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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19183; Directorate Identifier 2004–NM–158–AD; Amendment 39–13810; AD 2004–20–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This AD requires revising the airplane flight manual to provide procedures for the flightcrew to follow in the event of the loss of all liquid crystal display (LCD) units on airplanes equipped with a certain EIS2 standard of electronic instrument system. This AD is prompted by reports of the brief but total loss of all LCD units during cruise on airplanes equipped with that standard of electronic instrument system. We are issuing this AD to provide procedures to the flightcrew to restore operation of these LCD units and prevent prolonged loss of critical flight information to the flightcrew and the consequent reduced ability of the flightcrew to control the airplane during adverse flight conditions.

DATES: Effective October 15, 2004.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of October 15, 2004.

We must receive comments on this AD by November 29, 2004.

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

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

For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Examining the Docket

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

FOR FURTHER INFORMATION CONTACT: *Technical information:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A318, A319, A320, and A321 series airplanes. The DGAC advises that there have been several reports of total loss of all six liquid crystal display (LCD) units for the electronic instrument system (EIS) of a certain EIS2 standard during cruise for a short period of time. The flightcrew used the standby instruments, and the LCD units were eventually recovered. Subsequent investigation revealed that the three display management computers had received erroneous data from one LCD unit. Loss of all LCD units, if not corrected, could result in loss of critical flight information to the flightcrew and the reduced ability of the flightcrew to control the airplane during adverse operating conditions.

Relevant Service Information

Airbus has issued Temporary Revision (TR) 4.02.00/22, dated June 22, 2004, to the A318/319/320/321 Airplane Flight Manual (AFM). The TR provides procedures for the flightcrew to follow in the event of the loss of all LCD units on airplanes equipped with a certain EIS2 standard of electronic instrument system. The DGAC mandated incorporation of the TR and issued French airworthiness directive F–2004–104 R1, dated August 18, 2004, to ensure the continued airworthiness of these airplanes in France.

The DGAC advises that a new EIS2 standard, 4.2, has been developed to address the problems associated with

loss of the LCD units. Airbus Service Bulletin A320–31A1220, dated July 2, 2004 (reference Airbus Modification 34571), describes procedures for installing EIS2 standard 4.2, which eliminates the need for the AFM revision described above.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to provide procedures to the flightcrew to restore operation of these LCD units and prevent prolonged loss of critical flight information to the flightcrew and the consequent reduced ability of the flightcrew to control the airplane during adverse flight conditions. This AD requires incorporation of the TR described previously, unless the new EIS2 standard is installed.

Differences Between FAA and DGAC Airworthiness Directives

The DGAC airworthiness directive mandates changes to the master minimum equipment list (MMEL). But this (FAA) AD will not mandate those MMEL changes because the limits imposed by the FAA-approved MMEL meet or exceed those mandated by the French airworthiness directive.

Although the DGAC airworthiness directive mandates the immediate incorporation of the TR's operational limitations, this (FAA) AD would allow up to 10 days for compliance. We find that a 10-day compliance time will provide the time necessary for operators to accomplish the requirements of this AD without adversely affecting safety.

Interim Action

We consider this AD interim action. The DGAC is considering mandating the new EIS standard on those airplanes. We may consider further rulemaking at that time.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19183; Directorate Identifier 2004–NM–158–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www/faa.gov/language* and *http://www.plainlanguage.gov.*

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–20–05 Airbus: Amendment 39–13810. Docket No. FAA–2004–19183; Directorate Identifier 2004–NM–158–AD.

Effective Date

(a) This AD becomes effective October 15, 2004.

Affected ADs

(b) None.

Applicability

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

TABLE 1.—APPLICABILITY

Airbus model—	Modified by Airbus modification—	Or Airbus service bulletin—
A318, A319, A320, and A321 series airplanes ..	30368 or 31495	A320–31–1193, dated October 1, 2003; or A320–31A1198, dated July 11, 2003.

Unsafe Condition

(d) This AD was prompted by reports of the brief but total loss of all liquid crystal display (LCD) units during cruise on airplanes equipped with a certain EIS2 standard of electronic instrument system. The FAA is issuing this AD to provide procedures to the flightcrew to restore operation of these LCD units and prevent prolonged loss of critical flight information to the flightcrew and the consequent reduced ability of the flightcrew to control the airplane during adverse flight conditions.

Compliance

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

AFM Revision

(f) Within 10 days after the effective date of this AD, revise the Limitations section of the Airbus A318/319/320/321 Airplane Flight Manual (AFM) by inserting a copy of Temporary Revision (TR) 4.02.00/22, dated June 22, 2004, into the AFM. When the information in the TR is included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the TR may be removed from the AFM.

EIS2 Standard 4.2

(g) For airplanes on which EIS2 standard 4.2 (Airbus Modification 34571) is installed, the requirements of paragraph (f) of this AD do not apply. Airbus Service Bulletin A320–31A1220, dated July 2, 2004, provides procedures for installing EIS2 standard 4.2 on in-service airplanes. The TR required by paragraph (f) of this AD may be removed from the AFM if EIS2 standard 4.2 is later installed.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) French airworthiness directive F–2004–104 R1, dated August 18, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Temporary Revision 4.02.00/22, dated June 22, 2004, to the A318/319/320/321 Airplane Flight Manual, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21651 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19184; Directorate Identifier 2004–NM–159–AD; Amendment 39–13811; AD 2004–20–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A330 and A340 series airplanes. This AD requires revising the airplane flight manual to provide procedures for the flightcrew to follow in the event of the loss of all liquid crystal display (LCD) units on airplanes equipped with the EIS2 standard of electronic instrument system. This AD is prompted by reports of the brief but total loss of all LCD units during cruise on airplanes equipped with the EIS2 standard of electronic instrument system. We are issuing this AD to provide procedures to the flightcrew to restore operation of these LCD units and prevent prolonged loss of critical flight information to the flightcrew and the consequent reduced ability of the flightcrew to control the airplane during adverse flight conditions.

DATES: Effective October 15, 2004.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of October 15, 2004.

We must receive comments on this AD by November 29, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
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- Fax: (202) 493–2251.
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Docket Number") as a cross-reference for searching purposes.

Examining the Docket

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

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that there have been several reports of total loss of all six liquid crystal display (LCD) units for the electronic instrument system (EIS) of standard EIS2 during cruise for a short period of time. The flightcrew used the standby instruments, and the LCD units were eventually recovered. Subsequent investigation revealed that the three display management computers had received erroneous data from one LCD unit. Loss of all LCD units, if not corrected, could result in loss of critical flight information and the reduced ability of the flightcrew to control the airplane during adverse operating conditions.

Relevant Service Information

Airbus has issued the following temporary revisions (TRs) to the Airbus A330 and A340 airplane flight manuals (AFMs), as applicable:

TRs

TR—	Dated—	For model—	That are—
4.02.00/23	June 28, 2004	A330 series airplanes	Not equipped with FWC STD K7/486 (Airbus Modification 49193).
4.02.00/24	June 28, 2004	A330 series airplanes	Equipped with FWC K7/486 (Airbus Modification 49193).
4.02.00/38	June 28, 2004	A340 series airplanes	Not equipped with FWC STD L10/486 (Airbus Modification 49192).
4.02.00/39	June 28, 2004	A340 series airplanes	Equipped with FWC STD L10/486 (Airbus Modification 49192).

The TRs provide procedures for the flightcrew to follow in the event of the loss of all LCD units on airplanes equipped with the EIS2 standard of electronic instrument system. The DGAC mandated incorporation of the TRs and issued French airworthiness directive F–2004–117, dated July 21, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to provide procedures to the flightcrew to restore operation of these LCD units and prevent prolonged loss of critical flight information to the flightcrew and the consequent reduced ability of the flightcrew to control the airplane during adverse flight conditions. This AD requires revising the AFM to incorporate the TRs described previously.

Differences Between FAA and DGAC Airworthiness Directives

The DGAC airworthiness directive mandates changes to the master minimum equipment list (MMEL). But this (FAA) AD will not mandate those MMEL changes because the limits imposed by the FAA-approved MMEL meet or exceed those mandated by the French airworthiness directive.

Although the DGAC airworthiness directive mandates the immediate incorporation of the TRs' operational limitations, this (FAA) AD would allow up to 10 days for compliance. We find that a 10-day compliance time will provide the time necessary for operators to accomplish the requirements of this AD without adversely affecting safety.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–19184; Directorate Identifier 2004–NM–159–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA

personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www/faa.gov/language* and *http://www.plainlanguage.gov.*

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–20–06 Airbus: Amendment 39–13811. Docket No. FAA–2004–19184; Directorate Identifier 2004–NM–159–AD.

Effective Date

(a) This AD becomes effective October 15, 2004.

Affected ADs

(b) None.

Applicability

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

TABLE 1.—APPLICABILITY

Airbus model—	Modified as applicable by either—			
	Airbus modification—	Or Airbus service bulletin—	Revision—	Dated—
A330 and A340 series airplanes.	47524, 50161, 50183, 50616, or 51153.	A330–31–3056	Original	December 20, 2002.
			01	January 31, 2003.
			02	March 24, 2003.
		A330–31–3057	Original	July 10, 2003.
			01	October 15, 2003.
			02	December 19, 2003.
		A340–31–5001	Original	July 10, 2003.

Unsafe Condition

(d) This AD was prompted by reports of the brief but total loss of all liquid crystal display (LCD) units during cruise on airplanes equipped with the EIS2 standard of electronic instrument system. The FAA is issuing this AD to provide procedures to the flightcrew to restore operation of these LCD units and prevent prolonged loss of critical flight information to the flightcrew and the consequent reduced ability of the flightcrew to control the airplane during adverse flight conditions.

Compliance

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

AFM Revision

(f) Within 10 days after the effective date of this AD, revise the Limitations section of the Airbus A330 and A340 Airplane Flight Manuals (AFMs) by inserting a copy of the applicable temporary revision (TR) listed in Table 2 of this AD into the AFM. When the information in the TR is included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the TR may be removed from the AFM.

TABLE 2.—TRS

Use TR—	Dated—	For model—	That are—
4.02.00/23	June 28, 2004	A330 series airplanes	Not equipped with FWC STD K7/486 (Airbus Modification 49193).
4.02.00/24	June 28, 2004	A330 series airplanes	Equipped with FWC STD K7/486 (Airbus Modification 49193).
4.02.00/38	June 28, 2004	A340 series airplanes	Not equipped with FWC STD L10/486 (Airbus Modification 49192).
4.02.00/39	June 28, 2004	A340 series airplanes	Equipped with FWC STD L10/486 (Airbus Modification 49192).

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) French airworthiness directive F–2004–117, dated July 21, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) Unless the AD specifies otherwise, you must use the temporary revisions to the applicable Airbus A330 or A340 Airplane Flight Manual, listed in Table 3 of this AD, to perform the actions that are required by this AD:

TABLE 3.—INCORPORATION BY REFERENCE

Temporary revision—	Date—
4.02.00/23	June 28, 2004.
4.02.00/24	June 28, 2004.
4.02.00/38	June 28, 2004.
4.02.00/39	June 28, 2004.

The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21650 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–44–AD; Amendment 39–13807; AD 2004–20–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 707 and 720 series airplanes, that requires an inspection of the main landing gear (MLG) lock support fitting and the wing fillet flap support link for damage, and corrective action, if necessary; and replacement of the bolts and bushings at the joint between the MLG lock support fitting and the wing fillet flap support link. This action is necessary to prevent stress corrosion cracking of the bolts and wearing of the joint between the lock support fitting and the support link, which could lead to failure of the joint and could cause the collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective November 4, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of November 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 707 and 720 series airplanes was published in the **Federal Register** on February 13, 2004 (69 FR 7174). That action proposed to require an inspection of the main landing gear (MLG) lock support fitting and the wing fillet flap support link for damage, and corrective action, if necessary; and replacement of the bolts and bushings at the joint between the MLG lock support fitting and the wing fillet flap support link.

Comment

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

Request To Revise "Parts Installation" Paragraph

One commenter requests to revise "Parts Installation" paragraph (e) of the proposed AD. The commenter suggests including "and no person shall install a bushing other than an aluminum nickel bronze * * *." The commenter notes that the root cause of the unsafe condition of the proposed AD is corrosion and galling between the bolt and steel bushings.

We agree with the commenter. We inadvertently omitted the bushings from paragraph (e) of the proposed AD. As specified in paragraph (d) of the proposed AD, bolts and bushings are to be replaced with new CRES bolts and Cadmium-plated Al-Ni-Br bushings. The intent of paragraph (e) of the proposed AD was to prevent bolts and bushings other than CRES bolts and Cadmium-plated Al-Ni-Br bushings from being installed. We have revised paragraph (e) of the final rule accordingly.

Conclusion

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

Cost Impact

There are approximately 230 airplanes of the affected design in the

worldwide fleet. We estimate that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required replacement and inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $38,220, or $910 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–20–02 Boeing: Amendment 39–13807. Docket 2003–NM–44–AD.

Applicability: All Model 707 and 720 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking of the bolts and wearing of the joint between the lock support fitting and the support link, which could lead to failure of the joint and could cause the collapse of the main landing gear (MLG), accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3511, dated January 23, 2003.

Initial Inspection

(b) Within 12 months or 1,000 flight cycles after the effective date of this AD, whichever comes first, perform a high frequency eddy current (HFEC) inspection of the MLG lock support fitting and the support link for cracks and corrosion in accordance with the service bulletin.

Corrective Actions

(c) If any crack or corrosion is found, during the HFEC inspection required by paragraph (b) of this AD, before further flight, rework the lock support fitting or support link, in accordance with the service bulletin, except as specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) If the service bulletin specifies to contact Boeing for rework limits: Before further flight, repair or replace the lock support fitting or support link per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair/replacement method to be approved, the approval must specifically reference this AD.

(2) Where the service bulletin specifies to rework the forward and aft lug bore and faces common to the lock support fitting of the MLG as given in Boeing Service Bulletin 707–2837, this AD requires rework to be accomplished only in accordance with Revision 5 of Boeing 707 Service Bulletin 2837, dated March 31, 1978.

Replacement of Bolts and Bushings

(d) Within 12 months or 1,000 flight cycles after the effective date of this AD, whichever comes first, replace the bolts and bushings at the joint between the lock support fitting for the MLG and the wing fillet flap with new CRES bolts and Cadmium-plated Al-Ni-Br bushings in accordance with the service bulletin.

Parts Installation

(e) As of the effective date of this AD, only bolts specified in paragraph (e)(1) of this AD and bushings specified in paragraph (e)(2) of this AD, may be installed at the joint between the MLG lock support fitting and the support link, on any airplane.

(1) CRES bolts, part number (P/N) BACB30LR10DK56 or P/N BACB30LR10DK62.

(2) Cadmium-plated aluminum nickel bronze bushings as specified in the service bulletin.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing 707 Alert Service Bulletin A3511, dated January 23, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(h) This amendment becomes effective on November 4, 2004.

Issued in Renton, Washington, on September 16, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21649 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–57–AD; Amendment 39–13798; AD 2004–19–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–22B, RB211–524, and RB211–535 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2004–19–04. That AD applies to Rolls-Royce plc (RR) RB211–22B, RB211–524, and RB211–535 series turbofan engines. That AD was published in the **Federal Register** on September 22, 2004 (69 FR 56683). In the amendatory language, under § 39.13 [Amended], the amendment number for the AD was inadvertently omitted. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 04–21173 that applies to RR RB211–22B, RB211–524, and RB211–535 series turbofan engines, was published in the **Federal Register** on September 22, 2004 (69 FR 56683). The following correction is needed:

§ 39.13 [Corrected]

■ On page 56684, in the second column, under § 39.13 [Amended], in the fifth line, "2004–19–04 Rolls-Royce plc: Docket No." is corrected to read "2004–19–04 Rolls-Royce plc: Amendment 39–13798. Docket No.".

Issued in Burlington, MA, on September 23, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–21912 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 2004P–0354]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of Sirolimus Test System Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the sirolimus test system device into class II (special controls). The special control that will apply to the device is the guidance document entitled "Class II Special Controls Guidance Document: Sirolimus Test Systems." The device is intended to measure sirolimus levels in whole blood as an aid to managing therapy for transplant patients receiving sirolimus, an immunosuppressive drug. The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

DATES: This rule becomes effective November 1, 2004. The classification was effective July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Avis Danishefsky, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, ext. 161.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a document in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued a document on June 15, 2004, classifying the Microgenics CEDIA Sirolimus Assay in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On June 16, 2004, Microgenics Corp. submitted a petition requesting classification of the Microgenics CEDIA Sirolimus Assay under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Microgenics CEDIA Sirolimus Assay can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name sirolimus test system and is identified as a device intended to quantitatively determine sirolimus concentrations in whole blood. Measurements are used as an aid in management of transplant patients receiving therapy with sirolimus.

FDA has identified no direct risks to health related to use of sirolimus test systems. However, FDA has identified improper patient management, which involves failure of the test to perform as indicated or error in interpretation of results, as an indirect risk to health related to use of this device. For example, a falsely low sirolimus measurement could contribute to a decision to raise the sirolimus dose above that which is necessary for therapeutic benefit. This could result in increased risk in the form of thrombocytopenia, leukopenia, anemia, or hyperlipidemia. A falsely high sirolimus measurement could contribute to a decision to decrease the dose below

that which is necessary for immunosuppression. This could result in increased risk of rejection of the transplanted organ. Since optimal ranges for sirolimus may vary depending on the metabolite cross-reactivity of the specific assay, as well as on clinical factors, use of assay results to adjust a treatment regimen without consideration of such factors could also lead to improper patient management. Therefore, in addition to the general controls of the act, the device is subject to special controls, identified as the guidance document entitled "Class II Special Controls Guidance Document: Sirolimus Test Systems."

The class II special controls guidance document also provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations on validation of performance characteristics and labeling. FDA believes that following the class II special controls guidance document generally addresses the risks to health identified in the previous paragraph. Therefore, on July 28, 2004, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding 21 CFR 862.3840.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a sirolimus test system will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness. FDA review of performance characteristics, test methodology, and labeling to satisfy requirements of § 807.87(e), will provide reasonable assurance that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification containing information on the sirolimus test system they intend to market, before marketing the device.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of these devices into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $110 million. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Microgenics Corp., dated June 16, 2004.

List of Subjects in 21 CFR Part 862

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 862.3840 is added to subpart D to read as follows:

§ 862.3840 Sirolimus test system.

(a) *Identification.* A sirolimus test system is a device intended to quantitatively determine sirolimus concentrations in whole blood. Measurements are used as an aid in management of transplant patients receiving therapy with sirolimus.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled "Class II Special Controls Guidance Document: Sirolimus Test Systems." See § 862.1(d) for the availability of this guidance document.

Dated: September 21, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–22011 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

RIN 0651–AB32

Rules of Practice Before the Board of Patent Appeals and Interferences

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; Correcting amendments.

SUMMARY: The United States Patent and Trademark Office (Office) is correcting a rule that appeared in the **Federal Register** of 12 August 2004 (69 FR 49960). The document revised the rules of practice before the Board of Patent Appeals and Interferences and made corresponding amendments to rules in 37 CFR part 1.

DATES: *Effective date:* September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Torczon, 703–308–9797.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–17699 appearing on page 49960 in the **Federal Register** of 12 August 2004, the following correction is made to the **SUPPLEMENTARY INFORMATION:**

On page 49980, first column, third full paragraph (answer to comment 69), the fourth sentence "Furthermore, it is noted that the appellant can file a request for continued prosecution pursuant to § 1.114 and then the appellant would be able to submit an amendment and/or evidence directed to only claims unrelated to the new ground of rejection and have such considered by the examiner." is corrected to read: "Furthermore, it is noted that the appellant can file a request for continued prosecution pursuant to § 1.114 and then the appellant would be able to submit an amendment and/or evidence also directed to claims unrelated to the new ground of rejection and have such considered by the examiner."

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

■ Therefore, 37 CFR parts 1 and 41 are corrected by making the following correcting amendments:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. In § 1.248, revise paragraph (c) to read as follows:

§ 1.248 Service of papers; manner of service; proof of service in cases other than interferences.

* * * * *

(c) See § 41.106(e) of this title for service of papers in contested cases before the Board of Patent Appeals and Interferences.

■ 3. In § 1.302, revise paragraph (b) to read as follows:

§ 1.302 Notice of appeal.

* * * * *

(b) In interferences, the notice must be served as provided in § 41.106(e) of this title.

* * * * *

■ 4. In § 1.303, revise paragraph (c) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

* * * * *

(c) A notice of election under 35 U.S.C. 141 to have all further proceedings on review conducted as provided in 35 U.S.C. 146 must be filed with the Office of the Solicitor and served as provided in § 41.106(e) of this title.

* * * * *

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 5. The authority citation continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

■ 6. In § 41.3, revise paragraph (e)(1) to read as follows:

§ 41.3 Petitions.

* * * * *

(e) *Time for action.* (1) Except as otherwise provided in this part or as the Board may authorize in writing, a party may:

(i) File the petition within 14 days from the date of the action from which the party is requesting relief, and

(ii) File any request for reconsideration of a petition decision within 14 days of the decision on petition or such other time as the Board may set.

* * * * *

■ 7. In § 41.127, revise paragraph (d) to read as follows:

§ 41.127 Judgment.

* * * * *

(d) *Rehearing.* A party dissatisfied with the judgment may file a request for rehearing within 30 days of the entry of the judgment. The request must specifically identify all matters the party believes to have been misapprehended or overlooked, and the place where the matter was previously addressed in a motion, opposition, or reply.

■ 8. In § 41.154, revise paragraph (c)(1) to read as follows:

§ 41.154 Form of evidence.

* * * * *

(c) * * *

(1) Each exhibit must have an exhibit label with a unique number in a range assigned by the Board, the names of the parties, and the proceeding number in the following format:

JONES EXHIBIT 2001
Jones v. Smith
Contested Case 104,999

* * * * *

■ 9. In § 41.155, revise paragraph (b) to read as follows:

§ 41.155 Objection; motion to exclude; motion in limine.

* * * * *

(b) *Other than deposition.* For evidence other than deposition evidence:

(1) *Objection.* Any objection must be served within five business days of service of evidence, other than deposition evidence, to which the objection is directed.

(2) *Supplemental evidence.* The party relying on evidence for which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the objection.

* * * * *

Dated: September 24, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–21966 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 270

[Docket No. RM 2002–1G]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is announcing a final regulation specifying notice and recordkeeping requirements governing the reporting of certain uses of sound recordings performed by means of digital audio transmissions pursuant to statutory license for the period October 28, 1998, through March 31, 2004.

EFFECTTIVE DATE: November 1, 2004.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Gina Giuffreda, Attorney–Advisor, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance right for sound recordings are certain exemptions and a statutory license that permits certain eligible subscription, nonsubscription, and satellite digital audio radio to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio, and business establishment services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things, report to copyright owners of sound recordings on the use of their works. Both licenses direct the Librarian of Congress to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The purpose of this notice and recordkeeping requirement is to ensure that the royalties collected under the statutory licenses are distributed to the correct recipients.

The Copyright Office announced interim regulations on March 11, 2004, specifying notice and recordkeeping requirements for use of sound recordings under the section 112 and 114 licenses.[1] *See* 69 FR 11515 (March 11, 2004). However, those interim regulations are prospective and do not address the notice and recordkeeping requirements for the period from October 28, 1998 (the date the statutory licenses other than the license for preexisting subscription services first became available) through March 31, 2004 (the "historic period").

Proposed Rulemaking

Previously, the Office had published a notice of inquiry seeking comment on what records of use are to be prescribed for uses of sound recordings during the historic period, a period during which many services had maintained few or, in many instances, no records of such use. 68 FR 58054 (October 8, 2003). The Office received a number of comments and, on July 13, 2004, the Office published a notice of proposed rulemaking proposing rules to address the historic period that were based upon the comments it had received in response to the notice of inquiry. 69 FR 42007 (July13, 2004). Because few, if any, records of prior use had been maintained to date and those that do exist would be of little or no use in forming the basis for distribution of royalties for the historic period, the Office concluded that there was little likelihood of obtaining any useful and meaningful data by requiring services to report information from the historic period. Instead of requiring such retroactive reports, the Office followed the suggestion of several commenters and proposed to adopt rules providing that a proxy be used in lieu of reporting requirements for the historic period. The proxy that emerged as the one most favored by the commenters was the data already provided by the preexisting subscription services to SoundExchange, Inc.[2] under the regulations announced in 1998 and now codified at 37 CFR 270.2 for transmissions made under section 114(f).

The Office proposed to adopt regulations specifying that the records of use submitted by the preexisting subscription services during the period between October 28, 1998, and March 31, 2004, shall be considered the records of use for all services operating under the section 112(e) and section 114 licenses and that no additional records need be filed by the nonsubscription services, the satellite digital radio audio services, business establishment services or new types of subscription services.

Comments

Three comments were submitted to the Office in response to the notice of proposed rulemaking. SoundExchange, Inc., a nonprofit organization jointly controlled by representatives of copyright owners and performers on whose behalf it receives and disburses section 114 statutory royalties, expressed its support for the proposed rule as "the best solution for a bad situation"–*i.e.*, a situation in which services using the statutory license had not been required to retain data on use of sound recordings. The National Association of Broadcasters, many of whose members operate under the statutory license, also expressed its support for the proposed rule.

RLI submitted a comment in which it took no position on the use of data from

[1] Those regulations did not apply to preexisting subscription services, which are defined in section 114 as services that perform sound recordings by means of noninteractive audio–only subscription digital audio transmissions which were in existence and were making such transmissions to the public for a fee on or before July 31, 1998. 17 U.S.C. 114(j)(11). Requirements for preexisting subscription services were announced in 1998, *see* 64 FR 34289 (June 24, 1998), and will not be affected by the rules adopted today.

[2] SoundExchange has been designated as the agent to receive royalty payments and statements of account from the preexisting subscription services. 37 CFR 260.3(f). SoundExchange was also designated as the "Receiving Agent" to receive royalty payments from eligible nonsubscription transmission services for the period from October 28, 1998, through December 31, 2002. SoundExchange and Royalty Logic, Inc. ("RLI") were designated for the same period as "designated agents" to distribute those royalty payments to copyright owners and performers. However, the regulations governing that time period provided that with respect to any royalty payment, RLI could act as designated agent only for copyright owners and performers who notified SoundExchange that they had elected to use RLI at least 30 days prior to SoundExchange's receipt of the royalty payment. 37 CFR 261.4(b), (c). Our July 13 notice of proposed rulemaking stated that it was the Office's understanding that no copyright owners or performers had elected RLI as their designated agent in accordance with §261.4(c), and that if that was the case, the proposed regulation would not need to require SoundExchange to provide to RLI any data from the preexisting subscription services.

For the period after December 31, 2002, SoundExchange has been the sole designated agent. 37 CFR 262.4(b).

the preexisting subscription services as a proxy. However, RLI asserted that contrary to the Office's understanding, a number of copyright owners and performers had designated RLI as their designated agent to distribute statutory royalties. RLI therefore urged that the records of use submitted by the preexisting subscription services to SoundExchange be provided to RLI as well so that RLI could use those records in its distribution of royalties to copyright owners and performers who have designated it as their designated agent. RLI further requested that the regulations provide that RLI receive such records directly from the preexisting subscription services rather than from SoundExchange.

The Final Rule

In light of the support in the comments for adoption of the reports already submitted by the preexisting subscription services as a proxy for reports from nonsubscription services, the satellite digital radio audio services, business establishment services or new types of subscription services, the Office has decided to adopt the proposed rule as a final rule.

However, RLI's assertion that it is entitled to receive the preexisting subscription services' reports requires a modification of the proposed rule. Whether RLI has or has not properly been designated by any copyright owners or performers is not an issue that can be resolved in this rulemaking proceeding; nor is there any need to resolve that issue. It will suffice to provide in the regulation that if RLI has been properly designated by any copyright owners or performers,[3] SoundExchange must provide copies of the preexisting subscription services' reports to that designated agent. The Office rejects as impractical RLI's request that the preexisting subscription services be required to send those reports directly to RLI. The reports in question, which cover the period from October 28, 1998, through March 31, 2004, have already been submitted to SoundExchange (or its predecessor, the Recording Industry Association of America) over a period of several years under the existing notice and recordkeeping regulations for preexisting subscription services. It would be an unfair burden on the preexisting subscription services to require them now to serve additional copies of those reports (copies of which they have not necessarily retained) on RLI, especially when all the reports are now in the possession of SoundExchange, which necessarily will have retained those reports to assist in distribution of royalties.

[3] And RLI is the only other entity eligible to be so designated.

List of Subjects in 37 CFR Part 270

Copyright, Sound recordings.

Final Regulation

■ In consideration of the foregoing, the Copyright Office amends part 270 of 37 CFR to read as follows:

■ 1. The authority citation for part 270 continues to read as follows:

Authority: 17 U.S.C. 702.

PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

■ 2. Part 270 is amended as follows:

■ a. By redesignating § 270.4 as § 270.5; and

■ b. By adding a new § 270.4 to read as follows:

§ 270.4 Reports of use of sound recordings under statutory license prior to April 1, 2004.

(a) General. This section prescribes the rules which govern reports of use of sound recordings by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

(b) Reports of use. Reports of use filed by preexisting subscription services for transmissions made under 17 U.S.C. 114(f) pursuant to §270.2 for use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period October 28, 1998, through March 31, 2004, shall serve as the reports of use for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services for their use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

(c) Royalty Logic Inc. If, in accordance with §261.4(c), any Copyright Owners or Performers have provided timely notice to SoundExchange of an election to receive royalties from Royalty Logic, Inc. as a Designated Agent for the period October 28, 1998, through December 31, 2002, or any portion thereof, SoundExchange shall provide to RLI copies of the Reports of Use described in paragraph (b) of this section for that period or the applicable portion thereof.

Dated: September 21, 2004

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 04–22002 Filed 9–29–04; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 134–082; FRL–7820–1]

Interim Final Determination To Stay and/or Defer Sanctions, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern MCESD Rule 331.

DATES: This interim final determination is effective on September 30, 2004. However, comments will be accepted until November 1, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, 1001 N. Central Avenue, Suite 695, Phoenix, AZ 85004.

A copy of the rule may also be available via the Internet at *http://www.maricopa.gov/envsvc/AIR/ruledesc.asp*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On April 16, 2003 (68 FR 18546), we published a limited approval and limited disapproval of MCESD Rule 331 as adopted locally on April 7, 1999 and submitted by the State on August 4, 1999. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after April 16, 2003 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On April 21, 2004, MCESD adopted revisions to Rule 331 that were intended to correct the deficiencies identified in our limited disapproval action. On July 28, 2004, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our April 16, 2003 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our April 16, 2003 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised MCESD Rule 331, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with MCESD Rule 331 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 30, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–21824 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0003; FRL–7822–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Longmont Revised Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On April 12, 2004, the Governor of Colorado submitted a revised maintenance plan for the Longmont carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains revised transportation conformity motor vehicle emissions budgets for the years 2010 through 2014 and for 2015 and beyond. In this action, EPA is approving the Longmont CO revised maintenance plan and the revised transportation conformity motor vehicle emissions budgets. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on November 29, 2004 without further notice, unless EPA receives adverse comment by November 1, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2004–CO–0003, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *russ.tim@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08–OAR–2004–CO–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp*, 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. EPA's Regional Materials in EDOCKET and federal regulations.gov Web site 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 online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp*. 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 Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6479, and e-mail at: *russ.tim@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean National Ambient Air Quality Standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The word *State* means the State of Colorado, unless the context indicates otherwise.

I. General Information

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

1. Submitting CBI

Do not submit this information to EPA through Regional Materials in EDOCKET, *regulations.gov*, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

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

II. What Is the Purpose of This Action?

In this action, we are approving a revised maintenance plan for the Longmont CO attainment/maintenance area that is designed to keep the area in attainment for CO through 2015, and we're approving revised transportation conformity motor vehicle emissions budgets (MVEB). We approved the original CO redesignation to attainment and maintenance plan for the Longmont area on September 24, 1999 (*see* 64 FR 51694).

The original Longmont CO maintenance plan that we approved on September 24, 1999 (hereafter September 24, 1999 maintenance plan) utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the new, updated version of the model, MOBILE6. The policy guidance was entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" (hereafter, January 18, 2002 MOBILE6 policy). On November 12, 2002, EPA's Office of Transportation and Air Quality (OTAQ) issued an updated version of the MOBILE6 model, MOBILE6.2, and notified Federal, State, and local agency users of the model's availability. MOBILE6.2 contained additional updates for air toxics and particulate matter. However, the CO emission factors were essentially the same as in the MOBILE6 version of the model.

For the years analyzed in the September 24, 1999 maintenance plan (1993, 2005, 2010, and 2015), the State revised and updated the mobile sources CO emissions using MOBILE6.2. With the revised maintenance plan, the State also provided emissions data for 2006. The State recalculated the CO MVEB for 2010 through 2014 and applied a selected amount of the available safety margin to the 2010 through 2014 transportation conformity MVEB. The State recalculated the CO MVEB for 2015 and beyond and also applied a selected amount of the available safety margin to the 2015 and beyond transportation conformity MVEB. We have determined that all the revisions noted above are Federally-approvable, as described further below.

III. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the revised Longmont Carbon Monoxide (CO) Maintenance Plan December 18, 2003. The AQCC adopted the revised maintenance plan directly after the hearing. This SIP revision became State effective on March 1, 2004, and was submitted by the Governor to us on April 12, 2004.

We have evaluated the Governor's submittal for the revised maintenance plan and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. We reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, Appendix V and determined that the submittal was administratively and technically complete. The Governor was advised of our completeness determination through a letter from Robert E. Roberts, Regional Administrator, dated June 17, 2004.

IV. EPA's Evaluation of the Revised Maintenance Plan

EPA has reviewed the State's revised maintenance plan for the Longmont attainment/maintenance area and believes that approval is warranted. The following are the key aspects of this revision along with our evaluation of each:

(a) The State has revised the Longmont maintenance plan and has air quality data that show continuous attainment of the CO NAAQS.

As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average

concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. The September 24, 1999 maintenance plan relied on ambient air quality data from 1989 through 1996. In our consideration of the revised Longmont CO maintenance plan, submitted by the Governor on April 12, 2004, we reviewed ambient air quality data from 1993 through 2003 and the first calendar quarter of 2004. The Longmont area shows continuous attainment of the CO NAAQS from 1993 to present. All of the above-referenced air quality data are archived in our Aerometric Information and Retrieval System (AIRS).

(b) Using the MOBILE6.2 emission factor model, the State revised the attainment year inventory (1993), prior projected years (2005, 2010, and 2015) inventories and a new projected year (2006) emission inventory.

The revised maintenance plan that the Governor submitted on April 12, 2004 includes comprehensive inventories of CO emissions for the Longmont area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. More detailed descriptions of the revised 1993 attainment year inventory, the revised 2005, 2010, and 2015 projected inventories, and the new projected 2006 inventory, are documented in the maintenance plan in section 2 entitled "Emission Inventories and Maintenance Demonstration" and in the State's Technical Support Document (TSD). The State's submittal contains emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1993 attainment year and the projected years are provided in Table IV.–1 below.

TABLE IV.–1.—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR LONGMONT

Source category	1993	2005	2006	2010	2015
Point	0.18	0.12	0.12	0.09	0.07
Area	2.69	1.92	1.86	1.60	1.28
Non-Road	6.58	7.91	8.03	8.47	9.02
On-Road	43.26	33.97	35.32	28.01	25.99
Total	52.71	43.92	45.33	38.17	36.36

The revised mobile source emissions show the largest change from the September 24, 1999 maintenance plan and this is primarily due to the use of MOBILE6.2 instead of MOBILE5a. The MOBILE6.2 modeling information is contained in the State's TSD (see "Mobile Source Emission Inventories," page 6) and on a compact disk we prepared (a copy is available upon request). The State's TSD information is also available on a compact disk that may be requested from the State or it can be downloaded directly from the State's Web site at *http://apcd.state.co.us/documents/techdocs.html*. The TSD compact disk contains much of the modeling data, input-output files, fleet makeup, MOBILE6.2 input parameters, and other information and is included with the docket for this action. Other revisions to the mobile sources category resulted from revised vehicle miles traveled (VMT) estimates that were provided to the State from the Denver Regional Council of Governments (DRCOG), which is the metropolitan planning organization (MPO) for the Longmont area. In summary, the revised maintenance plan and State TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to EPA.

(c) The State revised the maintenance demonstration used in the September 24, 1999 Longmont maintenance plan.

As noted above, the State used the MOBILE6.2 model to revise the Longmont CO maintenance plan. Our January 18, 2002, MOBILE6 policy allows areas to revise their motor vehicle emission inventories and transportation conformity MVEBs using the MOBILE6 model without needing to revise the entire SIP or completing additional modeling if: (1) The SIP continues to demonstrate attainment or maintenance when the MOBILE5-based motor vehicle emission inventories are replaced with MOBILE6 base year and attainment/maintenance year inventories; and (2) the State can document that the growth and control strategy assumptions for non-motor vehicle emission sources continue to be valid and minor updates do not change the overall conclusion of the SIP. Our January 18, 2002 MOBILE6 policy also speaks specifically to CO maintenance plans on page 10 of the policy. The first paragraph on page 10 of the policy states "* * * if a carbon monoxide (CO) maintenance plan relied on either a relative or absolute demonstration, the first criterion could be satisfied by documenting that the relative emission reductions between the base year and the maintenance year are the same or greater using MOBILE6 as compared to MOBILE5."

The State could have used the streamlined approach described in our January 18, 2002 MOBILE6 policy to update the Longmont CO MVEB. However, the Governor's April 12, 2004 SIP submittal instead contained a completely revised maintenance plan and maintenance demonstration for the Longmont area. That is, all emission source categories (point, area, non-road, and mobile) were updated using the latest versions of applicable models (including MOBILE6.2), transportation data sets, emissions data, emission factors, population figures, and other demographic information. We have determined that this fully revised maintenance plan SIP submittal exceeds the requirements of our January 18, 2002 MOBILE6 policy and, therefore, our January 18, 2002 MOBILE6 policy is not relevant to our approval of the revised maintenance plan and its MVEB.

As discussed above, the State prepared revised emission inventories for the years 1993, 2005, 2006, and 2010, and 2015. The results of these calculations are presented in Table 1 "Longmont Carbon Monoxide Maintenance Plan Emission Inventories" on page 4 of the revised Longmont maintenance plan and are also summarized in our Table IV.–1 above. The State has demonstrated that with the use of MOBILE6.2, mobile source emissions show a continuous decline from 1993 to 2015 and that the total CO emissions, from all source categories, projected for each future year (2005, 2006, 2010, and 2015) are all below the 1993 attainment year level of

CO emissions. Therefore, we have determined that the revised maintenance plan continues to demonstrate maintenance of the CO NAAQS from 1993 to 2015 and is approvable.

(d) *Monitoring Network and Verification of Continued Attainment:* Continued attainment of the CO NAAQS in the Longmont area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section 5. "Monitoring Network/Verification of Continued Attainment" of the revised Longmont CO maintenance plan. In section 5., the State commits to continue the operation of the CO monitor in the Longmont area and to annually review this monitoring network and make changes as appropriate to meet the requirements of 40 CFR part 58.

Also, in section 6.A, the State commits to track mobile sources' CO emissions (which are the largest component of the inventories) through the ongoing regional transportation planning process that is done by DRCOG. Since regular revisions to Longmont's transportation improvement programs must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the revised maintenance plan. This regional transportation process is conducted by DRCOG in coordination with the State's Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are approving these commitments as satisfying the relevant requirements. We note that our final rulemaking approval renders the State's commitments federally enforceable. These commitments are also the same as we approved in the original maintenance plan.

(e) *Contingency Plan:* Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in section 6 of the revised maintenance plan, the contingency measures for the Longmont area will be triggered by a violation of the CO NAAQS. (However, the maintenance plan does note that an exceedance of the CO NAAQS may initiate a voluntary, local process by the City of Longmont, DRCOG, and APCD to identify and evaluate potential contingency measures.)

The City of Longmont and DRCOG, in conjunction with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the CO NAAQS has occurred. The subcommittee will present recommendations within 120 days of notification and the recommended contingency measures will be presented to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the recommended contingency measures, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the CO NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures that are identified in section 6.C of the revised Longmont CO maintenance plan include: (1) An enhanced vehicle inspection and maintenance program as described in AQCC Regulation No. 11 as it existed prior to the modifications adopted by the AQCC on January 10, 2000; (2) a 3.1% oxygenated gasoline program from November 8 through February 7, with a 2.0% oxygen content required from November 1 through November 7; and (3) nonattainment New Source Review (NSR) permitting requirements.

Based on the above, we find that the contingency measures provided in the State's revised Longmont CO maintenance plan are sufficient and continue to meet the requirements of section 175A(d) of the CAA.

(f) *Subsequent Maintenance Plan Revisions:* In accordance with section 175A(b) of the CAA, Colorado committed to submit a revised maintenance plan eight years after our approval of the original redesignation. This provision for revising the maintenance plan is contained in section 7 of the revised Longmont CO maintenance plan. In section 7, the State commits to submit a revised maintenance plan in 2007 to correspond with our initial approval of the original maintenance plan on September 24, 1999 (64 FR 51694).

Based on our review of the components of the revised Longmont CO maintenance plan, as discussed in our items IV.(a) through IV.(f) above, we have concluded that the State has met the necessary requirements in order for us to fully approve the revised Longmont CO maintenance plan.

V. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62193–62196) and in the sections of the rule referenced above.

With respect to maintenance plans, our conformity regulation requires that MVEB(s) must be established for the last year of the maintenance plan and may be established for any other years deemed appropriate (40 CFR 93.118). For transportation plan analysis years after the last year of the maintenance plan (in this case 2015), a conformity determination must show that emissions are less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the implementation plan. EPA's conformity regulation (40 CFR 93.124) also allows the implementation plan to quantify explicitly the amount by which motor vehicle emissions could be higher while still demonstrating compliance with the maintenance requirement. The implementation plan can then allocate some or all of this additional "safety margin" to the emissions budget(s) for transportation conformity purposes.

Section 4 "Transportation Conformity and Mobile Source Carbon Monoxide Emission Budgets" of the revised Longmont CO maintenance plan briefly describes the applicable transportation conformity requirements, provides MVEB calculations, identifies "safety margin," and indicates that the City of Longmont and DRCOG elected to apply the identified "safety margin" to the MVEB for 2010 through 2014 and 2015 and beyond.

In section 4 of the revised maintenance plan, the State evaluated two MVEBs; a budget for 2015 (the last year of the maintenance plan) and beyond and a budget applicable to the years 2010 through 2014. For the 2015 MVEB, the State subtracted the total estimated 2015 emissions (from all sources) of 36.36 Tons Per Day (TPD) from the 1993 attainment year total

emissions of 52.71 TPD. This produced a "safety margin" of 16.35 TPD. The State then reduced this "safety margin" by one TPD. The identified "safety margin" of 15.35 TPD for 2015 was then added to the estimated 2015 mobile sources emissions, 25.99 TPD, to produce a 2015 MVEB of 41 TPD. For the 2010 through 2014 MVEB, the State subtracted the total estimated 2010 emissions (from all sources) of 38.17 TPD from the 1993 attainment year total emissions of 52.71 TPD. This produced a "safety margin" of 14.54 TPD. The State then reduced this "safety margin" by one TPD. The identified "safety margin" of 13.54 TPD for 2010 was then added to the estimated 2010 mobile sources emissions, 28.01 TPD, to produce a 2010 through 2014 MVEB of 41 TPD. These MVEBs were identified in the first sentence of paragraph two of section 4 of the revised maintenance plan which states, "The Longmont attainment/maintenance area mobile source emission budgets are 41 tons/day for 2010 through 2014 and 41 tons/day for 2015 and beyond." Based on this choice, and in order for a positive conformity determination to be made, transportation plan analyses for years 2010 through 2014 must show that motor vehicle emissions will be less than or equal to the 2010 through 2014 MVEB of 41 TPD of CO and transportation plan analyses for years 2015 and beyond must show that motor vehicle emissions will be less than or equal to the 2015 MVEB of 41 TPD of CO. The revised maintenance plan also states that the previously approved CO MVEB of 16.76 TPD for 2015 and beyond (see 64 FR 51694, September 24, 1999) is removed from the SIP and is replaced by the new MVEBs of 41 TPD for the years 2010 through 2014 and 41 TPD for 2015 and beyond. Therefore, we are approving the transportation conformity MVEBs of 41 TPD of CO for 2010 through 2014 and 41 TPD of CO for 2015 and beyond for the Longmont attainment/maintenance area.

VI. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The revised Longmont CO maintenance plan will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VII. Final Action

In this action, EPA is approving the revised Longmont CO maintenance plan, that was submitted by the Governor on April 12, 2004, and the revised transportation conformity motor vehicle CO emission budgets for the years 2010 through 2014 and 2015 and beyond.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 29, 2004 without further notice unless the Agency receives adverse comments by November 1, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VIII. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 22, 2004.

Kerrigan G. Clough,

Acting Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart G—Colorado

■ 2. Section 52.349 is amended by adding paragraph (k) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(k) Revisions to the Colorado State Implementation Plan, carbon monoxide NAAQS, revised maintenance plan for Longmont entitled "Revised Carbon Monoxide Maintenance Plan for the Longmont Attainment/Maintenance Area", as adopted by the Colorado Air Quality Control Commission on December 18, 2003, State effective March 1, 2004, and submitted by the Governor on April 12, 2004.

[FR Doc. 04–21926 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[OAR–2003–0228, FRL–7821–6]

RIN 2060–AG12

Protection of Stratospheric Ozone; Listing of Substitutes in the Foam Sector

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today the Environmental Protection Agency (EPA) is taking final action to change the listing of HCFC–141b from acceptable to unacceptable for use as a foam blowing agent under the Significant New Alternatives Policy (SNAP) Program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which reduce the overall risk to public health and the environment. On July 11, 2000 EPA issued a proposed rule concerning the use of several hydrochlorofluorocarbons (HCFCs) in foam blowing applications. On July 22, 2002, EPA took final action with respect to a number of the HCFCs, but deferred its decision on changing the list for HCFC–141b in foam blowing applications due to the pending production and import ban of HCFC–141b (effective as of January 1, 2003) and incomplete information regarding the technical viability of alternatives. Since the publication of that final rule, EPA received information from outside parties through letters, meetings, and the HCFC–141b Exemption Allowance Petition process (68 FR 2819) that addresses the use of HCFC–141b in foam blowing applications. On March 10, 2004, EPA issued a Notice of Data Availability (NODA) which contained the new information mentioned above and sought comment on its completeness and accuracy. Today, based on the information contained in the NODA and the comments received on the NODA, EPA is making its final decision to change the listing for use of HCFC–141b as a foam blowing agent from acceptable to unacceptable.

DATES: This rule is effective on November 29, 2004.

ADDRESSES: EPA has established an official public docket for this action under Docket ID No. OAR–2003–0228 (continuation of Docket A–2000–18). All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, confidential business information (CBI) or other information whose disclosure is restricted by statute is not publically available. Certain other material, such as copyrighted material, is also listed in the index but not placed on the Internet. This material will be publicly available only in hard copy form. Publicly available docket materials are available electronically in EDOCKET. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Suzie Kocchi, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9387; fax number: (202) 343–2363; e-mail address: *kocchi.suzanne@epa.gov.* The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION:

Table of Contents: This action is divided into seven sections:

I. Regulated Entities

Today's rule regulates the use of HCFC–141b as a foam blowing agent used in the manufacture of rigid polyurethane/polyisocyanurate foam products. Businesses that currently might be using HCFC–141b, or might want to use it in the future, include:

—Businesses that manufacture polyurethane/polyisocyanurate foam systems.

—Businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc.

Table 1 lists potentially regulated entities:

TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION**.

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone depleting substances (ODS). EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. When the Agency grants a petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify EPA not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide EPA with the producer's health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published a rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning, foam manufacturing, solvents cleaning, fire suppression and explosion protection, sterilants; aerosols, adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

EPA defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance (40 CFR 82.172). Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative (40 CFR 82.174(a)). This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

C. Listing Decisions

Under section 612, EPA has considerable discretion in the risk management decisions it can make under the SNAP program. In the SNAP rule, the Agency identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable (40 CFR 82.180(b)). Fully acceptable substitutes, *i.e.*, those with no restrictions, can be used for all applications within the relevant sector end-use.

After reviewing a substitute, EPA may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as "acceptable subject to use conditions."

Even though EPA can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must first ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation must include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.*, performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes.

It is a violation of the CAA and EPA's SNAP regulations to replace an ODS with a substitute listed as unacceptable or to use of substitute in contravention of the limits set by a use condition or the narrowed use limits (40 CFR 82.174).

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor

do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings (59 FR 13044). Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

As described in the original March 18, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this final rule, EPA is revising its determination regarding the acceptability of HCFC–141b as a substitute in the foams blowing sector. Today's rule finalizes and incorporates decisions that were proposed on July 11, 2000 at 65 FR 42653 (referred to hereinafter as "the proposal"). The section below presents a detailed discussion of the determination that is made final in today's Final Rule.

III. Listing Decision on HCFC–141b in the Foam Sector

A. Background

A major goal of the SNAP program is to facilitate the transition away from ODS. In 1994, EPA listed several HCFCs as acceptable replacements for CFCs because the Agency believed that HCFCs provided a temporary bridge to alternatives that do not deplete stratospheric ozone ("ozone-friendly"). At that time, EPA believed that HCFCs were necessary transitional alternatives to CFC blowing agents in thermal insulating foam (59 FR 13083). As a result, HCFC–141b became one of the most common foam blowing agents in place of CFC–11. Pursuant to the CAA and the *Montreal Protocol on Substances that Deplete the Ozone Layer* HCFC–141b was phased out of production and import on January 1, 2003.[1] Since the time EPA initially listed HCFC–141b as acceptable in certain foam blowing uses, the Agency has listed several other non-ODS alternative blowing agents, including hydrofluorocarbons (HFCs), hydrocarbons, carbon dioxide, and other compounds as acceptable substitutes in foam blowing.[2] As of 2003, the vast majority of the foam industry has implemented alternatives other than HCFC–141b.[3] Finished products containing these alternatives are commercially available today. Spray foam is the only significant foam end use that has not completed the transition away from ODS. However, some spray foam companies have implemented non-ODS alternatives and are marketing foam systems containing non-ODS alternatives today. Others have identified non-ODS alternatives, overcome technical constraints and are working on the final implementation of non-ODS alternatives, such as acquiring final building code approvals before offering foam systems in the market by the end of 2004.

The spray foam sector operates differently than many other end users regulated under SNAP. Rather than the end user directly buying and using an alternative, the alternative is first processed by a formulator. The formulators purchase raw materials, including the blowing agent (*e.g.* HCFC–141b), isocyanates, surfactants, fire retardants, etc. from suppliers and blend the materials into a spray foam system. Because the re-formulating and testing is done by the formulators, they are relied upon for much of the technical expertise and support provided to the ultimate end user—on-site contractors. The contractors purchase these systems from the formulators in order to produce the actual foam product (*e.g.*, roof or wall insulation). Thus, in the spray foam sector, the formulators are responsible for implementing alternatives to HCFC–141b and providing the contractors with systems that produce foam meeting the necessary technical and code requirements. However, both the formulators and contractors are subject to SNAP regulations because both use the blowing agent (*e.g.* HCFC–141b). In the former case this entails blending the blowing agent in a foam formulation and in the latter case this involves producing the foam with aid of the blowing agent.

On July 11, 2000, EPA published a proposal that addressed the use of various HCFCs in foam end-uses (65 FR 42653). Part of that proposed rule was a proposal to list HCFC–141b as unacceptable in all foam end-uses upon finalization of the rule, with existing users allowed to continue use (*i.e.*, grandfathered) until January 1, 2005. EPA believed that this time period was sufficient for these end-users to transition to alternative foam blowing agents, considering the production phaseout of HCFC–141b on January 1, 2003. The Agency allowed 60 days for public comment and received 45 responses to the proposal by the close of the comment period (September 11, 2000). EPA received comments from chemical manufacturers, appliance manufacturers, spray foam manufacturers, associations, and others. Copies of the comments can be obtained through the Air Docket by referencing A–2000–18, IV–D–1 through 45 (*see* **ADDRESSES** section above for docket contact information). Specifically, the comments to the proposal on HCFC–141b detailed issues surrounding the technical viability and availability of non-ODS alternatives in the spray foam sector. On July 22, 2002, EPA took final action on other aspects of the July 11, 2000 proposed rule. In response to the comments regarding the technical viability and availability of alternatives in the spray foam sector, EPA deferred final action on the proposal to list HCFC–141b as unacceptable in order to monitor the progress of the spray foam sector in implementing technically viable alternatives (67 FR 47703).

Since EPA's deferral on the decision to find the use HCFC–141b in foam blowing applications unacceptable, the Agency has undertaken a number of initiatives to address the concerns of spray foam formulators that non-ODS alternatives were not technically and economically viable. There are approximately 15–20 companies in the U.S. that formulate spray foam for thousands of customers, including roofing contractors and others. Several of these formulators are larger businesses, but many are small businesses. In comments on the SNAP proposal and on a separate but related rulemaking (the HCFC Allowance Allocation proposal, July 20, 2001, 66 FR 38063), some small businesses that used HCFC–141b requested an industry wide exemption from the HCFC–141b production phaseout of January 1, 2003 (the phaseout date established in 1993). Based on their view of the technical viability and availability of alternatives, the formulators explained that access to HCFC–141b beyond the phaseout would allow them to complete all the tests and qualifications necessary to implement alternative blowing agents (*see* Air Docket A–98–33: IV–D–35 to IV–D–66 and IV–G–06 to IV–G–09). Upon review of these comments, EPA concluded that allowing production of HCFC–141b for the entire spray foam sector would

[1] The phaseout schedule was established on December 10, 1993 (58 FR 65018) as authorized under section 606 of the Clean Air Act.

[2] These listings are published in the following **Federal Register** notices: 61 FR 47012, 62FR 10700, 62 FR 30275, 63 FR 9151, 64 FR 30410, 64 FR 68039, 65 FR 19327, 65 FR 37900, 65 FR 78977 and 68 FR 50533.

[3] Within the context of this rule, the word alternative refers to a technically viable SNAP approved alternative that presents a lower overall risk to human health and the environment.

unfairly penalize companies who had invested in the transition from HCFC–141b. Additionally, hundreds if not thousands of companies had been relying on the HCFC–141b phaseout for ten years and had made investments according to the phaseout date established in 1993. EPA did not believe an industry wide exemption from the production ban would provide any small businesses that were experiencing technical constraints access to HCFC–141b produced after January 1, 2003, because they would be forced to compete with other companies for a limited supply of HCFC–141b (68 FR 2827). Therefore, in an immediate effort to address the concerns of small businesses, EPA funded a three-year grant (2001–2004) to the Spray Polyurethane Foam Alliance (SPFA). This grant assisted the SPFA to investigate and test non-ODS alternatives as well as provide guidance to the spray foam sector on implementation of those alternatives. EPA also provided outreach and assistance through various meetings, presentations and guidance directed at the spray foam sector from 2001 to 2004 (Air Docket OAR–2003–0228–30 and 31 and *http://www.epa.gov/ozone/snap/foams/index.html*).

More importantly, in response to the small businesses' requests for an extension of the production phaseout of HCFC–141b, EPA created the HCFC–141b Exemption Allowance Petition process in the final HCFC Allowance Allocation rule (January 21, 2003, 68 FR 2819). This process allowed formulators of HCFC–141b to individually petition EPA (on an annual basis) for new production of HCFC–141b beyond the phaseout date. The petitions must detail the technical viability of alternatives, access to stockpiled HCFC–141b and efforts to implement alternatives as well as the other information required under 40 CFR 82.16(h). Over the past two years, EPA has received approximately 25 petitions from formulators for a variety of applications, the majority of which were spray foam roofing and wall insulation.

The switch to alternatives has been slowed in the spray foam market because of the continued availability of HCFC–141b. Although stockpiled HCFC–141b will be depleted by the end of 2004, that is not the only source of HCFC–141b being used for spray foam applications. "Blended" polyurethane foam systems[4] containing HCFC–141b as the blowing agent are being imported to the U.S. under this scenario, HCFC–141b is newly produced and blended with the isocyanates, surfactants, fire retardants, etc. into a system in a country that is not subject to the production phaseout in the Montreal Protocol. Then, that "blended" system is imported into the U.S. for use in spray foam applications.

EPA has been monitoring this situation since the production phaseout on January 1, 2003 in order to determine whether this vehicle for obtaining HCFC–141b beyond the phaseout date would be exploited. As explained in the 2002 final foam rule, "* * * if this activity becomes widespread and compromises or undermines the intent of the U.S. HCFC–141b phaseout, disadvantages companies that have made good faith investments in developing and implementing non-ODS alternative technologies, EPA could consider establishing a SNAP use restriction * * *" (67 FR 47708). Given the information EPA has received since HCFC–141b production was phased out, it is apparent that the continued availability of HCFC–141b through these "blended" systems is not only delaying the transition to alternatives in the spray foam sector but threatens to reverse the transition by penalizing companies that have either transitioned to alternatives, or are technically capable of transitioning to alternatives but choose not to because of the widespread availability of foam systems containing HCFC–141b.

Based on the information from the HCFC–141b Exemption Allowance Petitions and other information provided by the industry, on March 10, 2004, EPA published a NODA (69 FR 11358) pertaining to the availability, including the technical viability, of alternatives, and the import of "blended" HCFC–141b polyurethane foam systems. EPA allowed 30 days for comment and received 16 comments on the information by the close of the comment period (April 9, 2004). The Agency received information on the technical viability of alternatives from chemical manufacturers, spray foam manufacturers, contractors, industry associations, and others. Copies can be obtained through the Air Docket by referencing OAR–2003–0228, Reference Numbers 14–29 (*see* **ADDRESSES** section above for docket contact info). Of the 16 comments received, 5 were from small businesses raising some concerns about the use of stockpiled HCFC–141b and the ability for all businesses to transition to alternatives by January 1, 2005. EPA addressed these and other issues the commenters raised below. In addition, EPA addressed any comments received to the 2004 NODA after the comment period closed on April 9, 2004 in a document titled "Response To Late Comments" found in Air Docket OAR–2003–0228. Today, EPA is making its final decision regarding the acceptability of HCFC–141b in the foam sector. EPA's decisions are based on the technical viability of alternatives, timing and availability of alternatives, the need for products that maintain thermal efficiency, structural integrity, safety, and the potential economic implications of this action.

B. Decision

Based on the comments received on the proposal and NODA, EPA is taking the following final actions: (1) Changing the listing decision for HCFC–141b so that it is unacceptable for all foam blowing end uses (other than those applications specifically exempted) as of January 1, 2005, (2) exempting the use of HCFC–141b for space vehicle, nuclear and defense foam applications from the unacceptability determination, (3) exempting the use of HCFC–141b for laboratory research and development applications from the unacceptability determination and (4) allowing the use of fully formulated HCFC–141b foam systems in inventory before January 1, 2005 until July 1, 2005.

The majority of the HCFC–141b users in the foam industry transitioned to alternatives on or before January 1, 2003. The remaining portion of the industry, specifically the spray foam sector, required additional time to implement alternatives to HCFC–141b. This sector includes small businesses at both the formulator level and the contractor level. Of the 15–20 formulators in the U.S. some are small businesses. Equally, of the thousands of contractors many are small businesses. Both the formulators and contractors use the blowing agent (*e.g.* HCFC–141b) in the manufacture of foam. The formulators use the blowing agent by blending it into the foam formulations found in the spray foam systems. The contractors use the blowing agent by spraying the foam system containing the blowing agent to create the actual foam product (*e.g.* roof, wall, pipe insulation). Over the past three years, EPA has been working extensively with this sector in order to ensure a safe and timely

[4] A foam system typically consists of two transfer pumps that deliver ingredients (polyisocyanate from one side and a mixture including the blowing agent and stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions. The components are then sent to a mixing gun and dispensed as foam directly to a surface such as a roof or tank. The "blended" foam systems being imported to the U.S. are complete systems, containing all the ingredients including the polyisocyanate and the blowing agent.

transition to less harmful alternatives, through the SPFA grant, the HCFC–141b Exemption Allowance Petition process and through the outreach efforts cited above.

In 2000, before the phaseout of HCFC–141b, small business formulators requested an extension of the HCFC–141b phaseout date in order to complete testing, qualification and code approvals of their alternative systems. EPA's technical expert, Caleb Management Services, surveyed the foam industry through a review of technical data and industry interviews and concluded that due to the field testing and approval process necessary for spray foam, commercial products containing alternatives would not be widely available until the beginning of 2005 (Air Docket A–2000–18, IV–D–78). The formulators supported this assessment and urged EPA to take action consistent with the Caleb Report. EPA agreed with the formulators and Caleb's assessment and established the HCFC–141b Exemption Allowance Petition process to provide relief to any business that did not have access to HCFC–141b while they were developing alternatives.

Suppliers of HCFC–141b and the majority of spray foam formulators (which hold the stockpiled HCFC–141b) provided key information to EPA through the two years of the HCFC–141b Exemption Allowance Petition process. This information included the quantity of stockpiled HCFC–141b available to the industry and the progress of formulators in implementing alternatives across the industry. EPA's analysis of that information determined that stockpiled HCFC–141b will be depleted by the end of 2004, the majority of technical constraints limiting the use of other acceptable alternatives have been overcome and alternatives will be implemented by the end of 2004 (Air Docket OAR–2003–0228–0009).

In the second half of 2002 the suppliers produced a large quantity of stockpiled HCFC–141b, including approximately 6.5 million pounds of uncommitted HCFC–141b. As a result, the majority of formulators purchased stockpiled HCFC–141b to meet their needs as they transitioned to non-ODS alternatives. Those formulators that did not purchase stockpiled HCFC–141b in 2002 before the phaseout, did so in both 2003 and 2004. As a result, the spray foam sector primarily relied on stockpiled HCFC–141b. During this period, EPA did not authorize new production of HCFC–141b through the HCFC–141b Exemption Allowance Petition process, with the exception of small quantities for specialized space vehicle applications (Air Docket A–98–33, IV–G–26–30).

Some formulators have made significant progress to transition away from HCFC–141b since their 2000 extension request. These firms now offer on the market foam systems containing non-ODS alternatives and others will be doing the same throughout 2004 (Air Docket OAR–2003–0228–0009). As EPA stated when establishing the HCFC–141b Exemption Allowance Petition process in January 2003, "EPA believes all or almost all formulators can have fully-approved commercially available foam systems using alternatives by the end of 2004." (68 FR 2828). The information gathered through the HCFC–141b Exemption Allowance Petition process supports EPA's belief that alternatives to HCFC–141b are technically and economically viable for foam applications.

Although alternatives are technically and economically viable for the majority of end uses in the foam industry, a few exceptions exist for space, nuclear and defense applications. EPA received information from the National Aeronautics and Space Administration (NASA), the National Nuclear Security Administration (NNSA) of the U.S. Department of Energy (DOE) and their contractors about specific foam applications that require continued use of HCFC–141b. These applications which include the use of HCFC–141b to insulate the external tank of the space shuttle and space launch vehicles in order to meet rigorous technical and human health and safety requirements. Alternatives to these uses have not proved technically viable to date (Air Docket OAR–2003–18, 20, 14 and 33). Those entities project their use of HCFC–141b will continue to at least 2010 when either the projects will be complete or alternatives will be qualified. Based on the highly specialized safety and technical requirements, EPA is allowing the continued use of HCFC–141b in space vehicle, nuclear and defense foam applications beyond January 1, 2005.

Additionally, suppliers of blowing agents, isocyanates, surfactants, fire retardants, etc. in the foam industry use small quantities of stockpiled HCFC–141b in laboratory-scale research and development for users outside the US.[5] This use includes various research and development activities such as preparing control samples, blending formulations, analyzing samples, etc. Given the fact that this is a small use that does not develop HCFC–141b foam products for the U.S., EPA is allowing the continued use of HCFC–141b in laboratory research and development applications beyond January 1, 2005.

Finally, EPA received comments from spray foam formulators and contractors requesting the use of inventoried HCFC–141b spray foam systems beyond January 1, 2005. Since 2000, EPA has provided continual updates on the status of the proposal through regulatory actions every year.[6] EPA believes that the spray foam sector has had sufficient notice to prepare and plan for the use restriction. This includes the prudent management of their inventories of stockpiled HCFC–141b and fully formulated systems containing HCFC–141b.

On the other hand, EPA recognizes that the actual application of spray foam is weather dependent, especially in the winter months where spray foam jobs are scheduled and delayed because of uncontrollable weather events. Additionally, EPA understands that a fully formulated spray foam system typically has a shelf life of approximately six months. In other words, if a spray foam system was formulated in December for a roofing application but that application was delayed due to weather, that formulated system has to be used by the end of June in order to maintain the foam's high quality and performance characteristics (after six months, the formulation could degrade and thus produce lower quality foam that does not meet all of the required performance standards). The total inventory of fully formulated spray foam systems is low in the winter because it is historically the slowest time of the year with relatively few spray foam applications scheduled. Thus, EPA is allowing the application of existing stock of fully formulated

[5] Although raw material suppliers are currently relying on stockpiled HCFC–141b for their research and development needs they may require additional production or import of *de minimis* quantities of HCFC–141b in the future. In a 2002 final rule, EPA defined *de minimis* quantities of class I controlled substances as 5 pounds or less (December 31, 2002, 67 FR 79861). EPA regulations exempt import and production of *de minimis* quantities of class I (CFCs) controlled substances for laboratory use from the phaseout of those substances with specific restrictions outlined in Appendix G in accordance with the Montreal Protocol (66 FR 14760). The issue of an HCFC–141b laboratory exemption including commercial research and development will be addressed in a separate rulemaking at a later date.

[6] These actions are as follows:

- SNAP Foam NPRM, July 11, 2000, 65 FR 42653,
- SNAP Foam NODA, May 23, 2001, 66 FR 28408,
- SNAP Foam Final rule, July 22, 2002, 67 FR 47703,
- HCFC Allowance Allocation Final rule, January 21, 2003, 68 FR 2819,
- SNAP Foam NODA, March 10, 2004, 69 FR 11385.

systems containing HCFC–141b until July 1, 2005.

In order to accommodate users who may have some remaining systems in inventory at the end of 2004, EPA is granting a one-time exception. Any fully formulated spray foam system containing HCFC–141b that is on-site and in the company's physical inventory, as of December 31, 2004 can be used through June 30, 2005, pursuant to this one time exception. However, effective July 1, 2005, it will be illegal to use an inventoried fully formulated system containing HCFC–141b for the purpose of foam application. As explained above, a fully formulated spray foam system typically has a finite shelf life of approximately six months before the reactivity of the system slows down and it will not perform to specification. Therefore, once blended the fully formulated spray foam systems needs to be applied within that limited period.

In order to comply with this exception, the spray foam systems containing HCFC–141b must be fully formulated and in existing stock with the formulator or contractor before January 1, 2005. Existing stock is defined as the total number of fully formulated systems containing HCFC–141b physically on-site at the company's facility on December 31, 2004 and listed on the inventory list. An inventory list must be created reflecting the total number of fully formulated systems containing HCFC–141b, on-site, at the facility. The inventory list must identify the name, address (not a Post Office Box), city, state, zip code, of the facility where the fully formulated systems are stored, and a signature attesting that the total number of fully formulated systems is true and accurate as of December 31, 2004. The facility must keep a copy of the inventory list at the facility site which stores the fully formulated systems list for three years.

Fully formulated systems that meet these conditions must be applied before July 1, 2005. Any user who knowingly applies an inventoried fully formulated system containing HCFC–141b on or after July 1, 2005 may be fined up to $27,500 per kilogram of HCFC–141b.

IV. Response to Comments

EPA received 45 comments during the comment period to the 2000 proposal. Those comments referred to all provisions in the proposal, including those related to the use of HCFC–22 and HCFC–142b, and were addressed in the 2002 final foam rule (67 FR 477703). The comments received on the 2000 proposal and the 2001 NODA regarding HCFC–141b were responded to in the final HCFC Allowance Allocation rule (28 FR 6819) which created the HCFC–141b Exemption Allowance Petition process. In addition, EPA received 16 comments during the comment period on the 2004 NODA. EPA addressed any late comments received to the 2004 NODA after the comment period closed on April 9, 2004 in a document titled "Response To Late Comments" found in Air Docket OAR–2003–0228. The comments EPA received within the comment period related to the use of HCFC–141b are summarized in the following 6 topics which are addressed in detail below:

1. Technical Availability of Alternatives.
2. Quantity of Stockpiled HCFC–141b.
3. Import into the U.S. of "Blended" Polyurethane Foam Systems.
4. Clean Air Act.
5. North American Free Trade Agreement.
6. De-listing HCFC–141b and Grandfathering under SNAP.

Technical Viability of Alternatives

Some commenters said that not all spray foam formulators will have qualified non-ODS alternatives available to them at the end of 2004. EPA's decision to list HCFC–141b as unacceptable in foam blowing is based on the fact that alternatives that provide a lower risk to human health and the environment are technically viable and commercially available. The commenters did not suggest or provide evidence why alternatives are not available to spray foam formulators. EPA's analysis of the information gathered from the HCFC–141b Exemption Allowance Petitions indicates that some formulators are already offering commercial products using non-ODS alternative blowing agents and the majority of formulators will be able to offer such products by the end of 2004 (Air Docket OAR–2003–0228–0009). As EPA stated when establishing the HCFC–141b Exemption Allowance Petition process, "EPA believes the spray and pour foam industries have had access to sufficient quantities of HFC–245fa [the alternative of choice for most formulators] for research, development and testing purposes since early 2001 and in many cases before. Therefore, by 2004, EPA believes that most, if not all, formulators in this sector will have had sufficient time to test and implement alternatives." (68 FR 2828).

Moreover, the formulators that petitioned EPA for newly produced HCFC–141b had to provide detailed information about the status of their implementation of alternatives. That information demonstrated that, overall, any remaining technical constraints were being addressed and alternatives would be implemented by the end of 2004 (Air Docket OAR–2003–0228–0009). It is important to note that these findings correspond and are consistent with the assessment in the Caleb Report of the spray foam sector and the formulators' support of that assessment. The Caleb Report stated that after completing field testing and achieving code approvals, the spray foam sector would be able to offer commercial products containing alternatives by 2005. Due to the progress in development, field testing and qualification in the sector, EPA believes by the beginning of 2005, the spray foam demand can be met with non-ODS alternatives. HCFC–141b will not be required to maintain technical requirements, such as structural integrity or thermal efficiency, in foam applications. However, as discussed in the previous section there are certain specialized space vehicle, nuclear and defense applications that do require HCFC–141b to meet rigorous technical, human health and safety requirements (*i.e.* space shuttle flight safety). For those limited applications, EPA is allowing the continued use of HCFC–141b.

Quantity of Stockpiled HCFC–141b

Some commenters recommended that EPA allow the use of any remaining stockpiled HCFC–141b in 2005. Before the phaseout of HCFC–141b, EPA encouraged stockpiling HCFC–141b for use during the transition to alternatives, especially for formulators that were experiencing technical constraints. According to EPA's analysis of data received from formulators and HCFC–141b suppliers, the remaining stockpiled HCFC–141b will be depleted by the end of 2004. In fact, petitioners in the HCFC–141b Exemption Allowance Petition process provided EPA with the quantity of stockpiled HCFC–141b they currently held and then demonstrated they did not have access to additional stockpiled HCFC–141b. Morever, the foam industry has been aware of the need to plan for its transition from HCFC–141b since 1993, which includes the use and management of a finite quantity of HCFC–141b. It is unlikely any company would be holding a large stockpile of HCFC–141b two years beyond the phaseout date. EPA is confident its analysis accurately reflects the quantity of stockpiled HCFC–141b available for use in the foam industry because it is based on data from the same industry that has requested to use stockpiles in

2005. EPA has been provided with no evidence that large stockpiles of HCFC–141b will exist in the spray foam sector beyond January 1, 2005. Therefore, EPA has determined that it is not necessary to allow stockpiled HCFC–141b to be used in 2005.

In a related issue, EPA acknowledges that some formulators and contractors could have HCFC–141b systems formulated and purchased in 2004 held in inventory at the beginning of 2005 due to weather delays. Given the fact that the production of HCFC–141b has been phased out since January 1, 2003 and that the use restriction was proposed in 2000, the foam industry has been on notice and should be making every effort to use HCFC–141b systems and transition to alternative based systems as soon as possible. However, as discussed in the previous section, in order to allow for the uncertainty of the winter months, EPA is allowing the use of fully formulated HCFC–141b foam systems that are in inventory before January 1, 2005 until July 1, 2005. This allowance will accommodate any formulators and contractors holding fully formulated HCFC–141b systems at the end of 2004 and ensure that HCFC–141b produced before the phaseout is consumed without a loss to the purchaser.

Import Into the U.S. of "Blended" Polyurethane Foam Systems

EPA received comments suggesting that restricting the use HCFC–141b would unfairly impact Mexico because such a restriction would preclude the use of "blended" foam systems containing HCFC–141b that are manufactured in and imported from Mexico. Restricting the use of HCFC–141b in foam applications in the U.S. does not restrict Mexico's ability to obtain HCFCs or use HCFCs. Under the Montreal Protocol, as an Article 5 country (a developing country), Mexico is allowed to produce and import HCFCs until 2040 in accordance with their baseline (which will be established in 2015). Equally, this use restriction does not prevent the use of or import into the U.S. of refrigerators or metal panels, for example, that contain HCFC–141b. Those products can continue to be manufactured in Mexico (or any other country) and imported into the U.S.

The commenters did not provide the quantity of HCFC–141b they were importing into the U.S. via these "blended" foam systems but another commenter stated that as much as 8–9 million pounds of HCFC–141b could be imported into the U.S. in this manner (Air Docket OAR–2003–0019).

• Some of the commenters contend that they are relying on the revenue from the sale of these "blended" foam systems for use in the U.S. to fund their research and development into alternatives in Mexico. This issue is beyond scope of this rulemaking because the SNAP program focuses on the transition to alternatives in the U.S. rather than other countries.

Clean Air Act

Another commenter stated that Section 610 of the CAA prevents EPA from restricting the use of HCFC–141b in foam applications. Under Section 610, EPA promulgated regulations prohibiting the sale and distribution and the offer for sale and distribution of nonessential products containing Class I and Class II controlled substances as of January 1994 (58 FR 4768 and 58 FR 69638). In Section 610, Congress provided a list of products manufactured with those controlled substances that it considered nonessential and that should be banned from sale and distribution in the U.S. However, in the language of CAA Section 610(d)—the Class II Nonessential Ban, Congress did not provide a list of products it considered essential. It listed exceptions to the self-effectuating ban for certain products (including "foam insulation products" containing Class II controlled substances), stating that those products should not be banned from sale and distribution in the U.S. at that time. Additionally, Section 610(d) provides the criteria that EPA should use to determine if additional products should be exempted from the ban. During the initial rulemaking to implement the Class II Nonessential Ban, EPA promulgated a definition for "foam insulation products" because the Agency determined that the use of the term "insulation" in the statute was ambiguous.[7] EPA used its authority to reach a reasonable interpretation in developing a definition of foam insulation.

Specifically, the commenter stated because Section 610 identifies foam insulation products as excluded from the nonessential product ban, EPA "has no authority to restrict HCFC use in foam insulation products based on the availability of substitutes." EPA agrees that under Section 610 it cannot ban the sale of foam insulation products made with ODS. However, the regulatory authority under Section 610 does not address EPA's ability to regulate the transition from the use of ODS to alternatives in the manufacturing of products such as foam. EPA has consistently interpreted the relationship between Section 610 and 612 as being independent, in that, Section 612 can restrict the use of a substitute in a product regardless of whether or not that product is considered nonessential under Section 610 (58 FR 69646).

Additionally, that same commenter states that EPA cannot prevent the use of "blended" foam systems containing HCFC–141b because Sections 604, 605 and 606 of the CAA are limited to controlled substances rather than products. Sections 604 and 605 mandate EPA to phaseout consumption (production + import − export) of Class I and Class II controlled substances. Section 606 gives EPA the power to accelerate the phaseout schedule of Class I and Class II controlled substances based on new scientific or technological information or in accordance with changes in the Montreal Protocol. In 1993, EPA promulgated a regulation phasing out the production and import of Class I and Class II controlled substances (58 FR 65018). As with Section 610, regulations promulgated under Sections 604, 605 and 606 do not limit the ability of EPA to address the transition from ODS to alternatives under Section 612, in particular whether an ODS is an acceptable substitute for another ODS in light of the availability of less harmful substitutes. While Sections 604, 605, and 606 regulate the production of HCFC–141b, this rule under Section 612 only restricts the use of HCFC–141b as a foam blowing agent substitute. The rule does not prohibit the production and import of HCFC–141b or products containing HCFC–141b (both of these issues are addressed in the separate EPA rulemakings discussed above).

North American Free Trade Agreement (NAFTA)

The commenter also states that if EPA prevents the use of HCFC–141b in foam applications the Agency would violate NAFTA because EPA's action would exempt grandfathered domestic use of HCFC–141b while restricting the import of similar products from Mexico. EPA has considered this argument and does not believe that the final rule is inconsistent with U.S. obligations under

[7] Foam insulation products are defined as a product containing or consisting of the following foam types: Closed cell rigid polyurethane foam; closed cell rigid polystyrene boardstock foam; closed cell rigid phenolic foam; and closed cell rigid polyethylene foam when such foam is suitable in shape, thickness and design to be used as a product that provides thermal insulation around pipes used in heating, plumbing, refrigeration, or industrial process systems (40 CFR 82.62). Any use of acceptable HCFC substitutes listed under the Section 612 SNAP program must comply with these restrictions.

the NAFTA (or any other international trade agreement to which the United States is a signatory), including Article 301 (national treatment) or Chapter 11. This rule does not regulate trade in HCFC–141b.[8] In terms of the use restriction on HCFC–141b, this rule does not distinguish where the HCFC–141b or the foam system containing HCFC–141b comes from. Rather, the use restriction applies to the use of HCFC–141b in certain foam blowing applications in the United States in the end uses covered by the SNAP regulations, including the use of foam systems containing HCFC–141b, regardless of the point of origin (domestic or foreign) of the HCFC–141b or how it is packaged. EPA is unaware of any other uses of foam systems containing HCFC–141b other than the uses covered by this rule. Thus, after December 31, 2004, it is unlikely that there will be a market for HCFC–141b systems in the United States. Although this rule does not restrict the import of HCFC–141b systems, we do not anticipate that these systems will continue to be imported after that date.

De-Listing HCFC–141b and Grandfathering Under SNAP

The same commenter argues that EPA does not have the authority to "de-list" HCFC–141b once it has found it unacceptable unless petitioned to do so under Section 612(d). EPA found HCFC–141b acceptable in foam applications in 1994, but stated it was doing so as an interim measure (59 FR 13044). In the proposal, EPA was following its mandate to review ODS alternatives and make determinations on their acceptability in order to ensure that substitutes for ODSs that are determined acceptable present a lower risk to human health and the environment than the ODS they replace and as compared with other potential substitutes. EPA disagrees, and as the Agency explained in the 2000 proposal, it has the authority to amend its regulations and change SNAP determinations independent of any petitions (65 FR 42659). Nothing in the statute bans such action and EPA believes that inherent in our authority to promulgate regulations initially is the authority to review and revise those regulations as the state of science advances.

Because one goal of the SNAP program is to expedite the transition from ODS to alternatives, the basis for EPA's proposal in 2000 was that the Agency believed alternatives were technically and economically viable in all foam applications. EPA deferred final action in 2002 because of insufficient information regarding the availability substitutes that presented a lower risk to human health and the environment. Because of concerns that the spray foam sector was experiencing technical constraints in implementing alternatives, in a separate rulemaking under Sections 605 and 606, EPA established the HCFC–141b Exemption Allowance Petition process as a mechanism to ensure formulators had access to HCFC–141b after the phaseout date. EPA also funded a three year grant to assist SPFA to develop and test alternatives. Today, considering the information generated by the above efforts, EPA believes alternatives are technically and economically viable and that the continued use of HCFC–141b contravenes the purpose and goal of Section 612, which is to ensure the use of alternatives that pose a lower risk to human health and the environment when such alternatives are technically and economically viable.

The commenter also claims that restricting the use of HCFC–141b would violate EPA's grandfathering practice. As explained in the proposal, "in the original SNAP rulemaking, EPA recognized that, where appropriate, EPA can grandfather the use of a substitute by setting the effective date of its unacceptability listing for one or more specific parties in the future." (65 FR 42658). In addition, the U.S. District Court for the District of Columbia established a four part test to judge the appropriateness of grandfathering which includes: (1) Is the new rule an abrupt departure from Agency practice, (2) what is the extent the interested parties relied on the previous rule, (3) what is the burden of the new rule on the interested parties and (4) what is the statutory interest in making the new rule effective immediately, as opposed to grandfathering interested parties (59 FR 13057). EPA disagrees with the commenter that grandfathering is appropriate here.

Grandfathering is designed to avoid penalizing users who have made good faith investments in alternatives. The foam industry has been on notice since 1993 (when the production phaseout date for HCFC–141b was published) about the need to find alternatives to HCFC–141b. Furthermore, in 1994 in the initial SNAP rulemaking, EPA stated that the Agency was finding HCFC–141b acceptable as a substitute for CFC–11 in foam blowing as an interim measure (59 FR 13083). Additionally, in 2000, EPA proposed to change the listing for HCFC–141b from acceptable to unacceptable effective January 1, 2005. Therefore, listing HCFC–141b as unacceptable is not an "abrupt departure" of EPA policy. Acknowledging the production phaseout of HCFC–141b, the majority of the foam industry made considerable investments and successfully transitioned to a variety of alternatives for a broad set of applications. The spray foam sector used stockpiled HCFC–141b for the remaining applications for an additional two years beyond the phaseout date in order to overcome any technical issues and qualify alternatives. That stockpile is expected to be depleted by the end of 2004 and the spray foam sector now has technically and economically viable alternatives to HCFC–141b (Air Docket OAR–2003–0228–0009).

However, despite the technical and commercial availability of alternatives, the transition from HCFC–141b in the spray foam applications is delayed by the continued availability of HCFC–141b in the U.S. The alternatives which are technically and economically available pose a lower overall risk to human health and the environment. There is no technical reason why the transition to alternatives should not be completed in the foam industry. Thus, EPA is finding HCFC–141b unacceptable in foam applications as of January 1, 2005.

V. Summary

A major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170(a)). In this light, a key policy interest of the SNAP program is promoting the shift from ODSs to alternatives posing lower overall risk and that are currently or potentially available (59 FR 13044). Today's decision to list HCFC–141b as unacceptable in foam applications is based on EPA's finding that the continued use of HCFC–141b in applications where non-ozone depleting alternatives are technically and economically available, would contribute to the continued depletion of the ozone layer, and will perpetually delay the transition to alternatives that pose lower overall risk to the health and the environment.

[8] This rule applies to the use of HCFC–141b, in the U.S., in foam applications covered by SNAP regulations. This rule does not apply to the production and import of ozone depleting substances (ODS). For information about trade of bulk ozone depleting substances, including HCFC–141b, between Parties of the Montreal Protocol please refer to the Direct Final rule EPA published on June 17, 2004 (69 FR 34024).

VI. 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 the Office of Management and Budget (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 entitlement, 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, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226.

This action does not impose any new information collection burden. Today's final rule is an Agency determination. OMB has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226 (EPA ICR No. 1596.05). This Information Collection Request (ICR) included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/Toxic Substances Control Act (TSCA) Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to use restrictions, and record-keeping for small volume uses.

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Office of Information Collection, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* Include the ICR and/or OMB number in any correspondence.

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 EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The 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 (APA) or any other statute unless the agency certifies that 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 rule on small entities, small entity is defined as:

(1) A small business that has fewer than 500 employees;

(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.

Types of businesses that are subject to today's final rule include:

- Businesses that manufacture polyurethane/polyisocyanurate foam systems (NAICS 326150).
- Businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc. (NAICS 326150).

The proposal preceding this final rule contained provisions related to HCFC–141b, HCFC–22 and HCFC–142b. As explained in the 2001 NODA and the 2002 final rule (66 FR 28408, 67 FR 47703), there were many small users of HCFC–22 and HCFC–142b that EPA was unaware of at the time of the proposal. The Agency hired a technical expert to investigate the concerns of the small businesses using HCFC–22 and HCFC–142b and published the findings in the 2001 NODA mentioned above. Subsequently, EPA addressed those concerns in the 2002 final rule mentioned above.

Furthermore, as described in the preamble to this rule, EPA deferred its decision on the use of HCFC–141b in the 2002 final rule in order to address the concerns of the small businesses using HCFC–141b. Through a separate process, those small businesses in the spray foam sector requested an extension of the January 1, 2003 production phaseout of HCFC–141b in order to complete the field testing and approvals necessary to transition to other alternatives. In response to the request, EPA established the HCFC–141b Exemption Allowance Petition process in the HCFC Allowance Allocation final rule (January 21, 2003, 68 FR 2819). This process allows formulators to petition EPA for new production of HCFC–141b if they do not have access to stockpiled HCFC–141b and meet the other criteria in 40 CFR 82.16(h).

After two years of development and field testing in the spray foam sector, alternatives are technically and economically viable and products containing those alternatives are commercially available. The majority of the spray foam sector has overcome the technical constraints and will be able to meet the demand in 2005 with alternatives. The spray foam sector consists of approximately 15–20 formulators and thousands of

contractors, both groups include small businesses. The spray foam sector operates differently than many other end users regulated under SNAP, in that the contractors purchase the spray foam systems from the formulators and thus rely heavily on those formulators to provide technical expertise and qualified spray foam systems.

EPA's analysis, found at Air Docket OAR–2003–0228, discusses the impact on formulators and contractors in the spray foam industry. This analysis indicates that due to the availability of multiple alternatives and the depletion of stockpiled HCFC–141b any economic impact on small businesses will be insignificant. Furthermore, virtually all those potential economic impacts result from the production and import phaseout of HCFC–141b in 2003. Because the production and import of HCFC–141b was phased out in the U.S. in 2003 and stockpiles of HCFC–141b will be depleted at the end of this year, spray foam formulators are transitioning to non-ODP blowing agents. Moreover, as explained in the analysis, EPA believes that the formulators that have completed the transition to alternatives have the capacity to meet the contractors demand in 2005. Finally, as described earlier in the preamble, in order to account for any remaining inventory of fully formulated systems containing HCFC–141b and to minimize any potential impact on contractors, EPA is allowing spray foam contractors to use those HCFC–141b systems in inventory at the end of the year until July 1, 2005.

As noted above, there are numerous alternatives available and some users have independently transitioned away from the substances listed as unacceptable. The actions herein may well provide benefits to small businesses who have transitioned to alternatives and made good faith efforts and investments in the transition. After considering the economic impacts of today's rule on small entities, EPA has concluded 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. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's final rule does not affect State, local, or tribal governments. The enforceable requirements of the rule for the private sector affect only a small number of foam manufacturers using HCFC–141b in the United States, and there are technically viable alternatives for those manufacturers. The impact of this rule on the private sector is less than $100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

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. This regulation applies directly to facilities that use these substances and not to governmental entities. 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 6, 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." "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 final rule does not have tribal implications. It 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.

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this final rule.

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

Executive Order 13045: "Protection of Children From Environmental Health

Risks 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.

This final rule is not subject to the Executive Order 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 or safety risks addressed by this action present a disproportionate risk to children. The use of HCFC–141b in foam manufacture occurs in the workplace where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact the manufacture of foam using HCFC–141b. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 29, 2004.

VII. Additional Information

For more information on EPA's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/* and from the Stratospheric Protection Hotline number at (800) 296–1996.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: September 23, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. Subpart G is amended by adding Appendix M to read as follows:

Appendix M to Subpart G—Unacceptable Substitutes Listed in the September 30, 2004 Final Rule, Effective November 29, 2004

FOAM BLOWING—UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All foam end-uses:	HCFC–141b	Unacceptable	Alternatives exist with lower or zero = ODP.
—Rigid polyurethane and polyisocyanurate laminated boardstock			
—Rigid polyurethane appliance			
—Rigid polyurethane spray and commercial refrigeration, and sandwich panels			
—Rigid polyurethane slabstock and other foams			
—Polystyrene extruded insulation boardstock and billet			
—Phenolic insulation board and bunstock			
—Flexible polyurethane			
—Polystyrene extruded sheet			
Except for: [1]			
—Space vehicle			
—Nuclear			
—Defense			
—Research and development for foreign customers			

[1] Exemptions for specific applications are identified in the list of acceptable substitutes.

[FR Doc. 04–21809 Filed 9–29–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[OPP–2004–0249; FRL–7372–6]

Bacillus thuringiensis var. aizawai strain PS811 (Cry1F insecticidal protein); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis var. aizawai* strain PS811 (Cry1F insecticidal protein) and the genetic material necessary for its production in cotton when applied/used as a plant-incorporated protectant. DowAgro Sciences, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis var. aizawai* strain PS811 (Cry1F insecticidal protein) and the genetic material necessary for its production in cotton when used as a plant-incorporated protectant.

DATES: This regulation is effective September 30, 2004. Objections and requests for hearings must be received on or before November 29, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0249. 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 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.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@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 a person or company involved with agricultural biotechnology, that may develop and market plant-incorporated protectants. Potentially affected entities may include, but are not limited to:

- Seed companies (NAICS code 111)
- Pesticide manufacturers (NAICS code 32532)
- Establishments involved in research and development in the life sciences (NAICS code 54171)
- Colleges, universities, and professional schools (NAICS code 611310).

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 174 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of August 11, 2004 (69 FR 48870) (FRL–7673–2), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F6785) by DowAgro Sciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. The petition requested that 40 CFR part 174 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis var. aizawai* strain PS811 (Cry1F insecticidal protein) and the genetic material necessary for its production in cotton when used as a plant-incorporated protectant.

This notice included a summary of the petition prepared by the petitioner DowAgro Sciences, LLC. Comments were received by The National Cotton Council and cotton grower groups. All comments were in support of this tolerance exemption.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require 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. . . ." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

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

III. Toxicological Profile

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

Data have been submitted to the Agency demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry1F protein. These data demonstrate the safety of the Cry1F protein at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tier II and Tier III). The acute oral toxicity data submitted support the prediction that the Cry1F protein would be non-toxic to humans. Thus, although Cry1F expression level data were required for an environmental fate and effects assessment, residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity.

Male and female mice (5 of each) were dosed with 15% (w/v) of the test substance, which consisted of *Bacillus thuringiensis var. aizawai* Cry1F protein at a net concentration of 11.4%. Two doses were administered approximately an hour apart to achieve the dose totaling 33.7 milliliter/kilogram body weight (mL/kg bwt). Outward clinical signs and body weights were observed and recorded throughout the 14–day study. Gross necropsies performed at the end of the study indicated no findings of toxicity. No mortality or clinical signs were noted during the study. A lethal dose $(LD)_{50}$ was estimated at >5,050 milligram (mg)/kg bwt of this microbially produced test material. The actual dose administered contained 576 mg Cry1F protein/kg bwt. At this dose, no LD_{50} was demonstrated as no toxicity was observed. Cry1F maize seeds contain 0.0017 to 0.0034 mg of Cry1F/gram of cotton kernel tissue. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al., *Toxicological Considerations for Protein Components of Biological Pesticide Products*, Regulatory Toxicology and Pharmacology 15L, 3–9 (1992). Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the Cry1F protein is not considered toxic. Further, amino acid sequence comparisons showed no similarity between Cry1F protein to known toxic proteins available in public protein databases. Finally, regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that the Cry1F protein would be non-toxic to humans.

Since Cry1F is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, and may be glycosylated and present at high concentrations in the food. Data has been submitted which demonstrates that the Cry1F protein is rapidly degraded by gastric fluid *in vitro* and is non-glycosylated. In a solution of Cry1F: Pepsin at a molar ratio of 1:100, complete degradation of Cry1F to amino acids and small peptides occurred in 5 minutes. A heat lability study demonstrated the loss of bioactivity of Cry1F protein to neonate tobacco budworm larvae after 30 minutes at 75 °C. This indicates that the protein is highly susceptible to digestion in the human digestive tract and that the potential for adverse health effects from chronic exposure is virtually nonexistent. Furthermore, studies submitted to EPA done in laboratory animals have not indicated any potential for allergic reactions to *Bacillus thuringiensis* or its components, including the endotoxin of the crystal protein. Additionally, a comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry1F, even at the level of 8 contiguous amino acids residues. Accordingly, the potential for the Cry1F protein to be a food allergen is minimal.

IV. Aggregate Exposures

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

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectants chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed cotton products and, potentially, drinking water. However, such exposures are unlikely to be problematic because of the demonstrated lack of mammalian toxicity and the digestibility of the Cry1F protein. Also, the protein is not likely to be present in drinking water because the protein is deployed in minute quantities within the plant, and studies demonstrate that Cry1F protein is rapidly degraded in soil. Finally, the use sites for the Cry1F protein are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity demonstrated for the Cry1F protein.

V. Cumulative Effects

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

Common modes of toxicity are not relevant to a consideration of cumulative exposure to the *Bacillus thuringiensis* Cry1F insect control protein. The product has demonstrated low mammalian toxicity and *Bt* insecticidal crystal proteins are known to bind to specific receptors in the insect gut, such that biological effects do not appear to be cumulative with any other known compounds.

Thus, the Agency does not expect any cumulative or incremental effects from exposure to residues of the Cry1F protein and the genetic material necessary for its production in cotton when applied/used as a plant-incorporated protectant as directed on the label and in accordance with good agricultural practices.

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

There is a reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of the Cry1F protein and the genetic material necessary for its production in cotton due to its use as a plant-incorporated protectant. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Cry1F protein include the characterization of the expressed Cry1F protein in cotton, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the protein. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered. Adequate information has been submitted to show that the Cry1F test material derived from microbial cultures was biochemically and functionally similar to the protein produced by the plant-incorporated protectant ingredients in cotton. Production of microbially produced protein was chosen in order to obtain sufficient material for testing. The acute oral toxicity data submitted supports the prediction that the Cry1F protein would be non-toxic to humans.

Both (1) available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers, including infants and children); and (2) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry1F protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the proteins. DNA and RNA are common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject active ingredient, have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject active plant pesticidal ingredients.

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are incorporated into EPA risk assessments either by (1) using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans, or (2) using a margin of exposure analysis.

In this instance, due to the anticipated agricultural use pattern for the product, non-dietary exposure to infants and children is not anticipated. Moreover, because all available information concerning the Cry1F protein and the genetic material necessary for its production demonstrates low to no

mammalian toxicity, a lack of allergenic potential, and a high degree of digestability, dietary exposure is anticipated to be at very low levels and, even then, is not anticipated to pose any harm to infants and children. Thus, the Agency concludes that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of the Cry1F protein and the genetic material necessary for its production in cotton, and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of the Cry1F protein and the genetic material necessary for its production in cotton. Accordingly, the Agency has determined that the additional margin of safety is not necessary to protect infants and children, and that not adding any additional margin of safety will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under FFDCA section 408(p), as amended by FQPA, to develop a screening process to determine whether pesticide chemicals (and any other substance that may have an effect that is cumulative to an effect of a pesticide chemical) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Advisory Committee (EDSTAC), EPA determined that there was no scientific basis for including, as part of the program, the androgen-and thyroid hormone systems, in addition to the estrogen hormone systems. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been determined, Cry1F proteins may be subjected to additional screening and/or testing to better characterize any effects related to endocrine disruption.

To date, however, and based on the weight of available data, the Agency has no information to suggest that the Cry1F protein and the material necessary for its production in cotton has an effect on the endocrine system. The Cry1F pesticidal active ingredient is a protein, derived from sources that are not known and not expected to exert an influence on the endocrine system. Similarly, given the rapid digestibility of the Cry1F insecticidal crystal protein, no chronic effects are expected. Accordingly, there is no impact via endocrine-related effects on the Agency's safety finding as set forth in this final rule for the Cry1F protein and the genetic material necessary for its production in cotton when applied/used as a plant-incorporated protectant. Therefore, the Agency is not requiring information on the endocrine effects of this plant-incorporated protectant at this time.

B. Analytical Method(s)

A validated method for extraction and direct enzyme linked immunosorbent assay analysis of Cry1F in cotton meal, cotton seed oil, and cotton by products has been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-incorporated protectant *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production in cotton.

VIII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0249 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 29, 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 VIII.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0249, 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).

IX. Statutory and Executive Order Reviews

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

X. 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 174

Environmental protection, Administrative practice and procedure, Pesticides and pests, Plant-incorporated protectant, Reporting and recordkeeping requirements.

Dated: September 23, 2004.

James Jones,

Director, Office of Pesticides Programs.

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

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136 - 136y; 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 174.455 is added to subpart W to read as follows:

§ 174.455 Bacillus thuringiensis Cry1F protein and the genetic material necessary for its production in cotton; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry1F protein and the genetic material necessary for its production in cotton are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in food and feed commodities of cotton. "Genetic material necessary for its production" means the genetic material which comprise: Genetic material encoding the Cry1F protein and its regulatory regions. "Regulatory regions" are the genetic material, such as

promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry1F protein.

[FR Doc. 04–21877 Filed 9–29–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0318; FRL–7680–8]

Dichlormid; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the inert ingredient (herbicide safener) dichlormid (Acetamide, 2,2-dichloro-*N,N*-di-2-propenyl-) in or on sweet corn commodities at 0.05 parts per million (ppm). Dow AgroSciences requested this tolerance under the Federal Food, Drug, and Cosmetic Act, (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerances will expire on December 31, 2005.

DATES: This regulation is effective September 30, 2004. Objections and requests for hearings must be received on or before November 29, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. After submitting your original written objection or hearing request as instructed in Unit VI., you can use EDOCKET or regulations.gov to submit the requested copy (see also Unit VI.A.2.). EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0318. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305– 6304; e-mail *address:boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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:

- Industry (NAICS 111), e.g., Crop Production, e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Industry (NAICS 112), e.g., Animal Production, e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Industry (NAICS 311), e.g., Food Manufacturing, e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Industry (NAICS 32532), e.g., Pesticide Manufacturing, 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 November 21, 2003 (68 FR 65708) (FRL–7333–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6676) by Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. This notice included a summary of the petition prepared by Dow AgroSciences, the petitioner.

The petition requested that 40 CFR 180.469 be amended by establishing time-limited tolerances for residues of the herbicide safener dichlormid, (*N,N*-diallyl-2,2-dichloroacetamide or Acetamide, 2,2-dichloro-*N,N*-di-2-propenyl-) (CAS Reg. No. 37764 –25–3), in or on sweet corn commodities at 0.05 parts per million (ppm). There were no comments received in response to the notice of filing.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other

relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for residues of dichlormid on sweet corn commodities at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the time-limited tolerances follows.

A. Toxicological Profile and Endpoints

In 1999, the Agency prepared a risk assessment which was used as the basis for establishing time-limited tolerances for residues of dichlormid in or on field and pop corn commodities. A final rule for these time-limited tolerances published in the **Federal Register** of March 27, 2000 (65 FR 16143) (FRL–6498–7). Based on that risk assessment, EPA concluded at that time that all of the risks were below the Agency's level of concern and there was a reasonable certainty that no harm would result to the general population, and to infants and children from aggregate exposure to residues of dichlormid on corn commodities.

No additional toxicity data has been reviewed and evaluated by the Agency since that time. For a complete description of the toxicological profile and endpoints, the uncertainty factors, the exposure assessment which included dietary exposure for both food and drinking water, the safety factor for infants and children, and aggregate risk for dichlormid, see the final rule of March 27, 2000.

In response to the new petition, to establish time-limited tolerances for sweet corn commodities, the Agency has prepared a new assessment that evaluates the acute and chronic dietary and drinking water risks from exposure to dichlormid in or on field, pop and sweet corn commodities. The drinking water exposure estimates are the same as those in the March 27, 2000 Final Rule. Since, no other assessments or evaluations are needed for assessing the risk of dichlormid, only the acute and chronic scenarios are discussed in Unit III. below.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Time-limited tolerances (expiring December 31, 2005) are established in 40 CFR 180.469 for residues of dichlormid, in or on field and pop corn commodities. Risk assessments were conducted by EPA to assess dietary exposures from dichlormid in or on field, pop and sweet corn commodities 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.

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 USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute dietary risk analyses incorporated tolerance level residues and assumed 100% of the corn commodities were treated with dichlormid.

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

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

For ground water, the Agency used its SCI-GROW (Screening Concentration in Ground Water) screening model and environmental fate data to determine the Estimated Environmental Concentration (EEC) of dichlormid in ground water. SCI-GROW is an empirical model based upon actual ground water monitoring data collected for the registration of a number of pesticides that serve as benchmarks for the model. The current version of SCI-GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites (i.e., sites with sandy soils and depth to ground water of 10 to 20 feet). The SCI-GROW ground water screening concentration is 0.046 ppb.

The Agency used the Generic Estimated Environmental Concentration (GENEEC) to estimate pesticide concentrations in surface water. GENEEC simulates a 1 hectare by 2 meter deep edge-of-the-field farm pond which receives pesticide runoff from a treated 10 hectare field. GENEEC can substantially overestimate true pesticide concentrations in drinking water. It has certain limitations and is not the ideal tool for use in drinking water risk assessments. However, it can be used in screening calculations and does provide an upper bound on the concentration of true drinking water concentrations.

Using GENEEC and available environmental fate data, EPA calculated the following Tier 1 EECs for dichlormid:

- Peak (Acute) EEC: 27.29 ppb
- Average (Chronic) EEC 26.93 ppb

Interim Agency policy allows the average (chronic) GENEEC value to be divided by 3 to obtain a value of 8.98 ppb for use in chronic risk assessment calculations.

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use EECs from these models to quantify drinking water exposure and risk as a percent of reference dose (%RfD) or percent of population adjusted dose (%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 dichlormid they are further discussed in Unit III.D.

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). Dichlormid is not approved for use on

any sites that would result in residential exposure.

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

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

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines 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. *Conclusion.* The additional FQPA safety factor of 10X is retained for acute risks since: (1) There is qualitative evidence of increased susceptibility in the rabbit developmental study; and (2) the toxicity database is incomplete. There are data gaps for the 2-generation reproduction study in rats, and acute and subchronic neurotoxicity studies. The additional FQPA safety factor of 30X is applied for chronic risks for the reasons discussed above for acute risks and for the data gap for the chronic toxicity study in dogs.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water. 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 USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. For dichlormid, a DWLOC was calculated for the acute and chronic scenarios for the U.S. population and for the most highly exposed population subgroup.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticide Programs (OPP) concludes with reasonable certainty that exposures to 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 previously discussed for acute exposure, the acute dietary exposure from food to dichlormid will occupy 3% of the aPAD for the U.S. population, and 9% of the aPAD for non-nursing infants <1 year old. In addition, there is potential for acute dietary exposure to dichlormid in drinking water. Since the modeled groundwater and surface water concentrations are less than the DWLOCs, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO DICHLORMID

Population Subgroup	aPAD /(mg/kg/day)	%aPAD/(Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.01	3	27.29	<1	338
Non-nursing infants (<1 year old)	0.01	9	27.29	<1	91

2. *Chronic risk.* Using the exposure assumptions previously described for chronic exposure, EPA has concluded that exposure to dichlormid from food will utilize 5% of the cPAD for the U.S. population, and 11% of the cPAD for children 1–6 years old. In addition, there is potential for chronic dietary exposure to dichlormid drinking water. Since the modeled groundwater and surface water concentrations are less than the DWLOCs, EPA does not expect

the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

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

Population Subgroup	cPAD /(mg/kg/day)	%cPAD/(Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0022	5	8.98	<1	73
Children (1-6 years old)	0.0022	11	8.98	<1	20

3. *Conclusion.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of the herbicide safener dichlormid, (*N,N*-diallyl-2,2-dichloroacetamide or Acetamide, 2,2-dichloro-*N,N*-di-2-propenyl-) (CAS Reg. No. 37764 –25–3).

IV. Other Considerations

A. Endocrine Disruptor Effects

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

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with a nitrogen selective detector) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, Public Information and Record Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov.*

C. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of dichlormid in corn commodities.

D. Conditions

There are several data gaps which needed to be addressed before permanent tolerances can be established. The following studies have been submitted for Agency review and evaluation (1) 2-Generation Reproduction Study-Rat, (2) General Metabolism (3) Acute Neurotoxicity (4) Subchronic Neurotoxicity, (5) Crop Field Trials, and (6) Rotational Crop (Confined). The Agency will review and evaluate these studies, and then prepare a new risk assessment.

The data gaps are not as extensive as it would seem. For the crop field trials, both pre-and post-emergent data using dichlormid have been provided. The additional field trials are to fulfill the guideline requirements. To account for the incomplete toxicological database, the Agency retained an additional 10X safety factor for infants and children as to acute risk and an additional 30X safety factor as to chronic risk.

V. Conclusion

Therefore, time-limited tolerances expiring December 31, 2005, are established for residues of the herbicide safener dichlormid, (*N,N*-diallyl-2,2-dichloroacetamide or Acetamide, 2,2-dichloro-*N,N*-di-2-propenyl-) (CAS Reg. No. 37764–25–3) in or on sweet corn commodities at 0.05 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0318 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 29, 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**. Send us your copies, identified by docket ID number OPP-2004–0318, using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the on-line instructions for submitting comments.
- *Agency Website: http://www.epa.gov/edocket/.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving electronic copies. Follow the on-line instructions for submitting materials to the docket.
- *E-mail: 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.
- *Mail:* 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.
- *Hand Delivery:* In person or by courier, bring a copy to the location of the PIRIB described in *ADDRESSES.*

Do not include any CBI in the copy you submit for the public docket.

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

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 23, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART180-[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 180.469 is amended by revising the section heading, and the introductory text of paragraph (a), and by adding alphabetically new commodities to the table in paragraph (a) to read as follows:

§ 180.469 Dichlormid; tolerances for residues.

(a) *General.* Tolerances are established for residues of dichormid; (Acetamide, 2,2-dichloro-*N,N*-di-2-propenyl-)(CAS Reg. No. 37764–25–3) when used as an inert ingredient (herbicide safener) in pesticide formulations in or on the following food commodities:

Commodity	Parts per million	Expiration/ revocation date
* *	* *	*
Corn, sweet, forage	0.05	12/31/05
Corn, sweet, kernel plus cob with husks removed	0.05	12/31/05
Corn, sweet, stover	0.05	12/31/05

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0211; FRL–7367–4]

Cyazofamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the combined residues of cyazofamid and its metabolite CCIM in or on potatoes, tomatoes, cucurbits, and imported wine. ISK Biosciences Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 30, 2004. Objections and requests for hearings must be received on or before November 29, 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–2004–0211. 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: Janet Whitehurst, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6129; e-mail address:*whitehurst.janet@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 May 7, 2003 (68 FR 24463) (FRL–7305–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F06305) by ISK Biosciences Corporation, Concord, OH. That notice included a summary of the petition prepared by ISK Biosciences Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the fungicide cyazofamid, 4-chloro-2-cyano-*N,N*-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile, expressed as cyazofamid, in or on cucurbit vegetables (Group 9) at 0.10 parts per million (ppm), potato at 0.01 ppm, tomato at 0.20 ppm, and grape wine at 1.0 ppm.

Following review of the residue and metabolism data, EPA has made several minor changes to the proposed tolerances. For cucurbits and potatoes, EPA expanded the tolerance expression to cover both cyazofamid and its metabolite CCIM, which is also a residue of concern. This expansion of the toleranceexpression necessitated a raising of the tolerance level for potatoes from 0.01 ppm to 0.02 ppm. No change in the tolerance values was needed for tomatoes. Finally, residue and processing data for grape wine showed that residues might slightly exceed 1.0

ppm; accordingly, the tolerance for grape wine was raised to 1.5 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of cyazofamid on cucurbits at 0.10 ppm, potatoes at 0.01 ppm, tomatoes at 0.2 ppm, and wine grape at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyazofamid 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.—TOXICITY PROFILE OF CYAZOFAMID [IKF–916] TECHNICAL

Guideline No.	Study Type	Results
870.3100	90–day oral toxicity in rats	NOAEL = 29.5 [M] mg/kg/day LOAEL = 295 [M] mg/kg/day based on increased number of "basophilic kidney tubules," and increased urinary volume, pH, and protein.
870.3150	90–Day oral toxicity in dogs	NOAEL = 1,000 [M/F] mg/kg/day LOAEL = not observed.
870.3200	28–Day dermal toxicity in rats	NOAEL = 1,000 [M/F] mg/kg/day LOAEL = not observed.
870.3700	Prenatal developmental in rats	Maternal NOAEL = 1,000 mg/kg/day LOAEL = not observed Developmental NOAEL = 100 mg/kg/day LOAEL = 1,000 mg/kg/day based on increased incidence of bent ribs.
870.3700	Prenatal developmental in rabbits	Maternal NOAEL = 1,000 mg/kg/day LOAEL = not observed Developmental NOAEL = 1,000 mg/kg/day LOAEL = not observed
870.3800	Reproduction and fertility effects in rats	Parental/Systemic NOAEL = 1,114/1,416 [M/F] mg/kg/day LOAEL = not observed Reproductive NOAEL = 1,114/1,416 [M/F] mg/kg/day LOAEL = not observed Offspring NOAEL = 1,114/1,416 [M/F] mg/kg/day LOAEL = not observed
870.4100	Chronic toxicity in rats	NOAEL = 171/ 856 [M/F] mg/kg/day LOAEL = not observed.
870.4100	Chronic toxicity in dogs	NOAEL = 200 [M/F] mg/kg/day LOAEL = 1,000 [M/F] mg/kg/day based on increased cysts in parathyroids in both sexes and increased pituitary cysts in females.
870.4200	Carcinogenicity rats	NOAEL = 171/ 856 [M/F] mg/kg/day LOAEL = not observed. No evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL = 94.8 [M] mg/kg/day LOAEL = 985 [M] mg/kg/day based on increased incidence of skin lesions including hair loss, body sores, dermatitis, ulceration, and acanthosis. No evidence of carcinogenicity

TABLE 1.—TOXICITY PROFILE OF CYAZOFAMID [IKF–916] TECHNICAL—Continued

Guideline No.	Study Type	Results
870.5100	Gene Mutation Bacterial reverse mutation assay	Negative ± S9 up to 5,000 µg/plate by standard plate and tube preincubation (not cytotoxic but there was precipitation at ≥ 1,500 µg/plate.
870.5300	Gene Mutation Mammalian cell culture	Negative ± S9 up to cytotoxic and precipitating concentration of 100 µg/mL
870.5375	Cytogenetics Chromosomal aberrations	Negative ± S9 for clastogenic/aneugenic activity up to cytotoxic and precipitating 200 µg/mL
870.5395	Cytogenetics Micronucleus test on mouse	Negative up to the highest dose tested (limit dose) 2,000 mg/kg
870.5500	Other Effects Bacterial DNA repair test (Rec-assay)	Negative ± S9 up to limit of solubility at 8,000 µg/disc
870.7485	Metabolism and pharmacokinetics in rats	There was rapid absorption (irrespective of dose t_{cmax} = 0.25–0.5 hrs) and rapid elimination at the low dose ($t_{½}$ 4.4–5.8 hrs) while there was saturated absorption with prolonged elimination ($t_{½}$ of 7.6–11.6 hrs) at the high-dose. The extent of absorption (as per cent of administered dose) was highly dose-dependent being nearly 75% at the low dose and only about 5% at the high dose. Both the urine and feces were major routes of excretion at the low dose with most of the urinary radioactivity being a metabolite named CCBA (4-(4-chloro-2-cyanoimidazol-5-yl)benzoic acid). The biliary elimination was highly variable at the low dose (~12–39% of the administered low dose) and negligible (<2%) in the high-dose groups. Urinary or biliary excretion in the high-dose groups was low (each ~2%) with most of the radioactivity being CCBA. Irrespective of the dosing regimen, most of the recovered fecal radioactivity was unchanged parent compound; the major fecal metabolites were CCBA and 4-chloro-5-p-tolylimidazole-2-carbonitrile (CCIM) each of which being less than 5% of the administered dose. Tissue burdens at $t_{½}$, t_{max}, and at 168 hours post dose indicated rapid clearance and low tissue burdens suggesting little or no bioaccumulation or sequestration.

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 (1×10^{-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 cyazofamid used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYAZOFAMID

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	NOAEL = 100 mg/kg UF = 100 Acute RfD = 1.0 mg/kg	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 1.0 mg/kg	Rat Prenatal Developmental Toxicity (MRID 45408933) LOAEL = 1,000 mg/kg based on developmental toxicity findings of increased incidence of bent ribs.
Acute Dietary (General population including infants and children)	NOAEL = NA UF = NA Acute RfD = NA	FQPA SF = NA aPAD = acute RfD ÷ FQPA SF = NA	Not Required. No adverse effects were observed which could be attributed to a single-dose exposure.
Chronic Dietary (All populations)	NOAEL= 94.8 mg/kg/day UF = 100 Chronic RfD = 0.95 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷ FQPA SF = 0.95 mg/kg/day	18–Month Mouse Oral Carcinogenicity (MRID 45408932) LOAEL = 985 mg/kg/day based on increased skin lesions.
Short- (1–30 days) and Intermediate-Term (1 to 6 months) Incidental Oral	NOAEL= NA No Residential Uses	Residential LOC for MOE = NA Occupational = NA	NA
Short- (1–30 days) and Intermediate-Term (1 to 6 months) Dermal	Oral study NOAEL = 100 mg/kg/day (dermal absorption rate = 37%)	Residential LOC for MOE = NA Occupational LOC for MOE = 100	Rat Prenatal Developmental Toxicity (MRID 45408933) LOAEL = 1,000 mg/kg based on developmental toxicity findings of increased incidence of bent ribs.
Long-Term Dermal (>6 months)	Oral study NOAEL = 94.8 mg/kg/day (dermal absorption rate = 37%)	Residential LOC for MOE = NA Occupational LOC for MOE = 100	18–Month Mouse Oral Carcinogenicity (MRID 45408932) LOAEL = 985 mg/kg/day based on increased skin lesions.
Short- (1–30 days) and Intermediate-Term (1 to 6 months) Inhalation	Oral study NOAEL = 100 mg/kg/day	Residential LOC for MOE = NA Occupational LOC for MOE = 100	Rat Prenatal Developmental Toxicity (MRID 45408933) LOAEL = 1,000 mg/kg based on developmental toxicity findings of increased incidence of bent ribs.
Long-Term Inhalation (>6 months)	Oral study NOAEL = 94.8 mg/kg/day	Residential LOC for MOE = NA Occupational LOC for MOE = 100	18–Month Mouse Oral Carcinogenicity (MRID 45408932) LOAEL = 985 mg/kg/day based on increased skin lesions.
Cancer (oral, dermal, inhalation)	Not Applicable	NA	NA

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.* Permanent and temporary tolerances for residues of cyazofamid and its metabolites are not currently established. Risk assessments were conducted by EPA to assess dietary exposures from the proposed uses of cyazofamid on food and feed crops 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™) and Lifeline™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: As an acute dietary endpoint was not identified for the general population including infants and children, the acute dietary analysis was performed for the population subgroup females 13 to 49 years old only. The assumptions of this dietary exposure assessment are tolerance level residues and 100% crop-treated.

At the 95th percentile of exposure, the Tier 1 acute DEEM-FCID™ and Lifeline™ analysis gave the results listed in Table 3. For the acute analysis, the exposure at the 95th percentile for Females 13 to 49 years old is 0.003769 mg/kg/day for DEEM-FCID™ or

0.004013 mg/kg/day for LifelineT, which utilizes <1% of the acute PAD for cyazofamid for both DEEM-FCID™ and Lifeline™. The results of the Lifeline™ and DEEM-FCID™ analyses are fully consistent.

A summary of the acute dietary exposure estimates for cyazofamid and its metabolote CCIM used for human risk assessment are shown in Table 3 of this unit:

TABLE 3.—ACUTE DIETARY EXPOSURE ESTIMATES FOR CYAZOFAMID

Population Subgroup	aPAD (mg/kg/day)	DEEM-FCID™		LifeLineTM	
		Exposure (mg/kg/day)	%aPAD[1]	Exposure (mg/kg/day)	%aPAD[1]
Females 13–49 years old	1.0	0.003769	<1	0.004013	<1

[1] Percent Acute PAD = (Exposure ÷ Acute PAD) x 100%.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™ and Lifeline™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The assumptions of this dietary exposure assessment are tolerance level residues and 100% crop-treated.

The Tier 1 chronic DEEM-FCID™ and Lifeline™ analysis gave the results listed in Table 4. For the chronic analysis, the most highly exposed population subgroup and the highest risk estimate was for Children 1 to 2 years old. The chronic exposures for Children 1 to 2 years old are 0.004778 mg/kg/day for DEEM-FCID™) or 0.004529 mg/kg/day for Lifeline™), which utilize <1.0% (for both DEEM-FCID™ and Lifeline ™) of the chronic PAD for cyazofamid. The results of the Lifeline™ and DEEM-FCID™ analyses are fully consistent.

A summary of the chronic dietary exposure estimates for cyazofamid used for human risk assessment is shown in Table 4 of this unit:

TABLE 4.—CHRONIC DIETARY EXPOSURE ESTIMATES FOR CYAZOFAMID

Population Subgroup	cPAD (mg/kg/day)	DEEM-FCID™		LifeLine™	
		Exposure (mg/kg/day)	%cPAD[1]	Exposure (mg/kg/day)	%cPAD[1]
General U.S. Population	0.95	0.001016	<1	0.000988	<1
All Infants (<1 year old)	0.95	0.001448	<1	0.001501	<1
Children 1–2 years old	0.95	0.004778	<1	0.004529	<1
Children 3–5 years old	0.95	0.003101	<1	0.003236	<1
Children 6–12 years old	0.95	0.001338	<1	0.00131	<1
Youth 13–19 years old	0.95	0.000567	<1	0.000589	<1
Adults 20–49 years old	0.95	0.000684	<1	0.000751	<1
Adults 50+ years old	0.95	0.000774	<1	0.000802	<1
Females 13–49 years old	0.95	0.000720	<1	0.000816	<1

[1] Percent Chronic PAD = (Exposure ÷ Chronic PAD) x 100%.

iii. *Cancer.* A cancer dietary assessment was not conducted because cyazofamid has been classified as "not likely to be carcinogenic to humans".

iv. *Anticipated residue and percent crop treated (PCT) information.* The Agency did not use anticicated residue estimates and PCT information in the cyazofamid dietary exposure assessment.

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

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 Groudwater (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 percent of the reference dose (%RfD) or percent of the population adjusted dose (%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.

Based on the FIRST and SCI-GROW models, the EECs of cyazofamid and its metabolites for acute exposures are estimated to be 6.436 parts per billion (ppb) for surface water and 0.002680 ppb for ground water. The EECs for chronic exposure is estimated to be 0.495 ppb for surface 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). Cyazofamid 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 cyazofamid and any other substances and cyazofamid 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 cyazofamid 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.* There are no concernsor residual uncertainties for pre- and or postnatal toxicity.

3. *Conclusion.* EPA determined that the 10X safety factor to protect infants and children should be removed *i.e.*, reduced to 1X. The FQPA factor is removed because:

i. In the prenatal developmental toxicity study in rabbits, there was no indication of increased susceptibility (qualitative or quantitative) of rabbit fetuses to *in utero* exposure to cyazofamid. No maternal or developmental effects were seen at any dose up to the limit dose of 1,000 mg/kg/day.

ii. In the prenatal developmental toxicity study in rabbits, there was no indication of increased susceptibility (qualitative or quantitative) of rabbit fetuses to *in utero* exposure to cyazofamid. No maternal or developmental effects were seen at any dose up to the limit dose of 1,000 mg/kg/day.

iii. In the two-generation reproduction study, the highest dose tested (>1,000 mg/kg/day) did not cause maternal systemic toxicity nor did it elicit reproductive or offspring toxicity.

iv. The Agency concluded that the concern is low for the quantitative susceptibility seen in the rat developmental toxicity study and there are no residual uncertainties because:

a. The developmental effect is well identified with clear NOAEL/LOAEL.

b. The developmental effect (increased bent ribs) is a variation rather than a malformation.

c. The developmental effect is seen only at the limit dose of 1,000 mg/kg/day.

d. This endpoint is used to establish the acute RfD for Females 13–49 years old.

e. The overall toxicity profile indicates that cyazofamid is not a very toxic compound.

v. There were no indications of pre- or postnatal toxicity and no residual uncertainties from the rabbit developmental study or the rat two generation reproduction study.

vi. The exposure assessments are Tier 1, conservative, high-end assessments and will not underestimate the potential dietary (food and water) exposures.

vii. There are no proposed residential uses.

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 cyazofamid will occupy <1% of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to cyazofamid 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 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CYAZOFAMID

Population Subgroup	aPAD (mg/kg/day)	Acute 95% Food Exposure[1] (mg/kg/day)	Maximum Acute Water Exposure[2] (mg/kg/day)	Ground Water EDWC[3] (ppb or µg/L)	Surface Water EDWC[3] (ppb or µg/L)	Acute DWLOC[4] (ppb or µg/L)
Females 13–49 years old	1.0	0.004013	1.0	0.495	6.436	3.0×10^{4}

[1] The exposure from the model producing the highest exposure estimate for the population subgroup was used.
[2] Maximum Water Exposure (mg/kg/day) = aPAD (mg/kg/day) - Dietary (Food) Exposure.
[3] The highest level was used.
[4] DWLOC(µg/L) = [maximum water exposure (mg/kg/day) x body weight (kg)] [water consumption (L) x 10^{-3} mg/µg]. A body weight of 70 kg is assumed for adults, 60 kg for females and youth, and 10 kg for children; water consumption is assumed to be 2 L for adults and 1 L for children.

2. *Chronic risk.* The chronic dietary exposure analyses in this assessment for cyazofamid result in dietary risk (food only) estimates that are below the Agency's level of concern for chronic dietary (food only) exposure. For the chronic analysis, the most highly exposed population subgroup and the highest risk estimate was for children 1 to 2 years old. The chronic exposures for children 1 to 2 years old are 0.004778 mg/kg/day for DEEM-FCID™ or 0.004529 mg/kg/day for Lifeline™, which utilize <1.0% (for both DEEM-FCID™ and Lifeline™) of the chronic PAD for cyazofamid. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 6 of this unit:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CYAZOFAMID

Population Subgroup	cPAD (mg/kg/day)	Chronic Food Exposure[1] (mg/kg/day)	Maximum Chronic Water Exposure[2] (mg/kg/day)	Ground Water EDWC[3] (ppb or µg/L)	Surface Water EDWC[3] (ppb or µg/L)	Chronic DWLOC[4] (ppb or µg/L)
General U.S. Population	0.95	0.001016	0.95	NA	NA	3.3×10^{4}
All Infants (<1 year old)	0.95	0.001501	0.95	NA	NA	9.5×10^{3}
Children 1–2 years old	0.95	0.004778	0.95	NA	NA	9.5×10^{3}
Children 3–5 years old	0.95	0.003236	0.95	NA	NA	9.5×10^{3}
Children 6–12 years old	0.95	0.001338	0.95	0.495	8.085	9.5×10^{3}
Youth 13–19 years old	0.95	0.000589	0.95	NA	NA	2.8×10^{4}
Adults 20–49 years old	0.95	0.000751	0.95	NA	NA	3.3×10^{4}
Adults 50+ years old	0.95	0.000802	0.95	NA	NA	3.3×10^{4}
Females 13–49 years old	0.95	0.000816	0.95	NA	NA	2.8×10^{4}

[1] The exposure from the model producing the highest exposure estimate for the population subgroup was used.
[2] Maximum Water Exposure (mg/kg/day) = cPAD (mg/kg/day) - Dietary (Food) Exposure
[3] The highest level was used.
[4] DWLOC(µg/L) = [maximum water exposure (mg/kg/day) x body weight (kg)] [water consumption (L) x 10^{-3} mg/µg]. A body weight of 70 kg is assumed for adults, 60 kg for females and youth, and 10 kg for children; water consumption is assumed to be 2L for adults and 1L for children.

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).

Cyazofamid 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).

Cyazofamid 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.* The Agency classified cyazofamid as "not likely to be carcinogenic to humans." Thus, cyazofamid is not expected to pose a 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 cyazofamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The Food and Drug Administration's (FDA's) Multi-Residue Protocol D (without cleanup) is the acceptable enforcement method in crops. The petitioner should provide the Agency with a single modified method for all crops with the inclusion of the minor variations for crops as needed.

B. International Residue Limits

There are currently no Codex, Canadian, or Mexican MRL's or tolerances for cyazofamid on cucurbits, tomato, potato, and wine. Therefore, international harmonization is not an issue for this petition.

C. Conditions

The following confirmatory data are needed for wheat. Data are listed below by guideline series.

1. *Harmonized guideline 860.1300—Nature of the residue.* The metabolism studies conducted on plants (grapes, potatoes, and tomatoes) and livestock (goats and hen) as well as the confined rotational crop study are deemed tentatively acceptable. To fully upgrade each study, the petitioner is required to provide information pertaining to dates of sample collection, extraction, and final analysis. This information is required for each study to determine actual sample storage intervals.

The metabolic profiles in crop matrices (grape, wine; potato and tomato) determined at the beginning and at the end of the analytical phase were not provided. Representative chromatograms of the radiolabeled residues taken before and after storage under frozen conditions should be submitted. In the future, additional metabolism data might be required if uses on additional crops are requested.

2. *Harmonized guideline 860.1340—Residue analytical methods.* The petitioner has provided the proposed enforcement method entitled, "Analytical Method for IKF–916 and CCIM in Tomato Samples" as an attachment to the ILV of the method. The Agency finds that the Residue Analytical Methods used for data collection may be used as a single analyte confirmatory method. However, the petitioner should provide the Agency with a single modified method for all crops with the inclusion of the minor variations for crops as needed. The FDA's Multi-Residue Protocol D (without cleanup) is the acceptable enforcement method in crops.

3. *Harmonized guideline 860.1380—Storage stability.* Storage stability data for 18 months on the representative commodities of the cucurbit group should be submitted to support the storage intervals and conditions of the crop field trials.

4. *Harmonized guideline 860.1850—Confined Accumulation in rotational Crops.* The submitted study is tentatively deemed adequate to satisfy data requirements for a confined rotational crop study pending submission of information pertaining to extraction and analysis dates of samples from the 31–day PBI. These dates are required to determine the actual sample storage intervals and need for additional storage stability data. The supporting storage stability data from the current submission indicate that the parent and its metabolites CCIM and CCBA are relatively stable in fortified samples of carrot roots, lettuce, and wheat forage stored frozen for up to 4 months. The identities of the parent, CCIM, CCIM-AM, and sugars are deemed adequately identified pending submission of representative TLC or data from TLC analyses.

5. *Other data.* Historical control data for dog toxicity studies.

V. Conclusion

Therefore, tolerances are established for the combined residues of cyazofamid, 4-chloro-2-cyano-*N,N*-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide, and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile, expressed as cyazofamid, in or on cucurbit vegetables (Group 9) at 0.10 ppm, potato at 0.02 ppm, tomato at 0.20 ppm, and grape, wine at 1.5 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0211 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 29, 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 Street, NW., Suite 350, Washington, DC. 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–2004–0211 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: _____

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 180.601 is added to read as follows:

§ 180.601 Cyazofamid; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of cyazofamid, 4-chloro-2-cyano-*N,N*-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide, and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile, expressed as cyazofamid, in or on the following commodities:

Commodity	Parts per million
Cucurbit vegetables (Group 9)	0.10
Grape, wine,* import	1.5
Potato	0.02
Tomato	0.20

*No domestic registrations.

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

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

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

[FR Doc. 04–21931 Filed 9–29–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0298; FRL–7678–7]

Octanal; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of octanal on growing crops or raw agricultural commodities (RAC) when used as an inert ingredient in pesticide formulations applied to growing crops, RAC after harvest, or to animals. Firmenich submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of octanal.

DATES: This regulation is effective September 30, 2004. Objections and requests for hearings must be received on or before November 29, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0298. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to using EDOCKET *(http://www.epa.gov/edocket/)* you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of December 20, 2000 (65 FR 79834) (FRL–6751–9), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (6E4757) by Firmenich, P.O. 5880, Princeton, NJ 08543.

Firmenich requested that octanal, also known as caprylic aldehyde, or 1-octanal, be approved for use as an inert ingredient in pesticide formulations applied to growing crops, RACs after harvest, or to animals at an amount that was not to exceed 0.2% of the formulated product. This notice included a summary of the petition prepared by the petitioner Firmenich.

The petition requested that 40 CFR 180.1001, (c) and (e), newly re-designated as § 180.910 and § 180.930 April 28, 2004 (69 FR 23113) (FRL–7335–4), be amended by establishing an exemption from the requirement of a tolerance for residues of octanal, (CAS Registration No. 124–13–0). There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) 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. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

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

III. Toxicological Profile

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

A. Toxicity data

Table 1 below summarizes the toxicological aspects of octanal (C_8 aldehyde), and its surrogates, heptanal (C_7 aldehyde) and nonanal (C_9 aldehyde). All three chemicals belong to a group of short-chained linear (unbranched) aliphatic acyclic aldehydes. Based on their structural similarities, and the fact that studies indicate that these aldehydes are biochemically similar, toxicity data can be used almost interchangeably as surrogate data for these three substances. These aliphatic aldehydes are oxidized in the body to form the corresponding fatty acids. Thus, the corresponding fatty acids, octanoic and nonanoic acid, which are essentially metabolites of the original aldehyde can also be used as surrogate data. The Agency used the surrogate data from heptanal, nonanal, octanoic acid, and nonanoic acid as discussed in table 1 below, to supplement the available information on octanal.

TABLE 1.—COMPARATIVE TOXICITY DATA FOR OCTANAL, HEPTANAL, AND NONANAL

Study Type	Octanal	Heptanal	Nonanal
Acute oral toxicity - rat	LD_{50} = 5.63 mL/kg *LD_{50} = 4,616 mg/kg	*LD_{50} > 5,000 mg/kg	LD_{50} > 5,000 mg/kg
Acute dermal toxicity - rabbit	*LD_{50} = 5,207 mg/kg	*LD_{50} > 5,000 mg/kg	*LD_{50} > 5,000 mg/kg
Acute eye irritation - rabbit	0.01 mL is irritating, 0.5 mL severe burn	NA	NA
Acute dermal irritation - rabbit	At 0.5 mL moderate dermal reaction (irritant)	NA	NA
Acute dermal irritation - human	Non-irritant at 500 mmol, irritant at 1,000 and 2,000 mmol	NA	NA
14 day dermal (5 days per week for two weeks with a two week recovery period)	NA	In this single dose study, at 500 mg/kg/day there was local dermal irritation that healed after a 2 week recovery period *The NOAEL would be less than 500 mg/kg/day	Rabbit/New Zealand White M/F NOAEL < 500 mg/kg/day (nonanoic acid surrogate data) i.e., 28 day dermal toxicity assay
Acute inhalation toxicity	NA	*LC_{50} = 4.7 mg/L	LC_{50} between 0.46 - 3.8 mg/L Rats/Sprague - Dawley M/F (Data from nonanoic acid)
Gene mutation-Ames test-with and without S-9 activation, strains used TA98, TA100, TA1535, and TA 1537	*There was no increase in the frequency of reverse mutations with or without S9 activation	Included strain TA97 *Negative results in all strains with and without S9 activation	Activation at 3 units = mmol/plate *(486 g/plate) non-mutagenic

TABLE 1.—COMPARATIVE TOXICITY DATA FOR OCTANAL, HEPTANAL, AND NONANAL—Continued

Study Type	Octanal	Heptanal	Nonanal
Developmental toxicity - rat dose levels of 0, 1,125 or 1,500 mg/kg/day	Maternal NOAEL undetermined but likely to be less than 1,125 mg/kg/day LOAEL= 1,125 mg/kg/day based on decreased body weight in dams Developmental NOAEL = 1,125 mg/kg/day LOAEL = 1,500 mg/kg/day based on significant decrease in the number of live pups. (Data from octanoic acid)	NA	NA
Embryo-fetotoxicity	NA	NA	Rat/Sprague-Dawley M/F NOAEL (maternity toxicity 1,500) mg/kg/day (nonanoic acid)
Reproduction (1-generation) - rat	This single-dose study was used as a range finding study to design another study. 2,050 mg/kg/day *No evidence of reproductive toxicity although only a limited number of parameters measured (octanoic acid)	NA	NA
Mammaliam mutation assay - mouse lymphoma forward mutation assay		*Did not result in any evidence of mutagenicity	L5178Y mouse lymphoma cell with metabolic activation Aroclor 1,245 from Fisher N334 male rats. Conc. Up to 25 nl/ml without activation non-mutagenic. 60 to 120 nl/ml with activation weak mutagenic
Teratogenesis			Low to moderate hazard (surrogate data for octanal and nonanal from nonanoic acid)

*Source of Data is a submission by the Flavor Extract Manufacturers Association (FEMA), Washington, DC, under EPA's High Production Volume (HPV) Challenger Program (*http://www.epa.gov/chemrtk/opptsrch.htm*)

B. Structure Activity Relationship

Toxicity for octanal was assessed, in part, by a process called structure-activity relationship (SAR). In this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high.

Octanal is absorbed via all routes. It is expected that oxidation of the aldehyde group to a carboxylic acid group would occur. There is concern for irritation to all tissues, especially at a high percentage in a product. There is uncertain concern for dermal sensitization based on analogs, and developmental toxicity based on aldehydes.

C. Conclusions

Octanal is a member of a class of chemicals (aldehydes) which are metabolized in the body to the corresponding fatty acids. The mammalian body has a demonstrated pathway to process octanal. Octanal is metabolized to octanoic acid.

There are developmental studies on octanoic acid performed as part of two investigations on the developmental effects of valproic acid. Unlike octanoic acid which is an eight carbon chain linear (unbranched) aliphatic acid that exhibits low toxicity, valproic acid is an eight carbon (branched chain) aliphatic acid. Valproic acid is teratogenic in humans and rodents. Based on results of these investigations, however, octanoic acid was not even included in the list of chemicals that were considered to have caused developmental effects.

The toxicity data from octanoic acid, was used to assess the toxicity of octanal. Even though as a group the staliphatic aldehydes and acids, which include octanoic acid and octanal, can exhibit developmental toxicity, the toxicity data for octanoic acid indicate that developmental effects were seen only at very high doses (1,125 milligrams/kiligram/day (mg/kg/day)). Also there was no evidence of reproductive toxicity for octanoic acid, even at very high doses (2,050 mg/kg/day).

The petitioner has accepted the Agency's limitation of 0.2% octanal in the formulated pesticide product. At this low percentage in the formulated products the residues from the use of

octanal as an inert ingredient will be much lower than the amounts which can possibly cause developmental or reproductive toxicity.

The SAR also indicated concerns for dermal sensitization, and irritation to mucous membranes. These concerns can be appropriately addressed through labeling and the use of protective equipment.

IV. Aggregate Exposures

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

A. Dietary Exposure

Octanal has been used in foodstuffs as a flavoring agent since the 1900's. The FDA has approved octanal for use as a direct food additive as a flavoring agent (21 CFR 172.515-Synthetic flavoring substances and adjuvants) and it is sponsored by EPA and the Flavor and Fragrance High Production Volume Consortia as a high production volume chemical. The Joint FAO/WHO (Food and Agriculture Organization/World Health Organization) Expert Committee on Food Additives concluded that linear aliphatic alcohols, aldehydes, and acids, which include octanal and octanoic acid, are ubiquitous in nature. In fact, low molecular weight alcohols and acids such as octanal and octanoic acid have been detected in almost every known fruit and vegetable. Given the natural occurrence, there is a background (naturally occurring) level of exposure to octanal that cannot be regulated, and cannot be decreased.

At its twenty-eighth meeting (1984), the Expert Committee established a group ADI (Acceptable Daily Intake) of 0–0.1 mg/kg bwt for octanal and nonanal singly or in combination. The Agency interprets this as an ADI of 0–0.1 mg/kg bwt for octanal alone. The use of octanal and octanoic acid was re-evaluated by the Expert Committee in 1998 (http://www.inchem.org/documents/jecfa/jecmono/v040je10.htm) as part of a group of flavoring agents. Using 1987 production volumes and other available information, JECFA estimated the exposure to octanal from use as a flavoring agent to be 0.0015 mg/kg bwt and for octanoic acid to be 0.011 mg/kg bwt. The available data indicates that consumption of octanal and octanoic acid as naturally occurring in fruit and vegetables is much greater than consumption as a flavoring agent. Exposure resulting from the use of octanal in only herbicide formulations at less than 0.2 % in the formulated product is anticipated to be much smaller than either the ADI, the naturally occurring background level of exposure, or exposure from its use as a flavoring agent.

2. *Drinking water exposure.* Due to its rapid volatilization octanal's half life in rivers is 2 hours and in lakes is 5 days. Because of this high volatility there would be only very low drinking water exposure and consequently no concern for risk to human health.

B. Other Non-Occupational Exposure

Octanal is used as a fragrance for soaps, detergents, and perfumes. Because it constitutes such a low percentage of the formulation exposure is likely to be minimal.

V. Cumulative Effects

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

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

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

FFDCA section 408 provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data unless EPA concludes that a different margin of safety will be safe for infants and children. For octanal, based on an understanding of the metabolic pathway, the expected low oral toxicity, the available toxicity data which indicates low toxicity, and especially considering the developmental toxicity no observed adverse effect level of 1,125 mg/kg/day for octanoic acid, a metabolite of octanal, EPA has not used a safety factor analysis to assess the risk. For the same reasons a 10-fold safety factor is unnecessary.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of octanal, and that under reasonably forseeable circumstances aggregate exposure to octanal will pose no appreciable risk to human health. Accordingly, EPA finds that exempting octanal (CAS Registration No. 124–13–0) from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Endocrine Disruptors

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

B. Analytical Method(s)

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

C. Existing Tolerances

There are no existing tolerance exemptions for octanal.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for octanal nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VIII. Conclusions

The mammalian body has a demonstrated pathway to process

octanal. Octanal is metabolized to the corresponding fatty acid, octanoic acid, so there are no concerns for dietary exposure. Given that the petitioner will use octanal at levels not to exceed 0.2% of the formulation, and its metabolic transformation to octanoic acid, its use as an inert ingredient would not significantly increase the levels of octanal in the food supply, and should result in human exposure far below any dose level that could possibly produce an adverse effect

Based on the information discussed in this preamble, the expected low oral toxicity, and the developmental toxicity data for the metabolite (octanoic acid), EPA concludes that there is reasonable certainty of no harm from aggregate exposure to residues of 1-octanal. Therefore, EPA is establishing a tolerance exemption for 1-octanal (CAS Reg. No. 124–13– 0) with a limitation in the pesticide formulation of not more than 0.2%.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) 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), as was provided in the old FFDCA sections 408 and 409. 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 Identification (ID) number OPP–2004–0298 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 29, 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 IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0298, 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. 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).

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) 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 FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect

on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications " is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). 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.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 23, 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. In § 180.910, the table is amended by adding alphabetically the following inert ingredient to read as follows:

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

* * * * *

Inert Ingredients	Limits	Uses
* *	* *	*
1-Octanal (CAS Reg. No. 124–13–0)	Not more than 0.2% of the pesticide formulation	Odor masking agent
* *	* *	*

■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	* *	*
1-Octanal (CAS Reg. No. 124–13–0)	Not more than 0.2% of the pesticide formulation	Odor masking agent
* *	* *	*

[FR Doc. 04–21937 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0313; FRL–7678–8]

Mesotrione; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on cranberry. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cranberry. This regulation establishes a maximum permissible level for residues of mesotrione in this food commodity. The tolerance will expire and is revoked on December 31, 2007.

DATES: This regulation is effective September 30, 2004. Objections and requests for hearings must be received on or before November 29, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0313. 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 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.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *Sec-18-Mailbox@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the herbicide mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on cranberry at 0.01 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Mesotrione on Cranberry and FFDCA Tolerances

The States claim that emergency situations have occurred due to new pests that have been introduced into cranberry producing areas. Oregon and Washington have both declared crisis exemptions under FIFRA section 18 for the use of mesotrione on cranberry for control of several broadleaf weeds. EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of mesotrione in or on cranberry. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberry after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether mesotrione meets EPA's registration requirements for use on cranberry or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of mesotrione by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Oregon and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for mesotrione, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of mesotrione and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of mesotrione in or on cranberry at 0.01 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

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

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

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

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

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary all populations	Not applicable	Not applicable	No appropriate study available.
Chronic dietary all populations	LOAEL = 2.1 milligrams/kilograms/day (mg/kg/day) UF = 3 Chronic RfD = 0.007 mg/kg/day	FQPA SF = 10X cPAD = chronic RfD ÷ FQPA SF = 0.0007 mg/kg/day	Reproduction study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia in F_1 and F_{2a} offspring and ocular discharge in F_1 pups.
Short-term dermal (1–7 days) (Occupational/Residential)	Oral study LOAEL = 100 mg/kg/day (dermal-absorption rate = 25%)	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential)	Developmental toxicity study - rat Developmental LOAEL = 100 mg/kg/day based upon delays in skeletal ossification and changes in manus/pes ossification assessments.
Short-term inhalation (1–7 days) (Occupational/Residential)	Oral study LOAEL = 100 mg/kg/day (inhalation-absorption rate = 100%)	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential).	Developmental toxicity study - rat Developmental LOAEL = 100 mg/kg/day based upon delays in skeletal ossification and changes in manus/pes ossification assessments.
Cancer (oral, dermal, inhalation)	"Not likely"	Not applicable	Acceptable oral rat and mouse carcinogenicity studies; no evidence of carcinogenic or mutagenic potential.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.571) for the residues of mesotrione, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from mesotrione 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. No appropriate study available show any acute dietary effects of concern.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Residue levels are at the recommended tolerances for cranberry, field and sweet corn, and 100% of the crop is treated with mesotrione. The % cPAD for the general U.S. population is 2.3% and for the most sensitive population subgroups, Children (1–6 years old), is 5.4%

iii. *Cancer.* Acceptable oral rat and mouse carcinogenicity studies showed no evidence of carcinogenic or mutagenic potential.

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

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and screening concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the GENEEC (Version 1.2) and SCI-GROW models the EECs of mesotrione for acute exposures are estimated to be 20 parts per billion (ppb) for surface water and 0.15 ppb for ground water. The EECs for chronic exposures are estimated to be 4.3 ppb for surface water and 0.15 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Mesotrione is not registered for use on any sites that would result in residential exposure.

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

EPA does not have, at this time, available data to determine whether mesotrione has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, mesotrione 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 mesotrione 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 final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the 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 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.

2. *Prenatal and postnatal sensitivity.* There is quantitative evidence of increased susceptibility of the young exposed to mesotrione in the prenatal developmental toxicity studies in rats, mice, and rabbits. Delayed ossification was seen in the fetuses at doses below those at which maternal toxic effects were noted. Maternal toxic effects in the rat were decreased body weight gain during treatment and decreased food consumption and in the rabbit, abortions and GI effects.

3. *Conclusion.* The FQPA safety factor (10x) is retained in assessing the risk posed because there is quantitative evidence of increased susceptibility of the young exposed to mesotrione in the prenatal developmental toxicity studies in mice, rats, and rabbits and in the multi-generation reproduction study in mice, there is qualitative evidence of increased susceptibility of the young

exposed to mesotrione in the multi-generation reproduction study in rats; and a Developmental Neurotoxicity Study is required to assess the effects of tyrosinemia on the developing nervous system exposed to mesotrione.

D. Aggregate Risks and Determination of Safety

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

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

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to mesotrione 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 mesotrione on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Acute doses and endpoints were not selected for the general U.S. population (including infants and children) or the females 13–50 years old population subgroup for mesotrione; therefore, an acute dietary exposure analysis was not performed.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to mesotrione from food will utilize 2.3% of the cPAD for the U.S. population, 2.9% of the cPAD for all infants <1 year old and 5.4% of the cPAD for children (3–5 years old). There are no residential uses for mesotrione that result in chronic residential exposure to mesotrione. In addition, despite the potential for chronic dietary exposure to mesotrione in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of mesotrione in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

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

Population Subgroup	cPAD (mg/kg/day)	% cPAD (food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.0007	2.3	4.3	0.15	23.8
All infants	0.0007	2.9	4.3	0.15	6.8
Children (1–6) years old)	0.0007	5.4	4.3	0.15	6.7
Females (13–49 years old)	0.0007	1.58	4.3	0.15	20.7

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).

Mesotrione is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

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

Mesotrione is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of carcinogenic response in rats and mice and the lack of mutagenic effects, and that there are no data in the literature or SAR information to indicate carcinogenic potential, no cancer risk is posed.

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 mesotrione residues.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levels for mesotrione residues. Thus, harmonization is not an issue at this time.

C. Conditions

Data deficiencies include the following:

1. Storage stability data in the plant and livestock metabolism studies.
2. Revised interference study.
3. Developmental neurotoxicity (DNT) study in the mouse. (A DNT study is required in the mouse in order to better characterize the effects of tyrosinemia on the developing nervous system and to correlate plasma tyrosine levels to neurotoxic effects.)
4. A 28-day inhalation toxicity study.

VI. Conclusion

Therefore, the tolerance is established for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on cranberry at 0.01 ppm.

VII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0313 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 29, 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 VII..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 the docket ID number OPP–2004–0313, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the 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 the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 24, 2004.

Donald R. Stubbs,

Acting 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 180.571 is amended by alphabetically adding an entry for "Cranberry" to the table in paragraph (b) to read as follows:

§ 180.571 Mesotrione; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Cranberry	0.01	12/31/07

* * * * *

[FR Doc. 04–21934 Filed 9–29–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0289; FRL–7677–1]

Sodium Thiosulfate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an existing exemption from the requirement of a tolerance for residues of sodium thiosulfate on raw agricultural commodities when used in pesticide formulations as an inert ingredient on raw agricultural commodities after harvest. Eden Bioscience Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an unlimited exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium thiosulfate.

DATES: This regulation is effective September 30, 2004. Objections and requests for hearings must be received on or before November 29, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0289. 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 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.

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In response to the original pesticide petition (PP OE6177) submitted in 2000 by Eden Bioscience, EPA established tolerance exemptions for sodium thiosulfate also known as thiosulfuric acid, disodium salt, anhydrous, (CAS Reg. No. 7772–98–7) or sodium thiosulfate pentahydrate also known as thiosulfuric acid disodium salt, pentahydrate, (CAS Reg. No. 10102–17–7). The exemptions as established specified that the percent of sodium thiosulfate was not to exceed 6% of the formulated product. For a discussion of the information submitted and the results of the Agency's review and evaluation, see the **Federal Register** of December 21, 2001 (66 FR 65850) (FRL–6811–6).

In the **Federal Register** of November 26, 2003 (68 FR 66416) (FRL–7333–8), EPA issued a notice pursuant to section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP OE6177) by Eden Bioscience, 3830 Monte Villa Parkway, Bothell, Washington, 98021–6942. This notice included a summary of the petition prepared by the petitioner Eden Bioscience.

The petition requested that the existing exemption in 40 CFR 180.1001, newly re-designated as 180.910, be amended by removing the 6% in the formulation limitation for residues of sodium thiosulfate (CAS Reg No.10102–17–7). There were no comments received in response to the notice of filing.

The petition was amended by Eden Bioscience Corporation because recent research indicates that higher levels of sodium thiosulfate than the currently allowed 6% are needed in certain situations, such as the use of very high water volumes with products containing a low percentage of active ingredient. Therefore, Eden Bioscience proposed to amend the existing exemption to permit the use of sodium thiosulfate in a pesticide formulated product as an inert ingredient with no numerical limitation when used on growing crops or on raw agricultural commodities after harvest.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) 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. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

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

III. Toxicological Profile

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

In support of the sodium thiosulfate petition submitted in 2000, the petitioner submitted mutagenicity information obtained from open literature, an acute oral toxicity study, and FDA's review and evaluation of the developmental studies conducted in the mouse, rat, hamster, and rabbit. There was no indication of any effect on maternal or fetal survival, or in incidences of visceral or skeletal abnormalities. There was no effect on genotoxicity, or mutagenicity for sodium thiosulfate. The Agency's review and evaluation of all submitted information was cited in the final rule published in the **Federal Register** of December 21, 2001, (66 FR 65850). No new or additional information was submitted to the Agency as a result of the amendment to the petition.

IV. Aggregate Exposures

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

EPA evaluated the use of sodium thiosulfate as an inert ingredient in addition to its use as a GRAS (Generally Recognized As Safe) substance as part of the previous action. A complete discussion on the possible dietary, and other non-occupational exposures is contained in the final rule published in the **Federal Register** of December 21, 2001, (66 FR 65850).

In that final rule, EPA considered that sodium thiosulfate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible.

Sodium thiosulfate is considered to be GRAS when used as a formulation aid or reducing agent in alcoholic beverages (not to exceed 0.00005%) and table salt (not to exceed 0.1%), and the per capita consumption was estimated to be 12 micrograms per day based on a population of 210 million. This implies a dose of 0.0002 milligrams/kilogram/day (mg/kg/day) for a 60 kg body weight female. This dose is orders of magnitude lower than the dose levels (550, 400, and 580 mg/kg/day) used in the developmental toxicity studies which were evaluated by the Agency. No effects were noted at these levels. The use of sodium thiosulfate in pesticide products as a dechlorinator when mixed with certain proteins such as harpin protein (a limited use pattern), and especially given the reactive nature of sodium thiosulfate, should not significantly increase the amount of sodium thiosulfate in the food supply above the levels that currently exist as a result of uses that are regulated by the FDA. The final rule of December 21, 2001 (66 FR 65850), established a tolerance exemption for the use of sodium thiosulfate as an inert ingredient when it constituted no more than 6% of the formulation. Thus, the Agency concludes that the reported uses of sodium thiosulfate, including its use as a GRAS substance, and its use as an inert ingredient, even without the 6% limitation, should result in human exposure far below any dose level that could possibly produce an adverse effect.

V. Cumulative Effects

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

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

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

Due to the expected low toxicity of sodium thiosulfate, and the low potential for exposure, the Agency believes that aggregate exposures to thiosulfuric acid, disodium salt, anhydrous, and thiosulfuric acid, disodium salt, pentahydrate under reasonably forseeable circumstances will pose no appreciable risks to human health. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data unless EPA concludes that a different margin of safety will be safe for infants and children. EPA has not used a safety factor analysis to assess the risk. For the same reasons a tenfold safety factor is unnecessary. Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of thiosulfuric acid, disodium salt, anhydrous (CAS Reg. No. 7772–98–7), and thiosulfuric acid, disodium salt, pentahydrate (CAS Reg. No. 10102–17–7), and that a tolerance is not necessary.

VII. Other Considerations

A. Endocrine Disruptors

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

B. Analytical Method

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

C. Existing Tolerances

There is an existing tolerance exemption in 40 CFR 180.910 for sodium thiosulfate anhydrous, (CAS Reg. No. 7772–98–7) or sodium thiosulfate pentahydrate, (CAS Reg. No. 10102–17–7). The Agency is amending this tolerance exemption to remove the 6% in the formulation limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance or tolerance exemption for sodium thiosulfate.

VIII. Conclusions

Based on this information in the record, summarized in this preamble, and in the final rule published on December 21, 2001 (66 FR 65850), EPA concludes that there is reasonable certainty of no harm from aggregate exposure to residues of sodium thiosulfate. Accordingly, EPA finds that exempting thiosulfuric acid, disodium salt, anhydrous, (CAS Reg. No. 7772–98–7) or thiosulfuric acid, disodium salt, pentahydrate, (CAS Reg. No. 10102–17–7) from the requirement of a tolerance will be safe.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) 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), as was provided in the old FFDCA sections 408 and 409. 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–2004–0289 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 29, 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 VIII.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–2004–0289, 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. 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).

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) 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 FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). 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.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 24, 2004.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.910 the table is amended by revising the entry for "sodium thiosulfate" to read as two separate entries and inserting them alphabetically as follows:

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

* * *

Inert Ingredients	Limits	Uses
* * * * * * *		
Thiosulfuric acid, disodium salt, anhydrous. (CAS Reg. No 7772–98–7)		Dechlorinator, reducing agent
Thiosulfuric acid, disodium salt, pentahydrate. (CAS Reg. No. 10102–17–7)		Dechlorinator, reducing agent
* * * * * * *		

[FR Doc. 04–21933 Filed 9–30–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0272; FRL–7681–5]

Forchlorfenuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of forchlorfenuron, *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea in or on grapes and kiwifruit. Siemer & Associates, Inc. on behalf of KIM-C1, LLC 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 30, 2004. Objections and requests for hearings must be received on or before November 29, 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–2004–0272. 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: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: 703–308–6742; e-mail address:*mcneilly.dennis@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; greehouse, 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 May 16, 2003 (68 FR 26607–26611) (FRL–7303–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6550) by Siemer & Associates, 4672 W. Jennifer, Suite 103, Fresno, California 93722. The petition requested that 40 CFR 180.569 be amended by establishing a tolerance for residues of the plant growth regulator forchlorfenuron, *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea, in or on grapes, raisins and kiwifruit at 0.03 parts per million (ppm). That notice included a summary of the petition prepared by Siemer & Associates, Inc., the registrant. The proposed uses are the first section 3 tolerances for this new active ingredient. Time-limited tolerances are currently in effect (69 FR 48799–48805, Aug 11, 2004) for residues of forchlorfenuron in or on grapes, kiwifruit, apples, blueberries, cranberries, figs, pears, plums (fresh), olives and almonds. These time-limited tolerances were established in conjunction with the granting of an Experimental Use Permit (EUP) originally issued on May 21, 2001. The time-limited tolerances were first established in the **Federal Register** on May 7, 2001 (66 FR 22930–22936 (FRL 6781–4)). Agency review of the submitted residue studies indicate that higher tolerances are required for raisins at 0.06 ppm and kiwifruit at 0.04 ppm. There were no comments received in response to the notice of filing.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of forchlorfenuron, *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea on grapes at 0.03 ppm; raisins at 0.06 ppm; and kiwifruit at 0.04 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, 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 forchlorfenuron is 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- rat ..	NOAEL = M ≥ 400, F = 84 milligrams/kilogram/day (mg/kg/day) LOAEL = M = not determined, F = 428: decrease BW gain and food efficiency mg/kg/day
870.3150	90 day oral toxicity -dogs	NOAEL = M = 16.8, F = 19.1 mg/kg/day LOAEL = M = 162.4, F = 188.7; decreases (≥ 10%) in BW gain, FC and food efficiency mg/kg/day
870.3700	Developmental tox-rat	Maternal NOAEL = 200 mg/kg/day Maternal LOAEL = 400 mg/kg/day based on increased incidence of alopecia: decrease in BW and BW gains Developmental NOAEL = 200 mg/kg/day Developmental LOAEL = 400 mg/kg/day based on decreased mean fetal BW
870.3700	Developmental tox - non-rodent.	Maternal NOAEL = ≥100 mg/kg/day Maternal LOAEL = not determined Developmental NOAEL = ≥100 mg/kg/day Developmental LOAEL = not determined

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

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects.	Parental/Systemic NOAEL = M = 11/13, F= 13/15 mg/kg/day Parental/Systemic LOAEL = 144–202 mg/kg/day based on decreased FC in F_0 and F_1 M; clinical signs of toxicity and lower BW in F_1 M and F and growth retardation in F_1 and F_2 pups Reproductive NOAEL = M = 144/168, F = 169/202 mg/kg/day Reproductive LOAEL = 544–926 mg/kg/day based on increased pup mortality (F_{1a}, F_{1b} and F_{2a}), emaciation in F_{1b}, and decrease in F_2 pups/litter
870.4300	Chronic carcinogenicity rat	NOAEL = M = 7, F = 9 mg/kg/day LOAEL = M = 93, F = 122 mg/kg/day based on Reduced BW and BW gain and FC; kidney toxicity (M = suppurative inflammation, F = non-suppurative interstitial nephritis) No evidence of carcinogenicity
870.4100	1-year feeding study-dogs	NOAEL (in mg/kg/day): M = 87, F = 91 LOAEL (in mg/kg/day): M = 195, F = 246, decreases in BW, BW gains and FC
870.4200	18–month carcinogenicity study-mice.	NOAEL (in mg/kg/day): M = 10.0, F = 9.9 LOAEL (in mg/kg/day): M = 991.4, F = 1001.8, decreases in BW and BW gains in M and F Not carcinogenic
870.7485	Metabolism study-rat	Recovery of 97% (M and F) by 168 hours. Absorbed dose 72–84%. Urine 62–74%. Feces 16–28%. Biliary excretion, 20–23% in bile. Urine and feces, elimination half-life 13.1–16.2 hours. Analyses identified parent and six metabolites in excreta. Parent not in urine and 1–2% in feces. Major metabolite forchlorfenuron-sulfate in urine of males (84%) and females (57%). Hydroxy forchlorfenuron (2 isomers) <4% in urine; predominant metabolite in feces (11% males and 18% females). Other metabolites: hydroxy forchlorfenuron-sulfate, methoxy forchlorfenuron-sulfate, forchlorfenuron glucuronide and dihydroxy forchlorfenuron (each <5%). Metabolism of forchlorfenuron in rats: conjugation with sulfate at phenyl ring before (major pathway), conjugation with glucuronide at phenyl ring, methylation of hydroxy group of hydroxy forchlorfenuron-sulfate and hydroxylation of both chloropyridinyl and phenyl rings.
870.5375	*In vitro* mammalian cytogenetics assay in Chinese Hamster CHO-KI cells 10, 20, 40, and 80 µg/mL ± S9 activation.	No increase in chromosomal aberrations over background ± S9
870.5550	Unscheduled DNA synthesis in primary rat hepatocytes/mammalian cell cultures 0.1 to 30 7µg/mL.	No increase in unscheduled DNA synthesis
870.5265	*Salmonella*/mammalian activation gene mutation assay. 10–1000 µg/plate +S9 ..... 2–200 µg/plate -S9	Evidence of a positive response in tester strain TA1535 in absence of S9 at 50, 100, and 200 µg/plate
870.5265	Salmonella/mammalian activation gene mutation assay. 10–1,000-µg/plate +S9 .... 2–200 µg/plate -S9	Evidence of induced mutany colonies over background in tester strain TA1535 in absence of S9

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 (1×10^{-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 forchlorfenuron used for human risk assessment is shown in the following Table 2:

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

Exposure Scenario	Dose(mg/kg/day)	Endpoint	Study
Acute Dietary	NOAEL - assumed to be 100 UF = 100	aPAD = 1.0 mg/kg/day	Rabbit developmental study
Chronic Dietary	NOAEL = 7.0	Decreases in body weight, body weight gain and food consumption as well as effects on the kidney at the LOEAL of 93 and 122 mg/ kg/day for males and females, respectively.	2–year rat feeding study
	UF = 100 FQPA = 1x	Chronic RfD = 0.07 mg/kg/day Chronic Population-Adjusted Dose (cPAD) = 0.07 mg/kg/day; apply to all population subgroups.	NA
Short-Term (Dermal)	NOAEL = 200	Decreases in maternal body weights and body weight gains as well as a decrease in mean fetal body weights.	developmental rat study
Intermediate-Term (Dermal)	NOAEL = 87	Based on decreases in body weight, bw gain, and food consumption.	1–Year feeding study in dogs
Long-Term (Dermal)	NA	Based on the limited use, long-term exposure is not expected anda risk assessment not conducted	NA
Short-Term (Inhalation)	NOAEL = 200	Same as short-term dermal	developmental rat study
Intermediate-Term (Inhalation)	NOAEL = 87	Same as intermediate-term dermal	1–Year feeding study in dogs

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

Exposure Scenario	Dose(mg/kg/day)	Endpoint	Study
Long-Term (Inhalation)	NA	Based on the limited use, long-term exposure is not expected anda risk assessment not conducted	NA
Cancer	NA	Not likely to be a human carcinogen	NA

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*— i. *Acute exposure.* In conducting this acute dietary risk assessment the Lifeline Model Version 2.0 and the Dietary Exposure Evaluation Model (DEEM™, Version 2.03) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues and 100% crop treated assumptions were used. DEEM (Version 7.81) default processing factors were used to modify the tolerance values for processed commodities for which separate tolerances are not being established.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Lifeline Model Version 2.0 and the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A conservative chronic dietary exposure analysis was performed for the general U.S. population and various population subgroups. Tolerance-level residues and 100% crop treated assumptions were used. The 1-in-10-year average surface water concentration from the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM-EXAMS) Model was used as a point estimate for drinking water in the dietary analyses.

iii. *Cancer.* A quantitative cancer dietary exposure assessment is not needed for forchlorfenuron since it is not a carcinogen.

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

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency has generally not used estimated environmental drinking water concentrations (EDWCs), which are the model estimates of a pesticide's concentration in water. EDWCs 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 forchlorfenuron they are further discussed in the aggregate risk Unit III. E. below.

As EPA has gathered more information regarding pesticide residues in drinking water and drinking water consumption amounts, it has been working toward refining the screening-level DWLOC approach to conducting aggregate risk assessments that combine exposures across all pathways. As a first step in this process, EPA has begun using the chronic and cancer EDWCs directly in chronic and cancer dietary exposure assessments to calculate aggregate dietaryfood + water risk. This is done by using the relevant PRZM-EXAMS value as a residue for water (all sources) in the dietary exposure assessment. The principal advantage of this approach is that the actual individual body weight and water consumption data from the Continuing Survey of Food Intake by Individuals (CSFII) are used, rather than assumed weights and water consumption for broad age groups.

Accordingly, the 1-in-10-year average surface water concentration from the PRZM-EXAMS Model was used as a point estimate for drinking water in the chronic dietary analysis. Estimated concentrations in drinking water were not included in the acute analysis. Instead, the maximum allowable exposure from drinking water was calculated by subtracting the exposure in food from the total allowable exposure. The maximum allowable exposure from drinking water is converted to the maximum allowable drinking water concentration, or DWLOCs. These values are then compared to the estimated drinking water concentrations.

Based on the PRZM/EXAMS and SCI-GROW models, the EDWCs of forchlorfenuron for chronic exposures are estimated to be 0.32 parts per billion (ppb) for surface water and 0.003 ppb for ground water. Based on the PRZM/EXAMS and SCI-GROW models, the EDWCs of forchlorfenuron for acute exposures are estimated to be 0.54 ppb for surface water and 0.003 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).

Forchlorfenuron 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 forchlorfenuron and any other substances and forchlorfenuron 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 forchlorfenuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs (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 database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is a lack of increased qualitative or quantitative susceptibility in developmental or reproductive studies. There are no concerns and no residual uncertainties with regard to pre-and/or postnatal toxicity.

3. *Conclusion.* As indicated, available data do not show any increased susceptibility to the young from exposure to forchlorfenuron and there are no residual uncertainties regarding pre- or post-natal toxicity. There is an adequate toxicity database for forchlorfenuron. As there was no evidence of neurotoxicity, it is not necessary to require a developmental neurotoxicity study. In addition, data used to evaluate exposure are adequate, and conservative assumptions are being used to evaluate aggregate exposure through food and drinking water. As a result, exposures are probably considerably overestimated. Accordingly, EPA concludes it has reliable data supporting removal of the additional FQPA 10-fold safety factor for the protection of infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency either calculates DWLOCs which are used as a point of comparison against EDWCs or uses the EDWCs directly in the aggregate exposure assessment. 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. As explained above, however, EPA is beginning to use EDWCs directly in estimating aggregate exposure in chronic and cancer assessment.

When EDWCs 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.* From the Lifeline Model, the U.S. population and all population subgroups had risk estimates that were below 1% of the acute population adjusted dose (aPAD) from exposure to forchlorfenuron in food. The most highly exposed population subgroup was children 1–2 years old, which had a risk estimate of 0.08% of the aPAD. The general U.S. population utilized 0.02% of the aPAD. In addition, there is potential for acute dietary exposure to forchlorfenuron in drinking water. After calculating DWLOCs and comparing them to the EDWCs for surface 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 FORCHLORFENURON

Population Subgroup	% aPAD (Food)	Surface Water EDWCs (ppb)	Ground Water EDWCs (ppb)	Acute DWLOC (ppb)
U.S. Population	0.000157	0.54	0.003	35,000
All Infants	0.000526	0.54	0.003	10,000
Children 1–2 years	0.000846	0.54	0.003	10,000
Children 3–5 years	0.000557	0.54	0.003	10,000
Children 6–12 years	0.000217	0.54	0.003	10,000
Youth 13–19 years	0.000089	0.54	0.003	30,000
Adults 20–49 years	0.000101	0.54	0.003	35,000
Adults 50+ years	0.000105	0.54	0.003	35,000
Females 13–49	0.000112	0.54	0.003	30,000

[1] Maximum Allowable Water Exposure = PAD - sum of all quantifiable exposures.
[2] Drinking Water Level of Comparison = Maximum Allowable Water Exposure x Body Weight (10 kg infants and children, 60 kg females, 70 kg all others) x 1,000 µg/mg ÷ Consumption (1 L/day infants and children, 2 L/day all others).

2. *Chronic risk.* The U.S. population and all population subgroups had risk estimates that were below 1% of the chronic population adjusted dose (cPAD) from exposure to forchlorfenuron in food. The most highly exposed population subgroup was children 1–2 years old, which had a risk estimate of 0.3% of the cPAD. There are no residential uses for forchlorfenuron that result in chronic residential exposure to forchlorfenuron. Based on the use pattern, chronic residential exposure to residues of forchlorfenuron is not expected. However, there is potential for chronic dietary exposure to forchlorfenuron in drinking water. The Agency does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

Chronic (non-cancer) aggregate risk is the sum of exposures resulting from chronic dietary food + chronic drinking water + chronic residential uses. Forchlorfenuron has no registered or proposed residential uses. Therefore, this risk assessment is the aggregate of chronic food and chronic drinking water exposures only. As stated above, the drinking water EDWCs were included in the dietary exposure analysis. As a result, the aggregate risk assessment is equivalent to the dietary analysis, the results of which are reported in Table 4 below. The results of the DEEM-FCID analysis were comparable to those of the Lifeline analysis. In the DEEM-FCID analysis, the general U.S. population and all population subgroups used <1% of the cPAD.

TABLE 4—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON–CANCER) EXPOSURE TO FORCHLORFENURON

Population Subgroup	Exposure (mg/kg/day)		%cPAD	
	Lifeline	DEEM–FCID	Lifeline	DEEM–FCID
General U.S. Population	0.000032	0.000040	<1.0	<1.0
All Infants (<1 year old)	0.000122	0.000142	<1.0	<1.0
Children 1–2 years old	0.000217	0.000230	<1.0	<1.0
Children 3–5 years old	0.000140	0.000140	<1.0	<1.0
Children 6–12 years old	0.000047	0.000053	<1.0	<1.0
Youth 13–19 years old	0.000017	0.000021	<1.0	<1.0
Adults 20–49 years old	0.000019	0.000023	<1.0	<1.0
Adults 50+ years old	0.000020	0.000026	<1.0	<1.0
Females 13–49 years old	0.000021	0.000025	<1.0	<1.0

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).

Forchlorfenuron 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).

Forchlorfenuron 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.* Forchlorfenuron was classified as not likely to be a human carcinogen, and therefore forchlorfenuron 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 forchlorfenuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The proposed enforcement method is a high performance liquid chromatography with ultra violet detection HPLC/UV procedure that measures parent forchlorfenuron. The method, including the confirmatory Mass spectrometry with mass spectrometry (MS/MS) analysis, has been adequately validated. The Analytical Chemistry Branch of BEAD performed a tolerance method validation (TMV) trial on the enforcement method using grapes. For grapes, the laboratory reported a limit of quantitation of 0.010 ppm and a limit of detection of 0.002 ppm.

An enforcement method for the regulable residue in animal commodities is not required for section 3 registrations on grapes and kiwifruit.

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

B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs for forchlorfenuron.

C. Conditions

Conditions of registration are discussed in the Notice of Registration.

V. Conclusion

Therefore, tolerances are established for residues of forchlorfenuron, *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea, in or on grapes at 0.03 ppm; raisins at 0.06 ppm; and kiwifruit at 0.04 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–2004–0272 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 29, 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–2004–0272, 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 21, 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 180.569 is amended by redesignating paragraph (a) as paragraph (a)(2), by removing the entries for grape and kiwifruit from the table in newly designated paragraph (a)(2), and by adding new paragraph (a)(1) to read as follows:

§ 180.569 Forchlorfenuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant growth regulator forchlorfenuron; *N*-(2-chloro-4-pyridinyl)-*N'*phenyl urea in or on the following commodities:

Commodity	Parts per million
Grape	0.03
Grape, raisin	0.06
Kiwifruit	0.04

* * * * *

[FR Doc. 04–21932 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7821–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Final rule; Notice of deletion of the Love Canal Superfund site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region II Office announces the deletion of the Love Canal Superfund site (Love Canal site) from the National Priorities List (NPL). The Love Canal site is located in the City of Niagara Falls, Niagara County, New York. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended.

EPA and the State of New York, through the Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions have been

implemented at the Love Canal site and that no further response actions, other than operation, maintenance, and monitoring, are required. In addition, EPA and NYSDEC have determined that the remedial action taken at the Love Canal site is protective of public health and the environment and that the operation, monitoring, and maintenance of such remedial action will confirm that it continues to be protective of public health and the environment.

Even though the Love Canal site will be deleted from the NPL, these ongoing monitoring activities will ensure NYSDEC and EPA involvement during the annual monitoring of the Love Canal site conditions, as well as the annual review of existing institutional controls.

DATES: *Effective,* September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Damian J. Duda, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4269.

SUPPLEMENTARY INFORMATION: To be deleted from the NPL is: the Love Canal Superfund site, City of Niagara Falls, Niagara County, New York. A Notice of Intent to Delete for the Love Canal site was published in the **Federal Register** on March 17, 2004. The closing date for comments on the Notice of Intent to Delete was April 16, 2004.

EPA received comments, including the two major comments discussed below, on the proposed deletion and addressed these comments in a Responsiveness Summary. Several commenters expressed concern that the wastes that were originally disposed of in the Love Canal landfill have not been removed. The containment, leachate collection, and treatment and monitoring remedy at the Site was selected consistent with the requirements of the Federal Superfund law. Excavation and removal of hazardous materials from landfills can potentially create more contaminant exposure to human health and the environment than a containment remedy. Moreover the large volumes of contaminated soils from an excavated landfill must be treated and redisposed of at other secure hazardous waste facilities, requiring either utilization of limited existing landfill capacity or the creation of new landfills to accommodate the excavated waste from old landfills. The excavated landfill requires filling with clean backfill materials and still must be subject to engineering controls due to residual contamination that could not practicably be removed. For these reasons, EPA developed a presumptive remedy for large landfills consisting of containment through capping and leachate collection and treatment. The Love Canal site remedy is a permanent remedy that is consistent with the requirements of the Superfund law. Several commenters were also concerned that the deletion of the Love Canal site from the NPL would imply that EPA will not have any further involvement at the Love Canal site and that, if there were to be a need for further Superfund response at the Love Canal site, such a response could not be provided since the Love Canal site would no longer be on the NPL. EPA confirmed in the Responsiveness Summary that its responsibility for the Love Canal site does not cease after the deletion from the NPL.

The NCP (40 CFR 300.425 (e)) states that a site that is deleted from the NPL is eligible for further fund-financed remedial actions should future conditions warrant such action. A Superfund site can be deleted from the NPL when one of the following criteria, as identified in the NCP (40 CFR 300.425(e)), is met. These criteria are as follows: (1) Responsible or other parties have implemented all appropriate response actions required; (2) all appropriate Fund-financed response under CERCLA has been implemented and no further response action by responsible parties is appropriate; or, (3) the remedial investigation has shown that the release poses no significant threat to human health or the environment, and therefore, taking remedial measures is not appropriate. In the case of the Love Canal site, the first two criteria have been met. The third criterion is not applicable, since remedial measures were taken.

All of the comments received and EPA's responses are contained in the Responsiveness Summary, a copy of which is available at the EPA Public Information Office, Niagara Falls, New York at (716) 285–8842. The Responsiveness Summary is also available in the Administrative Record File, located in the EPA Regional Office.

As part of EPA's policy for Superfund sites where the remedy will result in substances remaining on-site above health-based levels that would allow for unrestricted use or unlimited exposure, EPA conducts five-year reviews to confirm that the remedy continues to adequately protect human health and the environment. In the case of the Love Canal site, the institutional controls in place do not allow for unrestricted use or unlimited exposure. In September 2003, EPA issued the first five-year review report for the Love Canal site operations. NYSDEC provided technical oversight for the preparation of EPA's five-year review report and concurred with EPA's findings that the containment and barrier drain system were working properly. EPA concludes that the Site does not pose a significant threat to public health or the environment.

EPA identifies sites that appear to present a significant risk to public health or the environment, and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect potentially responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution controls, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 23, 2004.

Jane M. Kenny,

Regional Administrator—Region II.

■ For the reasons set out in the preamble, Part 300, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the site for "Love Canal, Niagara Falls, New York."

[FR Doc. 04–21806 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

43 CFR Part 2

RIN 1090–AA61

Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Department of the Interior.

ACTION: Final Rule; correcting amendments.

SUMMARY: In the October 21, 2002, **Federal Register**, the Department of the Interior (DOI) revised its regulations implementing the Freedom of Information Act (FOIA). This amendment adds four offices under the Office of Hearings and Appeals (OHA) that were inadvertently omitted in Appendix A, which provides a list of the Department's FOIA resources. This amendment also adds the requirement that bureaus notify requesters of their appeal rights when referring documents to another agency for a release determination, which was inadvertently omitted from section 2.22(b)(2), and makes several other editorial changes.

DATES: Effective on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Alexandra Mallus, Departmental FOIA Officer, Office of the Chief Information Officer, 1849 C Street, NW., MS–5312–MIB, Washington, DC 20240, telephone 202–208–5342.

SUPPLEMENTARY INFORMATION: The Department of the Interior published a final rule in the **Federal Register** on October 21, 2002, revising its regulations implementing the FOIA, 43 CFR Part 2. Four offices under the OHA were inadvertently omitted in Appendix A and the addresses for OHA's reading rooms located in Arlington, Virginia, and the Minnesota State Office, as well as the telephone number for the New Mexico State Office, were incorrect. The Arizona, Montana, North Dakota, and South Dakota State Offices have been added to Appendix A and the above-cited addresses and telephone number have now been corrected. Appendix A also has been updated to reflect other changes in the contact information that have occurred since October 21, 2002.

When the regulations were published in October 2002, the reference to OMB Circular A–110 in § 2.25 was inadvertently omitted. A correction has been made to clarify that, in accordance with OMB Circular A–110, the requirements of § 2.25 apply only to grants and Federal assistance awarded to institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations. They do not apply to those entities covered by OMB Circular A–102.

In addition, in § 2.22(b)(2), the requirement that bureaus notify requesters of their appeal rights when referring documents located in DOI's files to another agency for a release determination was inadvertently omitted. Section 2.22(b)(2) has been revised to include this requirement. Also, in § 2.17(c), the table summarizing the chargeable fees for each category of requester is being reprinted for clarity. Editorial changes have been made in §§ 2.18 and 2.23 to correct the references cited and typographical errors.

Administrative Procedure Act

This rule updates the Code of Federal Regulations to include accurate information about how to file requests under the FOIA. Because this rule corrects errors and omissions from the rule as originally published, and because this rule makes no substantive changes to the existing requirements, publishing a proposed rule and requesting public comments would delay public access to accurate information. Likewise, delaying the effective date would postpone public access to accurate information without serving any higher purpose. For these reasons, we find that:

(1) Notice and public comment on these corrections are impracticable, unnecessary, and contrary to the public interest. As allowed by 5 U.S.C. 553(b), we are not publishing a proposed rule.

(2) Good cause exists for making this rule effective immediately upon publication under 5 U.S.C. 553(d)(3).

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Courts, Freedom of information, Government employees, Privacy.

■ For the reasons set forth in the preamble, the Department is amending 43 CFR Part 2 as set forth below:

PART 2—RECORDS AND TESTIMONY: FREEDOM OF INFORMATION ACT

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701 and 43 U.S.C. 1460–1461. Appendix F to Part 2 also is issued under 30 U.S.C. 201–209; 30 U.S.C. 351–360.

■ 2. In paragraph (c) of § 2.17, the table is revised to read as follows:

§ 2.17 How will my requester category affect the fees that I am charged?

* * * * *

(c) * * *

Category	Search fees	Review fees	Duplication fees
Commercial Use	Yes	Yes	Yes.
Educational Institution	No	No	Yes (100 pages free).
Non-Commercial Sciencific Institution	No	No	Yes (100 pages free).
News Media	No	No	Yes (100 pages free).
All other	Yes (2 hours free)	No	Yes (100 pages free).

* * * * *

■ 3. In § 2.18, paragraph (g) is revised to read as follows:

§ 2.18 How are fees assessed and collected?

* * * * *

(g) Failure to pay fees. The bill for collection or the response letter will include a statement that interest will be charged in accordance with 31 U.S.C. 3717 and implementing regulations, if the fees are not paid within 30 calendar days of the date of the bill. This requirement does not apply if the requester is a State, local, or tribal government. The Debt Collection Improvement Act of 1996 will be used, as appropriate, to collect the fees (see Public Law 104–134).

* * * * *

■ 4. In § 2.22, paragraph (b)(2) introductory text is revised to read as follows:

§ 2.22 What happens if a bureau receives a request for records it does not have or did not create?

* * * * *

(b) * * *

(2) If, in response to a request, a bureau locates documents that originated with another Federal agency, it will refer the request, along with any responsive document(s), to that agency for a release determination and direct response. If the bureau refers the documents to another agency, it will notify you of the referral in writing and provide the name of a contact at the other agency. You may treat such a response as a denial of records and file an appeal. However, in the following situations, the bureau will make the release determination, after consulting with the originating agency.

* * * * *

■ 5. In § 2.23, paragraphs (d) and (e)(3) are revised to read as follows:

§ 2.23 How will a bureau handle a request for commercial or financial information that it has obtained from a person or entity outside the Federal Government?

* * * * *

(d) Whenever a bureau notifies a submitter that it may be required to disclose information in response to a FOIA request, the bureau also will notify you that it is giving the submitter an opportunity to review and comment on the material.

(e) * * *

(3) If not already provided, a telephone number (where the submitter can be reached during normal business hours), an e-mail address, and a fax number (if available) is important information that will help the bureau or Department communicate with the submitter.

* * * * *

■ 6. The introductory text of § 2.25 is revised to read as follows:

§ 2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?

In accordance with OMB Circular A–110, when published research findings are produced under a grant or other Federal assistance awarded to institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations, and the findings are used by a bureau in developing an agency action, *e.g.*, a policy or regulation, research data related to such findings are considered agency records. This applies even if the bureau's data are in the possession of the recipient of the Federal financial assistance (recipient).

* * * * *

■ 7. Appendix A is revised to read as follows:

Appendix A to Part 2—Department of the Interior FOIA/Public Affairs Contacts and Reading Rooms

BILLING CODE 4310–RK–P

DEPARTMENTAL

Departmental FOIA Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5342 Fax No. (202) 208-6867	Departmental FOIA Appeals Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5339 Fax No. (202) 208-6677	Departmental Privacy Act Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-0868 Fax No. (202) 501-2360
Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room - DOI's Library MIB - C Street Entrance 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

OFFICE OF THE SECRETARY

FOIA Officer MS-1413, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6045 Fax No. (202) 219-2374	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Office of Trust Records 6301 Indian School Road NE Suite 300 Albuquerque, NM 87110 Telephone No. (505) 816-1671 Fax No. (505) 816-1653
	Reading Room - DOI's Library MIB - C Street Entrance 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

NATIONAL BUSINESS CENTER - AVIATION MANAGEMENT

FOIA Officer 300 East Mallard Dr. Suite 200 Boise, ID 83706 Telephone No. (208) 433-5003 Fax No. (208) 433-5007	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room 300 East Mallard Dr. Suite 200 Boise, ID 83706 Telephone No. (208) 433-5003 Fax No. (208) 433-5007

OFFICE OF HEARINGS AND APPEALS (OHA)
HEADQUARTERS

FOIA Officer MS-QC-300 800 North Quincy St. Arlington, VA 22203 Telephone No. (703) 235-3810 Fax No. (703) 235-9014	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No (202) 208-3171 Fax No. (202) 208-3231	Reading Room Office of the Director MS-QC-300 801 N. Quincy Street Arlington, VA 22203 Telephone No. (703) 235-3810 Fax No. (703) 235-9014

OHA REGIONAL/FIELD OFFICES

Oklahoma Field Office 215 Dean McGee Ave., Rm 820 Oklahoma City, OK 73102 Telephone No. (405) 231-4896 Fax No. (405) 231-5568	Minnesota Field Office Bishop Henry Whipple Federal Bldg 1 Federal Drive, Suite 3600 Ft. Snelling, MN 55111-4080 Telephone No. (612) 725-1849 Fax No. (612) 725-1855	Utah Field Office Elks Bldg. 139 East South Temple, Suite 600 Salt Lake City, UT 84111 Telephone No. (801) 524-5344 Fax No. (801) 524-5539
Arizona Field Office 401 W. Washington, Space 63 Sandra Day O'Connor Building Phoenix, AZ 85003-2150 Telephone No. (602) 364-7950 Fax No. (602) 364-7959	California Field Office 801 I St., Rm 406 Sacramento, CA 95814 Telephone No. (916) 498-6600 Fax No. (916) 498-6409	New Mexico Field Office 1700 Louisiana Blvd., NE., Suite 220 Albuquerque, NM 87110 Telephone No. (505) 346-7265 Fax No. (505) 346-7267
North Dakota Field Office 230 West Century Avenue, Suite 234 Bismarck, ND 58503-1494 Telephone No. (701) 250-4598 Fax No. (701) 250-4610	Montana Field Office 301 North 27th Street, Suite 300 Billings, MT 59101-1260 Telephone No. (406) 657-6960 Fax No. (406) 657-6966	South Dakota Field Office 990 Saint Joseph Street., Suite 201 Rapid City, SD 57701 Telephone No. (605) 342-2070 Fax No. (605) 342-9511

OFFICE OF INSPECTOR GENERAL

FOIA Officer MS-5341, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4356 Fax No. (202) 219-1944	Public Affairs Office MS-5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944	Reading Room Room 5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944

OFFICE OF THE SOLICITOR (SOL) HEADQUARTERS

FOIA Officer MS-7456, MIB (Room 2328 for Deliveries) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6503 Fax No. (202) 208-5206	Reading Room Room 2328, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6503 Fax No. (202) 208-5206

SOL REGIONAL/FIELD OFFICES

Alaska Region Office of the Regional Solicitor 4230 University Dr., Suite 300 Anchorage, AK 99508-4626 Telephone No. (907) 271-4131 Fax No. (907) 271-4143	Northeast Region Office of the Regional Solicitor 1 Gateway Center, Suite 612 Newton, MA 02458-2802 Telephone No. (617) 527-3400 Fax No. (617) 527-6848	Pittsburgh Field Office Office of the Field Solicitor 3 Parkway Center, Suite 385 Pittsburgh, PA 15220 Telephone No. (412) 937-4000 Fax No. (412) 937-4003

Twin Cities Field Office Office of the Field Solicitor Bishop Whipple Federal Building 1 Federal Dr., Rm. 686 Fort Snelling, MN 55111 Telephone No. (612) 713-7100 Fax No. (612) 713-7121	Pacific Northwest Region Office of the Regional Solicitor 500 NE Multnomah St., Suite 607 Portland, OR 97232 Telephone No. (503) 231-2126 Fax No. (503) 231-2166	Billings Field Office Office of the Field Solicitor 316 North 26th St., Rm. 3005 Billings, MT 59101 Telephone No. (406) 247-7583 Fax No. (406) 247-7587
Boise Field Office Office of the Field Solicitor James A. McClure Federal Building U.S. Courthouse 550 West Fort St., Rm. 365 Boise, ID 83724 Telephone No. (208) 334-1911 Fax No. (208) 334-1918	Pacific Southwest Region Office of the Regional Solicitor 2800 Cottage Way, Rm. E-1712 Sacramento, CA 95825-1890 Telephone No. (916) 978-6131 Fax No. (916) 978-5694	Palm Springs Field Office Office of the Field Solicitor 901 E. Tahquitz Canyon Way Suite C-101 Palm Springs, CA 92262 Telephone No. (760) 416-8619 Fax No. (760) 416-8719
Phoenix Field Office Office of the Field Solicitor Sandra Day O'Connor U.S. Courthouse, Suite 404 401 West Washington Street, SP 44 Phoenix, AZ 85003-2151 Telephone No. (602) 364-7880 Fax No. (602) 364-7885	Intermountain Region Office of the Regional Solicitor 6201 Federal Bldg. 125 S. State St. Salt Lake City, UT 84138-1180 Telephone No. (801) 524-5677 Fax No. (801) 524-4506	San Francisco Field Office Office of the Field Solicitor 1111 Jackson Street, Suite 735 Oakland, CA 94607 Telephone No. (510) 817-1460 Fax No. (510) 419-0143
Southeast Region Office of the Regional Solicitor 75 Spring St., SW., Suite 304 Atlanta, GA 30303 Telephone No. (404) 331-4447 Fax No. (404) 730-2682	Knoxville Field Office Office of the Field Solicitor 530 Gay St., Rm. 308 Knoxville, TN 37902 Telephone No. (865) 545-4294 Fax No. (865) 545-4314	Southwest Region Office Office of the Regional Solicitor 505 Marquette Ave. NW. Suite 1800 Albuquerque, NM 87102 Telephone No. (505) 248-5600 Fax No. (505) 248-5623
Santa Fe Field Office Office of the Field Solicitor Paisano Building 2968 Rodeo Park Drive West Room 2070 Santa Fe, NM 87505 Telephone No. (505) 988-6200 Fax No. (505) 988-6217	Tulsa Field Office Office of the Field Solicitor 7906 E. 33rd Street, Suite 100 Tulsa, OK 74145 Telephone No. (918) 669-7730 Fax No. (918) 669-7736	Rocky Mountain Region Office of the Regional Solicitor 755 Parfet St., Suite 151 Lakewood, CO 80215 Telephone No. (303) 231-5353 Fax No. (303) 231-5363/60

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FWS REGIONAL/FIELD OFFICES

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Region 4 (AZ, FL, GA, KY, LA, MS, NC, SC, TN, VI, PR) 1875 Century Blvd. Atlanta, GA 30345 Telephone No. (404) 679-4096 Fax No. (404) 679-4093	Region 5 (CT, DC, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VA, VT, WV) 300 West Gate Center Dr. Hadley, MA 01035 Telephone No. (413) 253-8306 Fax No. (413) 253-8461	Region 6 (CO, KS, MT, ND, NE, SD, UT, WY) Asst. Regional Director P.O. Box 25486 Denver Federal Center Denver, CO 80225 Telephone No. (303) 236-7917 ext. 431 Fax No. (303) 236-6958
	Region 7 Alaska State Office 1011 East Tudor Rd. Anchorage, AK 99503 Telephone No. (907) 786-3455 Fax No. (907) 786-3847	

NATIONAL PARK SERVICE (NPS) HEADQUARTERS

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NPS REGIONAL/FIELD OFFICES

Alaska Region 240 W. 5th Avenue, Room 114 Anchorage, AK 99501 Telephone No. (907) 644-3508 Fax No. (907) 644-3816	National Capital Region 1100 Ohio Dr., SW. Washington, DC 20242 Telephone No. (202) 619-7177 Fax No. (202) 619-7302	Pacific West Region 1111 Jackson St., Suite 700 Oakland, CA 94607 Telephone No. (510) 817-1320 Fax No. (510) 817-1325
Intermountain Region P.O. Box 25287 Denver, CO 80225 Telephone No. (303) 969-2062 Fax No. (303) 969-2002	Midwest Region 1709 Jackson St. Omaha, NE 68102 Telephone No. (402) 221-3448 Fax No. (402) 341-2039	Northeast Region U.S. Customs House, 5th Floor 200 Chestnut St. Philadelphia, PA 19106 Telephone No. (215) 597-7384 Fax No. (215) 597-0065

Southeast Region 100 Alabama St., SW 1924 Building Atlanta, GA 30303 Telephone No. (404) 562-3182 Fax No. (404) 562-3263	Denver Service Center 12795 West Alameda Pkwy. Lakewood, CO 80228 Telephone No. (303) 969-2825 Fax No. (303) 987-6658	Harpers Ferry Center P.O. Box 50 Harpers Ferry, WV 25425 Telephone No. (304) 535-6276 Fax No. (304) 535-2929

BUREAU OF LAND MANAGEMENT (BLM) HEADQUARTERS

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BLM REGIONAL/FIELD OFFICES

Alaska State Office 222 West 7th Ave., # 13 Anchorage, AK 99513-5076 Telephone No. (907) 271-5054 Fax No. (907) 271-3624	Arizona State Office 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9364 Fax No. (602) 417-9556	California State Office Federal Building 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4409 Fax No. (916) 978-4416
Colorado State Office 2850 Youngfield St. Lakewood, CO 80215-7076 Telephone No. (303) 239-3688 Fax No. (303) 239-3933	Eastern States Office 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1634 Fax No. (703) 440-1519	Idaho State Office 1387 South Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3947 Fax No. (208) 373-3904
Montana State Office P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5000 Fax No. (406) 896-5298	Nevada State Office 1340 Financial Blvd. P.O. Box 1200 Reno, NV 89520 Telephone No. (775) 861-6632 Fax No. (775) 861-6411	New Mexico State Office 1474 Rodeo Rd. P.O. Box 27115 Santa Fe, NM 87502-0115 Telephone No. (505) 438-7636 Fax No. (505) 438-7435
Oregon State Office P.O. Box 2965 Portland, OR 97208 Telephone No. (503) 808-6276 Fax No. (503) 808-6308	Utah State Office Box 45155 Salt Lake City, UT 84145-0155 Telephone No. (801) 539-4161 Fax No. (801) 539-4183	Wyoming State Office 5353 Yellowstone Rd. Cheyenne, WY 82009 Telephone No. (307) 775-6180 Fax No. (307) 775-6058
National Interagency Fire Center 3833 South Development Ave. Boise, ID 83705-5354 Telephone No. (208) 387-5483 Fax No. (208) 387-5797	Denver Area Service Center Denver Federal Center Building 50, HR-250 Denver, CO 80225-0047 Telephone No. (303) 236-6362 Fax No. (303) 236-0711	National Training Center 9828 N. 31st Ave. Phoenix, AZ 85051 Telephone No. (602) 906-5572 Fax No. (602) 906-5619

BLM READING ROOMS

Information Access Center 222 West 7th Ave. #13 Anchorage, AK 99513 Telephone No. (907) 271-5960 Fax No. (907) 271-3624	Information Access Center 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9200 Fax No. (602) 417-9556	Information Access Center 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4401 Fax No. (916) 978-4416
Information Access Center 2850 Youngfield St. Lakewood, CO 80215 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Information Access Center 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1600 Fax No. (703) 440-1609	Information Access Center 1387 S. Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3889 Fax No. (208) 373-3899
Information Access Center P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Information Access Center P.O. Box 12000 1340 Financial Blvd. Reno, NV 89520 Telephone No. (702) 861-6500 Fax No. (702) 861-6606	Information Access Center 1474 Rodeo Rd. Santa Fe, NM 87505 Telephone No. (505) 438-7400 Fax No. (505) 438-7435
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MINERALS MANAGEMENT SERVICE (MMS) HEADQUARTERS

FOIA Officer 381 Elden St. MS-2200 Herndon, VA 20170-4817 Telephone No. (703) 787-1689 Fax No. (703) 787-1922/ (703) 787-1207	Public Affairs Office Office of Communications 1849 C St., NW MS-0200 Washington, DC 20240 Telephone No. (202) 208-3985 Fax No. (202) 208-3968

MMS REGIONAL/FIELD OFFICES

Minerals Revenue Management P.O. Box 25165, MS-320B2 Denver, CO 80225-0165 Telephone No. (303) 231-3316 Fax No. (303) 231-3781	Offshore Minerals Management 381 Elden St. MS-4063 Herndon, VA 20170-4817 Telephone No. (703) 787-1322 Fax No. (703) 787-1464	Gulf Of Mexico 1201 Elmwood Park Blvd., MS-5030 New Orleans, LA 70123-2394 Telephone No. (504) 736-2513 Fax No. (504) 736-2977
Alaska 949 East 36th Ave., Rm 300, MS-8001 Anchorage, AK 99508-4302 Telephone No. (907) 271-6621 Fax No. (907) 271-6805	Pacific 770 Paseo Camarillo, MS-7400 Camarillo, CA 93010-6064 Telephone No. (805) 389-7621 Fax No. (805) 389-7689	Southern Administrative Service Center 1201 Elmwood Park Blvd., MS-2620 New Orleans, LA 70123-2394 Telephone No. (504) 736-2878 Fax No. (504) 736-2478

Western Administrative Service Center P.O. Box 25165, MS-2700 Denver, CO 80225-0165 Telephone No. (303) 231-3900 Fax No. (303) 231-3908	Reading Room Public Information Office 1201 Elmwood Park Blvd. New Orleans, LA 70123-2394 Telephone No. (800) 200-GULF Fax No. (504) 736-2602

OFFICE OF SURFACE MINING (OSM)
HEADQUARTERS

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OSM REGIONAL/FIELD OFFICES
Appalachian Region

FOIA Coordinator 3 Parkway Center Pittsburgh, PA 15220 Telephone No. (412) 937-2146 Fax No. (412) 937-2177	Virginia State Office Big Stone Gap Field Office 1941 Neeley Rd., Suite 201 Compartment 116 Big Stone Gap, VA 24219 Telephone No. (276) 523-0000 ext. 12 Fax No. (276) 523-5053	West Virginia State Office Charleston Field Office 1027 Virginia St., East Charleston, WV 25301 Telephone No. (304) 347-7162 Fax No. (304) 347-7170
Ohio, Maryland, Michigan State Office 4605 Morse Rd, Suite 102 Gahanna, OH 43230 Telephone No. (614) 866-0578 Fax No. (614) 469-2506	Massachusetts, Pennsylvania, Rhode Island State Office 415 Market St., Suite 3C Harrisburg, PA 17101 Telephone No. (717) 782-4036 Fax No. (717) 782-3771	Georgia, North Carolina, Tennessee State Office Knoxville Field Office 530 Gay St., Suite 500 Knoxville, TN 37902 Telephone No. (423) 545-4103 Fax No. (423) 545-4111
	Kentucky State Office Lexington Field Office 2675 Regency Rd. Lexington, KY 40503 Telephone No. (606) 233-2896 Fax No (606) 233-2895	

Mid-Continent Region

FOIA Coordinator Iowa, Kansas, Missouri State Office Alton Federal Building 501 Belle St. Alton, IL 62002 Telephone No. (618) 463-6463 Fax No. (618) 463-6470	Alabama, Mississippi State Office Birmingham Field Office 135 Gemini Circle, Suite 215 Homewood, AL 35209 Telephone No. (205) 290-7286 Fax No. (205) 290-7280	Indiana, Illinois State Office Indianapolis Field Office 575 North Pennsylvania St., Room 301 Indianapolis, IN 46204 Telephone No. (317) 226-6700 Fax No. (317) 226-6182

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Western Region

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U.S. GEOLOGICAL SURVEY (USGS)
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USGS REGIONAL/FIELD OFFICES

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Pacific Northwest Region 1150 North Curtis Rd., PN-7602 Boise, ID 83706-1234 Telephone No. (208) 378-5122 Fax No. (208) 378-5129	Upper Colorado Region 125 South State St., Room 6107, UC-930 Salt Lake City, UT 84138-1102 Telephone No. (801) 524-3655 Fax No. (801) 524-5499	

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BIA REGIONAL/FIELD OFFICES

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Southern Plains Region (Kansas, Western Oklahoma, Texas) WCD Office Complex P.O. Box 368 Anadarko, OK 73005 Telephone No. (405) 247-5059, ext. 221 Fax No. (405) 247-6989	Rocky Mountain Region (Montana, Wyoming) 316 North 26th St. Billings, MT 59101 Telephone No. (406) 247-7970 Fax No. (406) 247-7984	Eastern Region (Florida, Louisiana, Alabama, Maine, Connecticut, Massachusetts, Rhode Island, Tennessee, Mississippi, New York, North Carolina, South Carolina) 711 Stewarts Ferry Pike Nashville, TN 37214 Telephone No. (615) 467-2931 Fax No. (615) 467-2964
Alaska Region (Alaska) P.O. Box 25520 Juneau, AK 99802-5520 Telephone No. (907) 586-7444 Fax No. (907) 586-7288	Midwest Region (Iowa, Michigan, Minnesota, Wisconsin) One Federal Dr., Room 550 Ft. Snelling, MN 55111 Telephone No. (612) 713-4400, ext. 1020 Fax No. (612) 713-4453	Eastern Oklahoma Region (Eastern Oklahoma) 3100 W. Peak Blvd. Muskogee, OK 74401 Telephone No. (918) 781-4616 Fax No. (918) 781-4624
Navajo Region (Navajo Reservation only: Arizona, New Mexico, Utah) P.O. Box 1060 Gallup, NM 87305 Telephone No. (505) 863-8320 Fax No. (505) 863-8212	Western Region (Arizona, Nevada, Utah) Two Arizona Center 400 N. 5th St. Phoenix, AZ 85004 Telephone No. (602) 379-6761 Fax No. (602) 379-4057	Northwest Region (Idaho, Oregon, Washington, Metlakatla Alaska) 911 NE 11th Ave. Portland, OR 97232 Telephone No. (503) 231-2229 Fax No. (503) 872-2888

Note: For more information on FOIA, including the most current listing of FOIA Contacts, visit DOI's FOIA home page at *http://www.doi.gov/foia/*.

Dated: September 21, 2004.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 04–21789 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–RK–C

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7847]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

DATES: *Effective Dates:* The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VII				
Nebraska:				
Deshler, City of, Thayer County	310218	August 20, 1974, Emerg; February 1, 1987, Reg; September 30, 2004, Susp.	Sept. 30, 2004 ..	Sept. 30, 2004.
Hebron, City of, Tyaher County	310219	February 27, 1975, Emerg; July 16, 1987, Reg; September 30, 2004, Susp.	.....do	Do.
Hubbell, Village of Thayer County	310220	June 20, 1975, Emerg; February 1, 1987, Reg; September 30, 2004, Susp.	.....do	Do.
Stanton, City of, Stanton County ...	310217	May 12, 1975, Emerg; September 18, 1987, Reg; September 30, 2004, Susp.	.....do	Do.
Stanton County, Unincorporated Areas.	310478	February 14, 1994, Emerg; December 19, 1987, Reg; September 30, 2004, Susp.	.....do	Do.
Thayer County, Unincorporated Areas.	310479	March 20, 1996, Emerg; September 30, 2004, Reg; September 30, 2004, Susp.	.....do	Do.
Region VIII				
Montana:				
Fort Peck Indian Reservation	300187	October 7, 1996, Emerg; September 30, 2004, Reg; September 30, 2004, Susp.	.....do	Do.

-Do- = Ditto
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–21974 Filed 9–29–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 24, 25, 26, 27, 28, 30, 31, 34, 35, 36, 38, 39, 42, 44, 45, 46, 47, 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, 76, 77, 78, 80, 90, 91, 92, 95, 96, 97, 98, 105, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 125, 127, 128, 129, 130, 131, 132, 133, 134, 147, 147A, 148, 150, 151, 153, 154, 159, 161, 162, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 177, 178, 179, 180, 181, 182, 183, 184, 185, 188, 189, 190, 193, 194, 195, 196, 197, 199, and 401

49 CFR Parts 450, 451, 452, and 453

[USCG–2004–18884]

RIN 1625–ZA03

Shipping and Transportation; Technical, Organizational and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: By this final rule, the Coast Guard is making editorial and technical changes throughout titles 46 and 49 of the Code of Federal Regulations (CFR) to update and correct the titles before they are revised on October 1, 2004. Our rule updates organization names and addresses, and makes conforming amendments and technical corrections. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective September 30, 2004.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying under docket number (USCG–2004–1884) at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Robert Spears, Project Manager, Standards Evaluation and Development Division (G–MSR–2), U.S. Coast Guard, at (202) 267–1099. If you have questions on viewing, or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements because some of these changes involve agency organization and practices, and all of these changes are non-substantive. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of the Rule

Each year titles 46 and 49 of the Code of Federal Regulations are updated on October 1. This rule, which becomes effective September 30, 2004, corrects organization names and addresses, revises authority citations for certain parts to reflect our move to the Department of Homeland Security (DHS) in March 2003, and makes other technical and editorial corrections throughout titles 46 and 49. This rule does not change any substantive requirements of existing regulations.

In the following paragraphs, we describe revisions that are not self-explanatory name, address or spelling corrections, gender-neutral changes, or updates to references/cites:

a. 46 CFR 10.205, 10.901, 10.903, 12.10–9, and 12.13–1. These sections contain a date or dates that no longer apply. Any date that has passed and no longer affects the rule has been removed.

b. 46 CFR 10.306, 10.811, and 12.02–29. The time periods for these sections have passed, or their subject matter is no longer relevant. These sections have served their purpose and are no longer valid. They are removed and reserved.

c. 46 CFR 13.113, 13.115, and 13.117. These sections contain grandfather provisions (for tankerman certified under prior regulations) that have expired. These sections have served their purpose, and they no longer apply to anyone. They are removed and reserved.

d. 46 CFR 15.1030. We added an interpretive note to the end of this section. Including this interpretive note in the CFR serves as an important reminder for those who are subject to it as well as those who are tasked with enforcing this regulation. The note first appeared in a Notice of Interpretation published in the **Federal Register** (USCG–2000–7742, 65 FR 49284, 11 Aug. 2000). We did not receive any formal comments (pro or con) when this notice was published.

e. 46 CFR 15.1105. Paragraph (d) is deleted as it has served its purpose. The passage of time has made this paragraph obsolete.

f. 46 CFR 28.575. This change allows one to use the formula with either English units or metric units.

g. 46 CFR 54.15 and 116.438. Errors in conversion of units are corrected.

h. 46 CFR 175.400. An erroneous conversion from cubic meters to cubic feet is corrected.

i. A number of sections throughout title 46 contain collection of information numbers changed by the transfer of the Coast Guard from the Department of Transportation (DOT) to the Department of Homeland Security (DHS). The old DOT series numbers (2115–) are replaced by the new DHS series numbers (1625–).

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 the regulatory policies and procedures of DHS is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

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 does not require a general NPRM and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

This rule will have no substantive effect on the regulated public. Therefore, 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.

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 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 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 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 1

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

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 3

Oceanographic research vessels, Reporting and recordkeeping requirements, Research.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

46 CFR Part 6

Navigation (water), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 7

Law enforcement, Vessels.

46 CFR Part 8

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 9

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 13

Reporting and recordkeeping requirements, Seamen, Cargo vessels

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 16

Drug Testing, Marine Safety, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 24

Marine safety.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 27

Fire Prevention, Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 34

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 36

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 39

Cargo vessels, Fire prevention, Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 42

Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 44

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 45

Great Lakes, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 46

Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 47

Vessels.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 52

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 53

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 59

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 62

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 63

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 64

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 67

Vessels.

46 CFR Part 68

Oil pollution, Vessels.

46 CFR Part 69

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 70

Marine Safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 77

Marine Safety, Navigation (water), Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 80

Advertising, Marine safety, Passenger vessels, Penalties, Travel.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Vessels.

46 CFR Part 112

Vessels.

46 CFR Part 113

Communications equipment, Fire prevention, Vessels.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 116

Fire prevention, Marine safety, Passenger vessels, Seamen.

46 CFR Part 117

Marine safety, Passenger vessels.

46 CFR Part 118

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 119

Marine safety, Passenger vessels.

46 CFR Part 120

Marine safety, Passenger vessels.

46 CFR Part 121

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 122

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Seamen.

46 CFR Part 127

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 128

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 129

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 130

Cargo vessels, Marine Safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 131

Cargo vessels, Fire prevention, Marine Safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 132

Cargo vessels, Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 133

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 134

Cargo vessels, Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 147

Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 147A

Fire prevention, Hazardous substances, Occupational safety and

health, Pesticides and pests, Seamen, Vessels.

46 CFR Part 148

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 159

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil Pollution, Reporting and recordkeeping requirements.

46 CFR Part 166

Schools, Seamen, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 171

Marine safety, Passenger vessels.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 173

Marine safety, Vessels.

46 CFR Part 174

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 177

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 178

Marine safety, Passenger vessels.

46 CFR Part 179

Marine safety, Passenger vessels.

46 CFR Part 180

Marine safety, Passenger vessels.

46 CFR Part 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 182

Marine safety, Passenger vessels.

46 CFR Part 183

Marine safety, Passenger vessels.

46 CFR Part 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic research vessels.

46 CFR Part 194

Explosives, Hazardous materials transportation, Marine safety, Oceanographic research vessels.

46 CFR Part 195

Marine safety, Navigation (water), Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 197

Benzene, Diving, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen

49 CFR Part 450

Coast Guard, Freight, Packaging and containers, Reporting and recordkeeping requirements, Safety.

49 CFR Part 451

Coast Guard, Freight, Packaging and containers, Safety.

49 CFR Part 452

Coast Guard, Freight, Packaging and containers, Reporting and recordkeeping requirements, Safety.

49 CFR Part 453

Administrative practice and procedure, Coast Guard, Freight, Packaging and containers, Safety.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 24, 25, 26, 27, 28, 30, 31, 34; 35, 36, 38, 39, 42, 44, 45, 46, 47, 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, 76, 77, 78, 80, 90, 91, 92, 95, 96, 97, 98, 105, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 125, 127, 128, 129, 130, 131, 132, 133, 134, 147, 147A, 148, 150, 151, 153, 154, 159, 161, 162, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 177, 178, 179, 180, 181, 182, 183, 184, 185, 188, 189, 190, 193, 194, 195, 196, 197, 199, and 401, and 49 CFR Parts 450, 451, 452, and 453 as follows:

Title 46—Shipping

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

■ 1. Revise the authority citation for part 1 to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

§ 1.01–25 [Amended]

■ 2. Amend § 1.01–25 as follows:
■ a. In paragraph (b), after the phrase "activities are channeled," add a comma; and
■ b. In paragraph (c)(1), remove the word "preferment" and add, in its place, the word "bringing".

§ 1.01–35 [Amended]

■ 3. In § 1.01–35(b), remove the number "2115–0007" and add, in its place, the number "1625–0002"; remove the number "2115–0141" and add, in its place, the number "1625–0035"; remove the number "2115–0053" and add, in its place, the number "1625–0014"; remove the number "2115–0003" and add, in its place, the number "1625–0001"; and remove the number "2115–0005" and add, in its place, the number "1625–0002".

PART 2—VESSEL INSPECTIONS

■ 4. Revise the authority citation for part 2 to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (*see* 46 U.S.C. App. note prec. 1).

§ 2.01–5 [Amended]

■ 5. In § 2.01–5 (c), after the word "When" and after the word "etc.", add commas; and between the words "whom" and "request", add the word "a".

§ 2.01–10 [Amended]

■ 6. In § 2.01–10(b), add commas before and after the words "on its own initiative".

§ 2.10–15 [Amended]

■ 7. Amend § 2.01–15 as follows:
■ a. In paragraph(a)(2), after the word "see", add the word "either" and, after the word "Vessels)", add the words "or § 115.700 of subchapter K (Small Passenger Vessels Carrying More than 150 Passengers or with Overnight Accommodations for more than 49 Passengers)"; and
■ b. In paragraph (b), in the introductory text, add commas before and after the words "in the opinion of the marine inspector".

§ 2.01–20 [Amended]

■ 8. In § 2.01–20, after the word "suspended" add the word "or".

■ 9. Revise § 2.01–25(a)(3) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *

(3) When authorized by the Commandant, U.S. Coast Guard, the American Bureau of Shipping may issue the Cargo Ship Safety Construction Certificate to cargo and tankships which it classes.

* * * * *

§ 2.10–101 [Amended]

■ 10. In § 2.10–101(b), remove "§ 2.10–103" and add, in its place, "§ 2.10–105".

§ 2.10–115 [Amended]

■ 11. In § 2.10–115(a), after the words "single service", add a comma.

■ 12. In § 2.20–40, revise the introductory text of paragraph (c) to read as follows:

§ 2.20–40 Chief Engineer's Report.

* * * * *

(c) When fusible plugs in boilers are renewed at a time other than the inspection for certification and there is no marine inspector in attendance at the renewal, the chief engineer must report the renewal of the fusible plugs by letter to the OCMI who issued the certificate of inspection. This letter report must contain the following information:

* * * * *

§ 2.20–50 [Amended]

■ 13. In § 2.20–50, add commas before and after the words "except in an emergency".

■ 14. Amend § 2.75–1 as follows:
■ a. In paragraph (c), remove the words "Marine Safety and Environmental Protection" wherever they appear, and add, in their place, the words "Marine Safety, Security and Environmental Protection";
■ b. Revise paragraph (f) to read as follows:

§ 2.75–1 Approvals.

* * * * *

(f) A listing of current and formerly approved equipment and materials may be found on the internet at: *http://cgmix.uscg.mil/equipment*. Each OCMI may be contacted for information concerning approved equipment.

§ 2.75–5 [Amended]

■ 15. Amend § 2.75–5 as follows:
■ a. In paragraph (a), remove the words "Marine Safety and Environmental Protection" and add, in their place, the words "Marine Safety, Security and Environmental Protection"; and
■ b. In paragraph (b), remove the word "sooner".

§ 2.75–50 [Amended]

■ 16. In § 2.75–50(c), remove the words "Marine Safety and Environmental Protection" and add, in their place, the words "Marine Safety, Security and Environmental Protection".

§ 2.85–1 [Amended]

■ 17. In § 2.85–1, add commas before and after the phrase "when placed on a vessel".

PART 3—DESIGNATION OF OCEANOGRAPHIC RESEARCH VESSELS

■ 18. Revise the authority citation for part 3 to read as follows:

Authority: 46 U.S.C. 2113, 3306; Department of Homeland Security Delegation No. 0170.1.

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

■ 19. The authority citation for part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 0170.1. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E).

§ 4.23–1 [Amended]

■ 20. In § 4.23–1, after the word "If", add a comma.

§ 4.40–30 [Amended]

■ 21. In § 4.40–30(b), before the phrase "on scene investigation" add the word "an".

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

■ 22. Revise the authority citation for part 5 to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; Department of Homeland Security Delegation No. 0170.1.

§ 5.19 [Amended]

■ 23. In § 5.19(b), add commas before and after the phrase "with or without probation".

§ 5.33 [Amended]

■ 24. In § 5.33, after the word "revocation", add a comma.

■ 25. Revise § 5.707(b) to read as follows:

§ 5.707 Stay of effect of decision and order of Administrative Law Judge on appeal to the Commandant; temporary license, certificate, or document.

* * * * *

(b) Action on the request is taken by the ALJ unless the hearing transcript has been forwarded to the Commandant, in which case, the Commandant will make the final action.

* * * * *

§ 5.803 [Amended]

■ 26. In § 5.803, after the words "transcript of", add the word "the".

§ 5.805 [Amended]

■ 27. In § 5.805(a), add commas before and after the words "in whole or in part".

PART 6—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS

■ 28. Revise the authority citation for part 6 to read as follows:

Authority: Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (*see* 46 U.S.C. App. note prec. 1); Department of Homeland Security Delegation No. 0170.1.

§ 6.01 [Amended]

■ 29. Amend § 6.01 as follows:

■ a. In paragraph (b), in the first sentence, add commas before and after the words "with respect to a particular vessel", and in the last sentence, add a comma after the words "in all other cases"; and

■ b. In paragraph (d), add a comma after the word "orally".

§ 6.06 [Amended]

■ 30. In § 6.06(c), in the introductory text, add commas before and after the phrase "effective for a particular vessel".

PART 7—BOUNDARY LINES

■ 31. Revise the authority citation for part 7 to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151, 1222; Department of Homeland Security Delegation No. 0170.1.

PART 8—VESSEL INSPECTION ALTERNATIVES

■ 32. Revise the authority citation for part 8 to read as follows:

Authority: 46 U.S.C. 3103, 3306, 3316, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 8.320 [Amended]

■ 33. In § 8.320(b)(9), remove the words "International Oil Pollution" and add, in their place, the words "International Pollution".

§ 8.450 [Amended]

■ 34. Amend § 8.450 as follows:

■ a. In paragraph (c), add a comma after the word "terminated"; and

■ b. In paragraph (d), add a comma after the word "terminated".

PART 9—EXTRA COMPENSATION FOR OVERTIME SERVICES

■ 35. Revise the authority citation for part 9 to read as follows:

Authority: 46 U.S.C. 2103; Department of Homeland Security Delegation No. 0170.1.

PART 10—LICENSING OF MARITIME PERSONNEL

■ 36. Revise the authority citation for part 10 to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906; Department of Homeland Security Delegation No. 0170.1. Sec. 10.107 is also issued under the authority of 44 U.S.C. 3507.

§ 10.102 [Amended]

■ 37. In § 10.102(b), remove the words "in 1995 and 1997".

§ 10.107 [Amended]

■ 38. In § 10.107(b), remove the number "2115–0514" and add, in its place, the number "1625–0040"; remove the number "2115–0111" and add, in its place, the number "1625–0028"; and, remove the number "2115–0624" and add, in its place, the number "1625–0079".

§ 10.205 [Amended]

■ 39. Amend § 10.205 as follows:

■ a. In paragraph (d)(4), in the third sentence, remove the words "in behalf", and add, in their place, the words "on behalf".

■ b. In paragraph (f)(3), remove the words "license or mariner's document", and add, in their place the words "license or merchant mariner's document";

■ c. In paragraph (l), remove the words "After January 31, 1997, except as provided in § 10.202, an STCW certificate or endorsement valid for any period on or after February 1, 2002," and add, in their place the words "Except as provided in § 10.202, an STCW certificate or endorsement"; and

■ d. In paragraphs (m)(1), (n)(1) and (o), remove the words "each candidate for an STCW certificate or endorsement as master or mate, to be valid on or after February 1, 2002," and add, in their place, the words "each candidate for an STCW certificate as master or mate".

§ 10.209 [Amended]

■ 40. In § 10.209(e)(3)(i) introductory text, remove the words "Coast Guard office", and add, in their place, the words "Coast Guard Regional Examination Center".

§ 10.302 [Amended]

■ 41. In § 10.302(a), remove the number "510", and add, in its place, the number "630".

§ 10.303 [Amended]

■ 42. In § 10.303(f) introductory text, remove the words "shall direct", and add, in their place, the word "directs".

§ 10.304 [Amended]

■ 43. In § 10.304(h)(7) and (8), remove the words "license or document", and add, in their place, the words "licenses or documents".

§ 10.306 [Remove and Reserve]

■ 44. Remove and reserve § 10.306.

§ 10.307 [Amended]

■ 45. In § 10.307, remove the number "510", and add, in its place, the number "630", and remove the number "(703) 235–1300", and add, in its place, the words "(202) 493–1025 (also available on the internet at: *www.uscg.mil/nmc*)."

§ 10.309 [Amended]

■ 46. In § 10.309(a)(11), remove the words "suite 510", and add, in their place, the words "Suite 630".

§ 10.805 [Amended]

■ 47. In § 10.805(b), remove the words "mariner s", and add, in their place the word "mariner's".

§ 10.811 [Remove and Reserve]

■ 48. Remove and reserve § 10.811.

§ 10.901 [Amended]

■ 49. In § 10.901(c), in the introductory text, remove the words "each applicant for an STCW certificate or endorsement, to be valid for service on or after February 1, 2002, in the following capacities", and add, in their place, the words "each applicant for an STCW certificate or endorsement in the following capacities".

■ 50. Revise the introductory text of 10.903(c) to read as follows:

§ 10.903 Licenses requiring examinations

* * * * *

(c) Each candidate for any of the following licenses shall meet the

requirements of the appropriate STCW regulations and standards of competence and those in part A of the STCW Code (incorporated by reference in § 10.102, as indicated in table 903–1):

* * * * *

PART 12—CERTIFICATION OF SEAMEN

■ 51. Revise the authority citation for part 12 to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; Department of Homeland Security Delegation No. 0170.1.

§ 12.01–9 [Amended]

■ 52. In § 12.01–9(b)(1), remove the number "2115–0624", and add, in its place, the number "1625–0079".

§ 12.02–3 [Amended]

■ 53. Amend § 12.02–3 as follows:
■ a. In paragraph (a), remove the words "applicants qualifying therefor", and add, in their place, the words "qualifying applicants";
■ b. In paragraph (b)(3), after the word "appears", add the word "and".

§ 12.02–4 [Amended]

■ 54. Revise § 12.02–4 as follows:
■ a. In paragraph (c)(1)(ii), in the first sentence, remove the comma after the words "reason or reasons for"; and
■ b. In paragraph (c)(6), after the words "of this section", add a comma.

§ 12.02–10 [Amended]

■ 55. In § 12.02–10, remove the words "Immigration and Naturalization Service" wherever they appear, and add, in their place, the words "US Citizenship and Immigration Services".

§ 12.02–11 [Amended]

■ 56. Amend § 12.02–11 as follows:
■ a. In paragraph (d)(1), in the first sentence, after the phrase "rating in the deck department" add a comma; in the first sentence, add commas around the second appearance of the phrase "except able seaman"; in the second sentence, after the phrase "qualifies as able seaman", add a comma; and, in the second sentence, after the words "deck department", add a comma.
■ b. In paragraph (d)(2), add a comma after the phrase "2,000 horsepower";
■ c. In paragraph (e)(1), after the phrase "junior assistant purser" add a comma.

§ 12.02–13 [Amended]

■ 57. In § 12.02–13(b)(8), remove the phrase "United States Immigration and Naturalization Service" and add, in its place, the phrase "US Citizenship and Immigration Services".

■ 58. Revise § 12.02–23(d) to read as follows:

§ 12.02–23 Issuance of duplicate documents.

* * * * *

(d) Each person issued a document described in § 12.02–5, shall report its loss to an Officer in Charge, Marine Inspection.

* * * * *

§ 12.02–29 [Remove and Reserve]

■ 59. Remove and reserve § 12.02–29.

§ 12.03–1 [Amended]

■ 60. In § 12.03–1—
■ a. In paragraph (a)(11), remove the words "suite 510" and add, in their place, the words "Suite 630".
■ b. In paragraph (c)(2), remove the words, "Commandant (G–MS)" and add, in their place, the words "Commanding Officer, National Maritime Center".

§ 12.05–9 [Amended]

■ 61. In § 12.05–9, redesignate paragraphs (c–1) and (d) as (d) and (e) respectively.

§ 12.10–3 [Amended]

■ 62. In § 12.10–3(a)(5), remove the word "served", and add, in its place, the word "service".

§ 12.10–9 [Amended]

■ 63. In § 12.10–9(a), remove the words "After July 31, 1998, each person" and add, in their place, the words "Each person".

§ 12.13–1 [Amended]

■ 64. In § 12.13–1, remove the words "After July 31, 1998, each person", and add, in their place, the words "Each person".

§ 12.15–5 [Amended]

■ 65. In § 12.15–5(c), remove the word "therefor", and add, in its place, the word "therefore".

§ 12.25–20 [Amended]

■ 66. In § 12.25–20, add a comma after the word "physician".

PART 13—CERTIFICATION OF TANKERMEN

■ 67. Revise the authority citation for part 13 to read as follows:

Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; Department of Homeland Security Delegation No. 0170.1.

§ 13.105 [Amended]

■ 68. In § 13.105, paragraph (b)(1), remove the number "2115–0514" and add, in its place, the number "1625–0040"; in paragraph (b)(2) remove the number "2115–0111" and add, in its place, the number "1625–0028".

§ 13.113 [Remove and Reserve]

■ 69. Remove and reserve § 13.113.

§ 13.115 [Remove and Reserve]

■ 70. Remove and reserve § 13.115.

§ 13.117 [Remove and Reserve]

■ 71. Remove and reserve § 13.117.

PART 15—MANNING REQUIREMENTS

■ 72. Revise the authority citation for part 15 to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906 and 9102; and Department of Homeland Security Delegation No. 0170.1.

§ 15.102 [Amended]

■ 73. In § 15.102, paragraph (b)(1)—
■ a. Remove the number "2115–0624" and replace it with the number "1625–0079"; and
■ b. Remove the words ", and 15.111".

§ 15.103 [Amended]

■ 74. In § 15.103(d), delete the words "in 1995".

§ 15.105 [Amended]

■ 75. In § 15.105(b), delete the words "in 1995".

§ 15.515 [Amended]

■ 76. In § 15.515 (a), add a comma after the phrase "in its service and on board".

§ 15.705 [Amended]

■ 77. In § 15.705(a), in the fifth sentence, remove the words "The minimal safe manning levels specified in a vessel's certificate of inspection takes into consideration" and add, in their place, the words "The minimum safe manning levels specified in a vessel's certificate of inspection take into consideration".

§ 15.710 [Amended]

■ 78. In § 15.710, in the introductory text, remove the first period in that paragraph, and add, in its place, a comma.

§ 15.812 [Amended]

■ 79. In § 15.812(c) introductory text, remove the words "as first class pilotage areas", and add, in their place, the words "areas of pilotage waters".

■ 80. Revise § 15.815(c) to read as follows:

§ 15.815 Radar observers.

* * * * *

(c) Each person having to be licensed under 46 U.S.C. 8904(a) for employment or service as master, mate, or operator on board an uninspected towing vessel of 8 meters (approximately 26 feet) or more in length must, if the vessel is equipped with radar, hold a valid endorsement as radar observer.

* * * * *

■ 81. In § 15.1030, add a note to the section that reads as follows:

§ 15.1030 New York and New Jersey.

* * * * *

Note to § 15.1030:

"Intra-port transit" as used in this section includes the movement of a foreign-trade vessel inbound from sea from the point where a State-licensed pilot ceases providing pilotage to another point within the identified areas (*i.e.*, a dock or anchorage). Likewise, intra-port transit also includes the movement of a foreign-trade vessel outbound to sea from a point within the identified areas (*i.e.*, a dock or anchorage) to the point where a State licensed pilot begins providing pilotage.

§ 15.1103 [Amended]

■ 82. In § 15.1103(b), remove the words "of 500 GT or more", and add, in their place, the words "of 500 GT or more as determined under the International Tonnage Convention".

§ 15.1105 [Amended]

■ 83. Amend § 15.1105 as follows:

■ a. Remove paragraph (d); and

■ b. Redesignate paragraph (e) as paragraph (d).

PART 16—CHEMICAL TESTING

■ 84. Revise the authority citation for part 16 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; Department of Homeland Security Delegation No. 0170.1.

PART 24—GENERAL PROVISIONS

■ 85. Revise authority citation for part 24 to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; Pub. L. 103–206; 107 Stat.2439; E.O. 12234; 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 25—REQUIREMENTS

■ 86–87. Revise the authority citation for part 25 to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1.

§ 25.01–5 [Amended]

■ 88. In § 25.01–5, paragraph (b), remove the number "2115.0549" and add, in its place, the number "1625–0099".

PART 26—OPERATIONS

■ 89. Revise the authority citation for part 26 to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; Pub. L. 103–206, 107 Stat. 2439; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 26.03–8 [Amended]

■ 90. In § 26.03–8(a), in the second sentence, after the word "Commandant", remove the words "(G–M)" and add, in its place, the words "(G–MOC)".

PART 27—TOWING VESSELS

■ 91. Revise the authority citation for part 27 to read as follows:

Authority: 46 U.S.C. 3306, 4102 (as amended by Pub. L. 104–324, 110 Stat. 3901); Department of Homeland Security Delegation No. 0170.1.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 92. Revise the authority citation for part 28 to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

§ 28.20 [Amended]

■ 93. In § 28.20, paragraph (b), remove the number "2115–0582" wherever it appears, and add, in its place, the number "1625–0061".

§ 28.30 [Amended]

■ 94. In § 28.30(a), remove the words "33 CFR".

§ 28.50 [Amended]

■ 95. In § 28.50, in the definition for "Coast Guard representative", remove the words "Chief, Vessel and Facility Operating Standards Division, Commandant (G–MSO–2)", and add, in their place, the words "Office of Compliance, Fishing Vessels Safety Division, Commandant (G–MOC–3)".

§ 28.65 [Amended]

■ 96. In § 28.65(c), remove the word "Bording", and add, in its place, the word "Boarding"; and remove the word "vesel", and add, in its place, the word "vessel".

■ 97. Revise § 28.70(b) to read as follows:

§ 28.70 Approved equipment and material

* * * * *

(b) A listing of current and formerly approved equipment and materials may be found on the internet at: *http://cgmix.uscg.mil/equipment*. Each OCMI may be contacted for information concerning approved equipment.

§ 28.140 [Amended]

■ 98. In § 28.140, in Table 28.140, remove the text "25.26–5", wherever it appears, and add, in its place, the text "25.26–50".

§ 28.275 [Amended]

■ 99. Amend § 28.275 as follows:

■ a. In paragraph (a), remove the words "United States Marine Safety Association (USMSA), 5458 Wagonmaster Drive, Colorado Springs, CO 80917", and add, in their place, the words "U.S. Marine Safety Association (USMSA). 5050 Industrial Road, Farmingdale, NJ 07727; telephone: (732) 751–0102; fax: (732) 751–0508; or e-mail: *usmsa@usmsa.org*";

■ b. In paragraph (a)(2)(ii) remove the word "revceived", and add, in its place, the word "received";

■ c. In paragraph (a)(3)(ii), remove the words "(See note 1.)"; and

■ d. Remove, in its entirety, the note to paragraph (a) marked "NOTE 1".

■ 100. Revise § 28.300 to read as follows:

§ 28.300 Applicability and general requirements

Each commercial fishing industry vessel which has its keel laid or is at a similar stage of construction, or which undergoes a major conversion completed on or after September 15, 1991, and that operates with more than 16 individuals on board, must comply with the requirements of this subpart in addition to the requirements of subparts A, B, and C of this part.

§ 28.515 [Amended]

■ 101. In § 28.515(b)(1), remove the word "a", and add, in its place, the word "an".

§ 28.575 [Amended]

■ 102. In § 28.575(b), remove "$0.00216E_n(V_n2A_nZ_n)/W$" and add, in its place, "$K\ E_n(V_n2A_nZ_n)/W$", and immediately following "where:" insert the words "K=0.00216 when consistent English units are used or 1.113 when consistent metric units are used."

§ 28.825 [Amended]

■ 103. In § 28.825(b)(2)(ii), remove the phrase "for 20 seconds before the agent".

PART 30—GENERAL PROVISIONS

■ 104. Revise the authority citation for part 30 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C.

5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–2 [Amended]

■ 105. In § 30.01–2, paragraph (b), remove the number "2115–0131" wherever it appears, and add, in its place, the number "1625–0038"; remove the number "2115–0554" wherever it appears, and add, in its place, the number "1625–0032"; remove the row of numbers that read "§ 32.53–85 * * * 2115–0505"; remove the number "2115–0589" and add, in its place, the number "1625–0064"; remove the number, "2115–0506" and add, in its place, the number "1625–0039"; remove the number, "2115–0505" and add, in its place, the number "1625–0038".

§ 30.15–1 [Amended]

■ 106. In § 30.15–1(a) remove the word "therefor", and add, in its place, the word "therefore".

§ 30.30–11 [Amended]

■ 107. In § 30.30–11(b) remove the word "therefor", and add, in its place, the word "therefore".

PART 31—INSPECTION AND CERTIFICATION

■ 108. Revise the authority citation for part 31 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.01–3 [Amended]

■ 109. In § 31.01–3(b), remove the number "(202) 267–6925" and add, in its place, the number "(202) 267–2988".

PART 34—FIREFIGHTING EQUIPMENT

■ 110. Revise the authority citation for part 34 to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 35—OPERATIONS

■ 111. Revise the authority citation for part 35 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 112. Revise § 35.30–35(a)(2), to read as follows:

§ 35.30–35 Spark producing devices—TB/ALL

(a) * * *

(2) The compartments adjacent and the compartments diagonally adjacent are either:

(i) Gas-free;

(ii) Inerted;

(iii) Filled with water;

(iv) Contain Grade E liquid and are closed and secured; or

(v) Are spaces in which flammable vapors and gases normally are not expected to accumulate; and,

* * * * *

PART 36—ELEVATED TEMPERATURE CARGOES

■ 113. Revise the authority citation for part 36 to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 38—LIQUEFIED FLAMMABLE GASES

■ 114. Revise the authority citation for part 38 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5101, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 39—VAPOR CONTROL SYSTEMS

■ 115. Revise the authority citation for part 39 to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 39.10–13 [Amended]

■ 116. Amend § 39.10–13 as follows:

■ a. In paragraph (c), remove the words "paragraphs (a) and (b)", and add, in their place, the words "paragraph (a)";

■ b. In paragraph (d), remove the words "paragraph (d)", and add, in their place, the words "paragraph (c)".

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

■ 117. Revise the authority citation for part 42 to read as follows:

Authority: 46 U.S.C. 5101–5116; Department of Homeland Security Delegation No. 0170.1; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

§ 42.01–5 [Amended]

■ 118. In § 42.01–5, paragraph (b), remove the number "2115–0043" wherever it appears, and add, in its place, the number "1625–0013".

PART 44—SPECIAL SERVICE LIMITED DOMESTIC VOYAGES

■ 119. Revise the authority citation for part 44 to read as follows:

Authority: 46 U.S.C. 5101–5116; Department of Homeland Security Delegation No. 0170.1.

§ 44.05–10 [Amended]

■ 120. In § 44.05–10(d), in the first sentence, remove the word "no", and add, in its place, the word "on".

PART 45—GREAT LAKES LOAD LINES

■ 121. Revise the authority citation for part 45 to read as follows:

Authority: 46 U.S.C. 5104, 5108; Department of Homeland Security Delegation No. 0170.1.

PART 46—SUBDIVISION LOAD LINES FOR PASSENGER VESSELS

■ 122. Revise the authority citation for part 46 to read as follows:

Authority: 46 U.S.C. 3306; 46 U.S.C. 5101–5116; E.O. 12234, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 47—COMBINATION LOAD LINES

■ 123. Revise the authority citation for part 47 to read as follows:

Authority: 46 U.S.C. 5115; Department of Homeland Security Delegation No. 0170.1.

PART 50—GENERAL PROVISIONS

■ 124. Revise the authority citation for part 50 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

§ 50.01–20 [Amended]

■ 125. In § 50.01–20, paragraph (b), remove the number, "2115–0142" and add, in its place, the number "1625–0097".

§ 50.25–1 [Amended]

■ 126. In paragraph (e), remove the number "58.30–17" and add, in its place, "58.30–15".

PART 52—POWER BOILERS

■ 127. Revise the authority citation for part 52 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 53—HEATING BOILERS

■ 128. Revise the authority citation for part 53 to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 54—PRESSURE VESSELS

■ 129. Revise the authority citation for part 54 to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 54.15–25 [Amended]

■ 130. In § 54.15–25(c), remove the words "standard conditions 0 °C and 1.03 kp/cm^2" and add, in their place, the words "standard conditions 15 °C and 103 kPa".

PART 56—PIPING SYSTEMS AND APPURTENANCES

■ 131. Revise the authority citation for part 56 to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 56.01–2 [Amended]

■ 132. In § 56.01–2(b) remove the word "Flantion" and add, in its place, the word "Flanges".

§ 56.20–9 [Amended]

■ 133. Amend § 56.20–9 as follows:

■ a. In paragraph (a), between the fourth and fifth sentences, add the sentence "See § 56.50–1(g)(2)(iii)"; and

■ b. In paragraph (c), remove the text "Refer also to § 56.20–15(b)(2)(ii)" and add, in its place, the text "Refer also to § 56.20–15(b)(2)(iii)".

§ 56.55 [Amended]

■ 134. In Table 56.50–55(a), in note 1, remove the words "Subpart 182.25" and add, in their place, the words "Subpart 182.520".

§ 56.50–60 [Amended]

■ 135. In § 56.50–60(m)(2), remove "§ 58.50–90" and add, in its place, "§ 56.50–90".

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

■ 136. Revise the authority citation for part 58 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 58.20–15 [Amended]

■ 137. In § 58.20–15(c), remove the word "waterweight" and add, in its place, the word "watertight".

PART 59—REPAIRS TO BOILERS, PRESSURE VESSELS AND APPURTENANCES

■ 138. Revise the authority citation for part 59 to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; Department of Homeland Security Delegation No. 0170.1.

PART 61—PERIODIC TESTS AND INSPECTIONS

■ 139. Revise the authority citation for part 61 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 62—VITAL SYSTEM AUTOMATION

■ 140. Revise the authority citation for part 62 to read as follows:

Authority: 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 62.50–20 [Amended]

■ 141. In § 62.50–20(g)(2), remove "§ 111.30–1(a)(4)" and add, in its place, "§ 111.30–1".

PART 63—AUTOMATIC AUXILIARY BOILERS

■ 142. Revise the authority citation for part 63 to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 63.01–3 [Amended]

■ 143. In § 63.01–3(b), remove the term "(20 gph)".

PART 64—MARINE PORTABLE TANKS AND CARGO HANDLING SYSTEMS

■ 144. Revise the authority citation for part 64 to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1.

§ 64.95 [Amended]

■ 145. In § 64.95(d), remove "§ 50.25–15" and add, in its place, "§ 50.25–10".

PART 67—DOCUMENTATION OF VESSELS

■ 146. Revise the authority citation for part 67 to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110, 12106, 12120, 12122; 46 U.S.C. app. 841a, 876; Department of Homeland Security Delegation No. 0170.1.

§ 67.3 [Amended]

■ 147. In § 67.3(c) in the definition for "National Vessel Documentation Center", remove the words "2039 Stonewall Jackson Drive" and add, in their place, the words "792 T.J. Jackson Drive".

§ 67.13 [Amended]

■ 148. In § 67.13(a), remove the words "2039 Stonewall Jackson Drive", and add, in their place, the words "792 T.J. Jackson Drive".

§ 67.14 [Amended]

■ 149. In § 67.14(b), remove the number "2115–0110" wherever it appears, and add, in its place, the number "1625–0027".

§ 67.31 [Amended]

■ 150. In § 67.31(c)(3), remove the word "meaning", and add, in its place, the word "manning".

PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

■ 151. Revise the authority citation for part 68 to read as follows:

Authority: 46 U.S.C. 2103; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1. Subpart 68.01 also issued under 46 U.S.C. App. 876; subpart 68.05 also issued under 46 U.S.C. 12106(d).

PART 69—MEASUREMENT OF VESSELS

■ 152. Revise the authority citation for part 69 to read as follows:

Authority: 46 U.S.C. 2301, 14103; Department of Homeland Security Delegation No. 0170.1.

§ 69.29 [Amended]

■ 153. In § 69.29(b), remove the number "2115–0086" wherever it appears, and

add, in its place, the number "1625–0022".

PART 70—GENERAL PROVISIONS

■ 154. Revise the authority citation for part 70 to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

§ 70.01–15 [Amended]

■ 155. In § 70.01–15, in paragraph (b), remove the number "2115–0136" and add, in its place, the number "1625–0032"; remove the number "2115–0554" and add, in its place, the number "1625–0032"; remove the number "2115–0589" wherever it appears and add, in its place, the number "1625–0064".

PART 71—INSPECTION AND CERTIFICATION

■ 156. Revise the authority citation for part 71 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 71.15–5 [Amended]

■ 157. In § 71.15–5 (b), remove "(202) 267–6925" and add, in its place, "(202) 267–2988".

PART 72—CONSTRUCTION AND ARRANGEMENT

■ 158. Revise the authority citation for part 72 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 76—FIRE PROTECTION EQUIPMENT

■ 159. Revise the authority citation for part 76 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 76.23–15 [Amended]

■ 160. In § 76.23–15(a), remove "§ 78.47–15" and add, in its place, "§ 78.47–18".

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 161. Revise the authority citation for part 77 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 78—OPERATIONS

■ 162. Revise the authority citation for part 78 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

PART 80—DISCLOSURE OF SAFETY STANDARDS AND COUNTRY OF REGISTRY

■ 163. Revise the authority citation for part 80 to read as follows:

Authority: 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

PART 90—GENERAL PROVISIONS

■ 164. Revise the authority citation for part 90 to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 90.01–15 [Amended]

■ 165. In § 90.01–15(b), remove the number "2115–0517", and add, in its place, the number "1625–0065"; remove the number "2115–0554" wherever it appears, and add, in its place, the number "1625–0032"; remove the number "2115–0589" wherever it appears, and add, in its place, the number "1625–0064".

PART 91—INSPECTION AND CERTIFICATION

■ 166. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; 46 U.S.C. Chapter 701; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 91.15–5 [Amended]

■ 167. In § 91.15–5(b), remove the number "(202) 267–6925" and add, in its place, the number "(202) 267–2988".

PART 92—CONSTRUCTION AND ARRANGEMENT

■ 168. Revise the authority citation for part 92 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 95—FIRE PROTECTION EQUIPMENT

■ 169. Revise the authority citation for part 95 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 170. Revise the authority citation for part 96 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 97—OPERATIONS

■ 171. Revise the authority citation for part 97 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 97.12–5 [Amended]

■ 172. In § 97.12–5, remove the words "30 Vesey Street, New York, NY 10007–2914", and add, in their place, the words "17 Battery Place, Suite 1232, New York, NY 10004–1207 (telephone: 212–785–8300; fax: 212–785–8333; or e-mail: *helpdesk@natcargo.org*)".

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

■ 173. Revise the authority citation for part 98 to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

■ 174. Revise the authority citation for part 105 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

PART 107—INSPECTION AND CERTIFICATION

■ 175. Revise the authority citation for part 107 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3307; 46 U.S.C. 3316; Department of Homeland Security Delegation No. 0170.1; § 107.05 also issued under the authority of 44 U.S.C. 3507.

§ 107.05 [Amended]

■ 176. In § 107.05(b), remove the number "2115–0505" wherever it appears, and add, in its place, the number "1625–0038"; remove the number "2115–0589", and add, in its place, the number "1625–0064".

§ 107.205 [Amended]

■ 177. In § 107.205(b), remove the number "(202) 267–6925" and add, in its place, the number "(202) 267–2988".

PART 108—DESIGN AND EQUIPMENT

■ 178. Revise the authority citation for part 108 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; Department of Homeland Security Delegation No. 0170.1.

PART 109—OPERATIONS

■ 179. Revise the authority citation for part 109 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; Department of Homeland Security Delegation No. 0170.1.

PART 110—GENERAL PROVISIONS

■ 180. Revise the authority citation for part 110 to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C 1333; 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; § 110.01–2 also issued under 44 U.S.C. 3507.

§ 110.01–2 [Amended]

■ 181. In § 110.01–2(b), remove the number "2115–0115", and replace it with the number "1625–0031".

§ 110.25–3 [Amended]

■ 182. In the Editorial Note to § 110.25–3, remove the word "addded" and add, in its place, the word "added".

PART 111—ELECTRICAL SYSTEMS–GENERAL ENGINEERING

■ 183. Revise the authority citation for part 111 to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 111.01–15 [Amended]

■ 184. Amend § 111.01–15 as follows:

■ a. In paragraph (a), remove "40 °C" and add, in its place, "40 °C (104 °F)";

■ b. In paragraph (b), remove "50 °C" and add, in its place, "50 °C (122 °F)", and remove "45 °C" and add, in its place, "45 °C (113 °F)";

■ c. In paragraph (c), remove "45 °C" and add, in its place, "45 °C (113 °F), remove "40 °C" and add, in its place, "40 °C (104 °F)", and remove "50 °C" and add, in its place, "50 °C (122 °F)"; and

■ d. In paragraph (d), remove "55 °C" and add, in its place, "55 °C (131 °F)".

§ 111.60–7 [Amended]

■ 185. In § 111.60–7, in Table 111.60–7, in the "Demand load" column, remove the words "when grounded netural is not protected" and add, in their place, the words "when grounded neutral is not protected".

§ 111.99–3 [Amended]

■ 186. In § 111.99–3, in the definition for "Fire door holding magnet" remove the word "electronmagnet" and add, in its place, the word "electromagnet".

§ 111.101–1 [Amended]

■ 187. In § 111.101–1, remove "§ 56.50–55(a)(2)(i)" and add, in its place, "§ 56.50–55".

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

■ 188. Revise the authority citation for part 112 to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 112.50–1 [Amended]

■ 189. In § 112.50–1(i), remove "§ 58.10–15(g)" and add, in its place, "§ 58.10–15(f)".

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

■ 190. Revise the authority citation for part 113 to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 113.25–20 [Amended]

■ 191. In § 113.25–20(b), remove the words "corrision-resistant" and add, in their place, the words "corrosion-resistant".

§ 113.30–5 [Amended]

■ 192. In § 113.30–5(e)(1), remove the word "comunication" and add, in its place, the word "communication".

§ 113.43–3 [Amended]

■ 193. In § 113.43–3(a), remove the word "contol" and add, in its place, the word "control".

PART 114—GENERAL PROVISIONS

■ 194. Revise the authority citation for part 114 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

§ 114.900 [Amended]

■ 195. In § 114.900(b), remove the number "2115–0578" wherever it appears, and add, in its place, the number "1625–0057"; remove the number "2115–0003" wherever it appears, and add, in its place, the number "1625–0001"; and, remove the words "will be displayed when assigned by OMB" wherever it appears, and add, in their place, the number "1625–0057".

PART 116—CONSTRUCTION AND ARRANGEMENT

■ 196. Revise the authority citation for part 116 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277, Department of Homeland Security Delegation No. 0170.1.

§ 116.438 [Amended]

■ 197. In § 116.438(g), remove "(0.375 inches)" and add, in its place, "(0.19685 inches)".

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

■ 198. Revise the authority citation for part 117 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 118—FIRE PROTECTION EQUIPMENT

■ 199. Revise the authority citation for part 118 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 119—MACHINERY INSTALLATION

■ 200. Revise the authority citation for part 119 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 120—ELECTRICAL INSTALLATION

■ 201. Revise the authority citation for part 120 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 121—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 202. Revise the authority citation for part 121 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 122—OPERATIONS

■ 203. Revise the authority citation for part 122 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 125—GENERAL

■ 204. Revise the authority citation for part 125 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1.

PART 127—CONSTRUCTION AND ARRANGEMENTS

■ 205. Revise the authority citation for part 127 to read as follows:

Authority: 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

PART 128—MARINE ENGINEERING: EQUIPMENT AND SYSTEMS

■ 206. Revise the authority citation for part 128 to read as follows:

Authority: 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

PART 129—ELECTRICAL INSTALLATIONS

■ 207. Revise the authority citation for part 129 to read as follows:

Authority: 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

PART 130—VESSEL CONTROL, AND MISCELLANEOUS EQUIPMENT AND SYSTEMS

■ 208. Revise the authority citation for part 130 to read as follows:

Authority: 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

PART 131—OPERATIONS

■ 209. Revise the authority citation for part 131 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

PART 132—FIRE-PROTECTION EQUIPMENT

■ 210. Revise the authority citation for part 132 to read as follows:

Authority: 46 U.S.C. 3306, 3307; Department of Homeland Security Delegation No. 0170.1.

PART 133—LIFESAVING SYSTEMS

■ 211. Revise the authority citation for part 133 to read as follows:

Authority: 46 U.S.C. 3306, 3307; Department of Homeland Security Delegation No. 0170.1.

PART 134—ADDED PROVISIONS FOR LIFTBOATS

■ 212. Revise the authority citation for part 134 to read as follows:

Authority: 46 U.S.C. 3306, 3307; Department of Homeland Security Delegation No. 0170.1.

PART 147—HAZARDOUS SHIPS' STORES

■ 213. Revise the authority citation for part 147 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 147.5 [Amended]

■ 214. In § 147.5, remove the words "Marine Safety and Environmental Protection" and add, in their place, the words "Marine Safety, Security and Environmental Protection".

§ 147.8 [Amended]

■ 215. In § 147.8(b), remove the number "2115–0139" wherever it appears, and add, in its place, the number "1625–0034".

PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

■ 216. Revise the authority citation for part 147A to read as follows:

Authority: 46 U.S.C. 5103; Department of Homeland Security Delegation No. 0170.1.

PART 148—CARRIAGE OF SOLID HAZARDOUS MATERIALS IN BULK

■ 217. Revise the authority citation for part 148 to read as follows:

Authority: 49 U.S.C. 5103; Department of Homeland Security Delegation No. 0170.1.

PART 150—COMPATIBILITY OF CARGOES

■ 218. Revise the authority citation for part 150 to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1. Section 150.105 issued under 44 U.S.C. 3507; Department of Homeland Security Delegation No. 0170.1.

§ 150.105 [Amended]

■ 219. In § 150.105(b), remove the number "2115–0016" wherever it appears, and add, in its place, the number "1625–0007"; remove the number "2115–0089" wherever it appears, and add, in its place, the number "1625–0094"; remove the number "2115–0113" and add, in its place, the number "1625–0029".

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

■ 220. Revise the authority citation for part 151 to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

■ 221. Revise the authority citation for part 153 to read as follows:

Authority: 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903 (b).

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

■ 222. Revise the authority citation for part 154 to read as follows:

Authority: 46 U.S.C. 3703, 9101; Department of Homeland Security Delegation No. 0170.1.

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

■ 223. The authority citation for part 159 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1; Section 159.001–9 also issued under the authority of 44 U.S.C. 3507.

§ 159.001–9 [Amended]

■ 224. In § 159.001–9(b), remove the number "2115–0090" wherever it appears, and add, in its place, the number "1625–0035"; remove the number "2115–0121" wherever it appears, and add, in its place, the number "1625–0035"; remove the number "2115–0141" wherever it appears, and add, in its place, the number "1625–0035"; remove the number "2115–0525" wherever it appears, and add, in its place, the number "1625–0035".

PART 161—ELECTRICAL EQUIPMENT

■ 225. Revise the authority citation for part 161 to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 161.002–4 [Amended]

■ 226. In § 161.002–4(b)(4), immediately after the word "protection", insert the words, "(defined in § 110.15–1 of this chapter)", and delete the words, "Category ENV3 of".

§ 161.002–10 [Amended]

■ 227. In § 161.002–10(g)(1), remove the word "valves" and add, in its place, the word "values".

PART 162—ENGINEERING EQUIPMENT

■ 228. Revise the authority citation for part 162 to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

§ 162.017–6 [Amended]

■ 229. In § 162.017–6(c), remove the words "acceptable to the Commanding Officer, USCG Marine Safety Center" and add, in their place, the words "acceptable to the Commandant (G–MSE)".

PART 166—DESIGNATION AND APPROVAL OF NAUTICAL SCHOOL SHIPS

■ 230. Revise the authority citation for part 166 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; Department of Homeland Security Delegation No. 0170.1.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

■ 231. Revise the authority citation for part 167 to read as follows:

Authority: 46 U.S.C. 3306, 3307, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 167.01–20 [Amended]

■ 232. In § 167.01–20(b), remove the number "2115–0554", and add, in its place, the number "1625–0032"; remove the number "§ 167.65–43", and replace it with the number "§ 167.65–42"; remove the number "2115–0589" wherever it appears, and add, in its place, the number "1625–0064".

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

■ 233. Revise the authority citation for part 168 to read as follows:

Authority: 46 U.S.C. 3305, 3306; Department of Homeland Security Delegation No. 0170.1.

PART 169—SAILING SCHOOL VESSELS

■ 234. Revise the authority citation for part 169 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.117 [Amended]

■ 235. In § 169.117(b), remove the number "2115–0517" wherever it appears, and add, in its place, the number "1625–0002"; remove the number "2115–0007", and add, in its place, the number "1625–0002"; remove the number "2115–0546" wherever it appears, and add in its place, in consecutive order, the numbers "1625–0002", "1625–0014", "1625–0014", "1625–0032", "1625–0018", and "1625–0038"; remove the number "2115–0554", and add, in its place, the number "1625–0032"; remove the number "2115–0095", and add, in its place, the numbers "1625–0038, 1625–0064"; remove the number "2115–0132", and add, in its place, the numbers "1625–0035, 1625–0038"; remove the number "2115–0003", and add, in its place, the number "1625–0001"; remove the number "2115–0589", and add, in its place, the number "1625–0064"; remove the number "2115–0071", and add, in its place, the number "1625–0018".

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

■ 236. Revise the authority citation for part 170 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp.. p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 170.020 [Amended]

■ 237. In § 170.020(b), remove the string of numbers "2115–0095, 2115–0114, 2115–0130, 2115–0131" wherever it appears and add, in its place, the number "1625–0064"; remove the entry for "§ 170.210."

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

■ 238. Revise the authority citation for part 171 to read as follows:

Authority. 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

■ 239. Revise the authority citation for part 172 to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 173—SPECIAL RULES PERTAINING TO VESSEL USE

■ 240. Revise the authority citation for part 173 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2113, 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

■ 241. Revise the authority citation for part 174 to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 175—GENERAL PROVISIONS

■ 242. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

§ 175.400 [Amended]

■ 243. In § 175.400, in the definition for "Open to the atmosphere" remove the words "cubic meter (foot)" and add, in their place, the words "cubic meter (35 ft^3)".

§ 175.900 [Amended]

■ 244. In § 175.900(b), remove the number "2115–0578" wherever it appears and add, in its place, the number "1625–0057"; remove the number "2115–0589" and add, in its place, the number "1625–0057"; remove the number "2115–0559" wherever it appears and add, in its place, the number "1625–0057"; remove the number "2115–0003" wherever it appears, and add, in its place, the number "1625–0001"; and, remove the footnote "[1] Will be displayed when assigned by OMB" from the bottom of the table, and in the four places in the table where the note (1) was applied, remove the reference to the note and add, in its place, the number "1625–0057".

PART 177—CONSTRUCTION AND ARRANGEMENT

■ 245. Revise the authority citation for part 177 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 177.202 [Amended]

■ 246. In § 177.202(d), remove the words "Marine Safety Center (Marine Safety Center)" and add, in their place, the words "Marine Safety Center (MSC)".

PART 178—INTACT STABILITY AND SEAWORTHINESS

■ 247. Revise the authority citation for part 178 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 179—SUBDIVISION, DAMAGE STABILITY, AND WATERTIGHT INTEGRITY

■ 248. Revise the authority citation for part 179 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

■ 249. Revise the authority citation for part 180 to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 181—FIRE PROTECTION EQUIPMENT

■ 250. Revise the authority citation for part 181 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 182—MACHINERY INSTALLATION

■ 251. Revise the authority citation for part 182 to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 182.455 [Amended]

■ 252. In § 182.455(a)(1), remove the words "9 millimeters" and add, in their place, the words "0.9 millimeters".

PART 183—ELECTRICAL INSTALLATION

■ 253. Revise the authority citation for part 183 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 254. Revise the authority citation for part 184 to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 185—OPERATIONS

■ 255. Revise the authority citation for part 185 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 188—GENERAL PROVISIONS

■ 256. Revise the authority citation for part 188 to read as follows:

Authority: 46 U.S.C. 2113, 3306; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 188.01–15 [Amended]

■ 257. In § 188.01–15(b), remove the number "2115–0554" wherever it appears, and add, in its place, the number "1625–0032"; remove the number "2115–0589" wherever it appears, and add, in its place, the number "1625–0064".

PART 189—INSPECTION AND CERTIFICATION

■ 258. Revise the authority citation for part 189 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

PART 190—CONSTRUCTION AND ARRANGEMENT

■ 259. Revise the authority citation for part 190 to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 193—FIRE PROTECTION EQUIPMENT

■ 260. Revise the authority citation for part 193 to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 194—HANDLING, USE, AND CONTROL OF EXPLOSIVES AND OTHER HAZARDOUS MATERIALS

■ 261. Revise the authority citation for part 194 to read as follows:

Authority: 46 U.S.C. 2103, 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 262. Revise the authority citation for part 195 to read as follows:

Authority: 46 U.S.C. 2113, 3306, 3307; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 196—OPERATIONS

■ 263. Revise the authority citation for part 196 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

PART 197—GENERAL PROVISIONS

■ 264. Revise the authority citation for part 197 to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; Department of Homeland Security Delegation No. 0170.1.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

■ 265. Revise the authority citation for part 199 to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

§ 199.05 [Amended]

■ 266. In § 199.05(a), remove the words "Lifesaving and Fire Safety Division (G–MSE–4)" and add, in their place, the words "Lifesaving and Fire Safety Standards Division (G–MSE–4)".

■ 267. In § 199.30—

■ a. Revise the definition for "Approval series".

■ b. In the definition for "Ferry", remove the text, "§ 70.10–15" and add, in its place, the text, "§ 70.10–1". The revision reads as follows:

§ 199.30 Definitions.

* * * * *

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of current and formerly approved equipment and materials may be found on the Internet at: *http://cgmix.uscg.mil/equipment*. Each OCMI may be contacted for information concerning approved equipment.

* * * * *

§ 199.175 [Amended]

■ 268. In § 199.175(b)(21)(ii)(B), remove the words "(3,937 pounds-force)" and add, in their place, the words "(3,370 pounds-force)".

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 269. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C 3507.

§ 401.105 [Amended]

■ 270. In § 401.105(b), remove the number "2115–0022", and add, in its place, the number "1625–0086".

§ 401.110 [Amended]

■ 271. In § 401.110(a)(9), remove "(G–MW–1)" and add, in its place, "(G–MWP–2)".

TITLE 49—TRANSPORTATION

PART 450—GENERAL

■ 272. Revise the authority citation for part 450 to read as follows:

Authority: Sec. 4, 91 Stat 1475 (46 U.S.C. 1503); Department of Homeland Security Delegation No. 0170.1.

§ 450.3 [Amended]

■ 273. Amend § 450.3 as follows:

■ a. In paragraph (a)(2)(iv)(B), remove the words "The term *container* includes neither vehicles nor packaging; however, containers when carried on chassis are included."; and

■ b. Add paragraph (a)(2)(v) to read as follows:

§ 450.3 Definitions.

(a) * * *

(2) * * *

(v) The term *container* includes neither vehicles nor packaging; however, containers when carried on chassis are included.

* * * * *

§ 450.11 [Amended]

■ 274. In § 450.11—

■ a. In paragraph (a), remove the text "(G–MVI)" and add, in its place, the text "(G–MSO)"; and

■ b. In paragraph (d), remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

§ 450.12 [Amended]

■ 275. In § 450.12(a) introductory text, remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

§ 450.13 [Amended]

■ 276. In § 450.13, remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" wherever they appear and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

§ 450.14 [Amended]

■ 277. In § 450.14, remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" wherever they appear and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

§ 450.15 [Amended]

■ 278. In § 450.15(a), remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

§ 450.16 [Amended]

■ 279. In § 450.16(a) introductory text and (b) introductory text, remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

PART 451—TESTING AND APPROVAL OF CONTAINERS

■ 280. Revise the authority citation for part 451 to read as follows:

Authority: Sec. 4, 91 Stat 1475 (46 U.S.C. 1503); Department of Homeland Security Delegation No. 0170.1.

§ 451.1 [Amended]

■ 281. In § 451.1(a), remove "(G-MVI)" and add, in its place, "(G–MSO)".

§ 451.3 [Amended]

■ 282. In § 451.3(a), remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" wherever they appear and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

§ 451.5 [Amended]

■ 283. In § 451.5(b), remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" wherever they appear and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

§ 451.7 [Amended]

■ 284. In § 451.7(a), add commas before and after the phrase "relating to the end and sidewall strength tests".

§ 451.12 [Amended]

■ 285. In § 451.12(a)(4), remove the words "of bailee" and add, in their place, the words "or bailee".

§ 451.18 [Amended]

■ 286. In § 451.18(a), remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" wherever they appear and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)".

PART 452—EXAMINATION OF CONTAINERS

■ 287. Revise the authority citation for part 452 to read as follows:

Authority: Sec. 4, 91 Stat 1475 (46 U.S.C. 1503); Department of Homeland Security Delegation No. 0170.1.

§ 452.1 [Amended]

■ 288. In § 452.1(a) after the phrase "except that for containers approved as new containers" add a comma.

§ 452.3 [Amended]

■ 289. Amend § 452.3 as follows:
■ a. In paragraph (a)(2) remove the text "(types)"; and
■ b. In paragraph (b) after the word "include" add a comma.

§ 452.7 [Amended]

■ 290. Amend § 452.7 as follows:
■ a. In paragraph (a), remove "(G–MVI)" and add, in its place, "(G–MSO)".
■ b. In the text following paragraph (c), remove the number "2115–0094", and add, in its place, the number "1625–0024".

§ 452.9 [Amended]

■ 291. Amend § 452.9 as follows:
■ a. In paragraph (b), add a comma before the phrase "in addition".
■ b. In the text following paragraph (b), remove the number "2115–0094", and add, in its place, the number "1625–0024".

PART 453—CONTROL AND ENFORCEMENT

■ 292. Revise the authority citation for part 453 to read as follows:

Authority: Sec. 4, 91 Stat 1475 (46 U.S.C. 1503); Department of Homeland Security Delegation No. 0170.1.

§ 453.7 [Amended]

■ 293. Amend § 453.7 as follows:
■ a. In § 453.7 remove the words "Merchant Vessel Inspection Division, Office of Merchant Marine Safety" wherever they appear and add, in their place, the words "Office of Operating and Environmental Standards (G–MSO)"; and
■ b. In paragraph (a) after the phrase "or other order" add a comma.

Dated: September 24, 2004.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 04–21845 Filed 9–29–04; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202 and 225

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses.

DATES: Effective: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 202 and 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 202 and 225 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202 and 225 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of "Contracting activity", under the heading "DEPARTMENT OF DEFENSE", by removing "Real Estate and Facilities Directorate, Washington Headquarter Services" and adding in its place "Acquisition and Procurement Office, Washington Headquarters Services".

PART 225—FOREIGN ACQUISITION

225.870–5 [Amended]

■ 3. Section 225.870–5 is amended in paragraph (a), in the second sentence, by revising the text after the second colon to read "DFAS Columbus Center, DFAS–CO/North Entitlement Operations, PO Box 182266, Columbus, OH 43218–2266.".

[FR Doc. 04–21851 Filed 9–29–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2004–D015]

Defense Federal Acquisition Regulation Supplement; Extension of Partnership Agreement—8(a) Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect an extension in the expiration date of a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement permits DoD to award contracts to 8(a) Program participants on behalf of SBA.

DATES: Effective September 29, 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 2004–D015.

SUPPLEMENTARY INFORMATION:

A. Background

By partnership agreement dated February 1, 2002, between the SBA and DoD, the SBA delegated to DoD its authority to enter into contracts under Section 8(a) of the Small Business Act (15 U.S.C. 637(a)). The expiration date of the partnership agreement has been extended from September 30, 2004, to September 30, 2005. This final rule amends DFARS 219.800 to reflect the extension.

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–D015.

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 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 219 is amended as follows:

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

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

PART 219—SMALL BUSINESS PROGRAMS

219.800 [Amended]

■ 2. Section 219.800 is amended in paragraph (a), in the last sentence, by removing "2004" and adding in its place "2005".

[FR Doc. 04–21852 Filed 9–29–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 19

[Docket No. OST—2004–18517]

RIN 2105–AC83

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Institutions

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT) is issuing a final rule on the changes to OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Institutions," which OMB published as agency guidance in the **Federal Register** on March 16, 2000, in Volume 65, Number 52, page 144051, and DOT codified as an interim final rule in the same document.

DATES: *Effective Date:* This rule is effective November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ladd Hakes, Business Policy Division, M–61, Office of the Senior Procurement Executive, Office of the Secretary, (202) 366–4268.

SUPPLEMENTARY INFORMATION: Congress included a two-sentence provision in the Office of Management and Budget's (OMB) appropriation for fiscal year 1999 directing OMB to amend Section __.36 of OMB Circular A–110 to "require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The provision also provided for a reasonable fee to cover the costs incurred in responding to a request. OMB Circular A–110 applies to grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit institutions, from all Federal agencies.

OMB finalized the revision on September 30, 1999 (64 FR 54926, October 8, 1999). OMB published guidance to Federal agencies for adopting the revisions (65 FR 14405) on March 16, 2000, as an interim final rule. DOT adopted the guidance as an interim final rule in the same document. DOT now adopts the revisions as a final rule.

DOT did not receive any comments on the interim final rule. Consequently, the Department is adopting the interim final rule without change.

Regulatory Analyses and Notices

This is a significant regulatory action under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures, because it adopts as a final rule an earlier regulatory action which had been listed as significant.

The Regulatory Flexibility Act requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. DOT certifies that this final rule will not have a significant impact on a substantial number of small entities. This rule concerns the information that Federally-funded researchers must provide in response to Freedom of Information Act requests.

The Unfunded Mandates Act requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector. Since this final rule will not result in expenditures of this magnitude, DOT certifies that such statements are not necessary. This final rule will not impose additional reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

Issued this 8th day of September, 2004, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

■ For the reasons stated in the preamble, the Department of Transportation adopts as a final rule that which was published as an interim final rule in the March 16, 2000, **Federal Register** (65 FR 14405).

[FR Doc. 04–21980 Filed 9–29–04; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2004–19143]

RIN 2127–AJ35

List of Nonconforming Vehicles Decided To Be Eligible for Importation

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

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation. This list is contained in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The revised list includes all vehicles that NHTSA has decided to be eligible for importation since October 1, 2003. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to

conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made "on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)]." The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR Part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This is a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This action was not reviewed under E.O. 12866. This action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Because this action does not impose any regulatory requirements, but merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have been made, it has no economic impact. Based upon this evaluation, I certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

3. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" 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." Executive Order 13132 defines the term "policies that have federalism implications" 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, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance 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 NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The amendments adopted in this rule 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, as amended, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Executive Order 12778 (Civil Justice Reform)

This rule will not have any retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires 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 annually (adjusted for inflation with the base year of 1995). Because this final rule will not require the expenditure of any financial resources, no Unfunded Mandates assessment has been prepared.

8. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant.

9. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements, but merely revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation into the United States to

include all vehicles for which such decisions have been made since the last list was prepared in September of 2003.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 400 to 999, which is due for revision on October 1, 2004, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal Motor Vehicle Safety Standards is eligible for importation,* is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for Part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50

■ 2. Appendix A to Part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined to be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) "VSA" eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

(2) "VSP" eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) "VCP" eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically by make. Eligible models within each make are listed numerically by "VSA," "VSP," or "VCP" number.

(c) All hyphens used in the Model Year column mean "through" (for example, "1973–1989" means "1973 through 1989").

(d) The initials "MC" used in the Manufacturer column mean "motorcycle."

(e) The initials "SWB" used in the Model Type column mean "Short Wheel Base."

(f) The initials "LWB" used in the Model Type column mean "Long Wheel Base."

(g) For vehicles with a European country of origin, the term "Model Year" ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive vehicles unless noted as RHD. The initials "RHD" used in the Model Type column mean "Right-Hand-Drive."

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214; (d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216; (e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225.
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Acura	51			Legend		1988
Acura	77			Legend		1989
Acura	305			Legend		1990–1992
Alfa Romeo	196			164		1989
Alfa Romeo	76			164		1991
Alfa Romeo	156			164		1994
Alfa Romeo	124			GTV		1985

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Alfa Romeo	70			Spider		1987
Aston Martin	430			Vanquish		2002–2004
Audi	223			80		1998–1989
Audi	93			100		1989
Audi	317			100		1990–1992
Audi	244			100		1993
Audi	160			200 Quattro		1985
Audi	352			A4		1996–2000
Audi	400			A4, RS4, S4	8D	2000–2001
Audi	332			A6		1998–1999
Audi	337			A8		1997–2000
Audi	424			A8		2000
Audi	238			Avant Quattro		1996
Audi	443			RS6 & RS Avant		2003
Audi	428			S6		1996
Audi	424			S8		2000
Audi	364			TT		2000–2001
Bimota (MC)	397			DB4		2000
Bimota (MC)	397			SB8		1999–2000
BMW		66		316		1979–1982
BMW	25			316		1986
BMW	248			3 Series		1995–1997
BMW	379			3 Series		1999, 2001
BMW	356			3 Series		2000
BMW		23		318i, 318iA		1981–1989
BMW		16		320, 320i, 320iA		1979–1985
BMW	283			320i		1990–1991
BMW		67		323i		1979–1985
BMW		30		325, 325i, 325iA, 325E		1985–1989
BMW		24		325e, 325eA		1984–1987
BMW	96			325i		1991
BMW	197			325i		1992–1996
BMW		31		325iS, 325iSA		1987–1989
BMW	205			325iX		1990
BMW		33		325iX, 325iXA		1988–1989
BMW	194			5 Series		1990–1995
BMW	249			5 Series		1995–1997
BMW	314			5 Series		1998–1999
BMW	345			5 Series		2000
BMW	414			5 Series		2000–2002
BMW	4			518i		1986
BMW		68		520, 520i		1979–1983
BMW	9			520iA		1989
BMW		26		524tdA		1985–1986
BMW		69		525, 525i		1979–1982
BMW	5			525i		1989
BMW		21		528e, 528eA		1982–1988
BMW		20		528i, 528iA		1979–1984
BMW		22		533i, 533iA		1983–1984
BMW		25		535i, 535iA		1985–1989
BMW	15			625CSi		1981
BMW	32			628CSi		1980
BMW		18		633CSi, 633CSiA		1979–1984
BMW		27		635, 635CSi, 635CSiA		1979–1989
BMW	299			7 Series		1990–1991
BMW	232			7 Series		1992
BMW	299			7 Series		1993–1994
BMW	313			7 Series		1995–1999
BMW	366			7 Series		1999–2001
BMW		70		728, 728i		1979–1985
BMW	14			728i		1986
BMW		71		730, 730i, 730iA		1979–1980
BMW	6			730iA		1988
BMW		72		732i		1980–1984
BMW		19		733i, 733iA		1979–1984
BMW		28		735, 735i, 735iA		1980–1989
BMW		73		745i		1980–1986
BMW	361			8 Series		1991–1995
BMW	396			850 Series		1997
BMW	10			850i		1990
BMW		78		All other models except those in the M1 and Z1 series..		1979–1989

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
BMW		29		L7		1986–1987
BMW		35		M3		1988–1989
BMW		34		M5		1988
BMW		32		M6		1987–1988
BMW	260			Z3		1996–1998
BMW	350			Z8		2000–2001
BMW	406			Z8		2002
BMW (MC)	228			K1		1990–1993
BMW (MC)	285			K100		1984–1992
BMW (MC)	303			K1100, K1200		1993–1998
BMW (MC)	229			K75S		1987–1995
BMW (MC)	231			R1100		1994–1997
BMW (MC)	368			R1100		1998–2001
BMW (MC)	177			R1100RS		1994
BMW (MC)	359			R1200C		1998–2001
BMW (MC)	295			R80, R100		1986–1995
Bristol Bus			2	VRT Bus—Double Decker		1979–1981
Buell (MC)	399			All Models		1995–2002
Cadillac	300			DeVille		1994–1999
Cadillac	375			Seville		1991
Cagiva	444			Gran Canyon 900 motorcycle		1999
Chevrolet	150			400SS		1995
Chevrolet	298			Astro Van		1997
Chevrolet	405			Blazer		1986
Chevrolet	349			Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997
Chevrolet	435			Camaro		1999
Chevrolet	369			Cavalier		1997
Chevrolet	365			Corvette		1992
Chevrolet	419			Corvette Coupe		1999
Chevrolet	242			Suburban		1989–1991
Chrysler	344			Daytona		1992
Chrysler	373			Grand Voyager		1998
Chrysler	276			LHS (manufactured for sale in Mexico).		1996
Chrysler	216			Shadow (Middle Eastern market)		1989
Chrysler	273			Town and Country		1993
Citroen			1	XM		1990–1992
Daimler	12			Limousine		1985
Dodge	135			Ram		1994–1995
Ducati (MC)	241			600SS		1992–1996
Ducati (MC)	421			748		1999–2003
Ducati (MC)	220			748 Biposto		1996–1997
Ducati (MC)	201			900SS		1991–1996
Ducati (MC)	421			916		1999–2003
Ducati (MC)	398			996R		2001–2002
Ducati (MC)	407			Monster 600		2001
Eagle	323			Vision		1994
Ferrari		76		208, 208 Turbo (all models)		1979–1988
Ferrari		36		308 (all models)		1979–1985
Ferrari		37		328 (except GTS)		1985, 1988–1989
Ferrari		37		328 GTS		1985–1989
Ferrari	86			348 TB		1992
Ferrari	161			348 TS		1992
Ferrari	376			360		2001
Ferrari	433			360 (manufactured after August 31, 2002).		2002
Ferrari	402			360 (manufactured before September 1, 2002).		2002
Ferrari	327			360 Modena		1999–2000
Ferrari	410			360 Spider & Coupe		2003
Ferrari	256			456		1995
Ferrari	408			456 GT & GTA		1997–1998
Ferrari	173			512 TR		1993
Ferrari	377			550		2001
Ferrari	292			550 Marinello		1997–1999
Ferrari	415			575		2002–2003
Ferrari	436			Enzo		2003–2004
Ferrari	259			F355		1995
Ferrari	355			F355		1996–1998
Ferrari	391			F355		1999
Ferrari	226			F50		1995

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Ferrari		38		GTO		1985
Ferrari		74		Mondial (all models)		1980–1989
Ferrari		39		Testarossa		1987–1989
Ford	265			Bronco (manufactured in Venezuela).		1995–1996
Ford	322			Escort (Nicaragua)		1996
Ford			9	Escort RS Cosworth		1994–1995
Ford	268			Explorer (manufactured in Venezuela).		1991–1998
Ford	425			F150		2000
Ford	367			Mustang		1993
Ford	250			Windstar		1995–1998
Freightliner	179			FLD12064ST		1991–1996
Freightliner	178			FTLD112064SD		1991–1996
GMC	383			Jimmy		1980
GMC	134			Suburban		1992–1994
Harley Davidson (MC)	202			FX, FL, XL Series		1979–1997
Harley Davidson (MC)	253			FX, FL, XL Series		1998
Harley Davidson (MC)	281			FX, FL, XL Series		1999
Harley Davidson (MC)	321			FX, FL, XL Series		2000
Harley Davidson (MC)	362			FX, FL, XL Series		2001
Harley Davidson (MC)	372			FX, FL, XL Series		2002
Harley Davidson (MC)	393			FX, FL, XL Series		2003
Harley Davidson (MC)	422			FX, FL, XL Series		2004
Harley Davidson (MC)	374			VRSCA		2002
Harley Davidson (MC)	394			VRSCA		2003
Harley Davidson (MC)	422			VRSCA		2004
Hobson		8		Horse Trailer		1985
Honda	280			Accord		1991
Honda	319			Accord		1992–1999
Honda	128			Civic DX Hatchback		1989
Honda	191			Prelude		1989
Honda	309			Prelude		1994–1997
Honda (MC)	440			CB 750 (CB750F2T)		1996
Honda (MC)	106			CB1000F		1988
Honda (MC)			22	CBR 250		1989–1994
Honda (MC)	348			CMX250C		1979–1987
Honda (MC)	174			CP450SC		1986
Honda (MC)	358			RVF 400		1994–2000
Honda (MC)	290			VF750		1994–1998
Honda (MC)	358			VFR 400		1994–2000
Honda (MC)			24	VFR 400, RVF 400		1989–1993
Honda (MC)	34			VFR750		1990
Honda (MC)	315			VFR750		1991–1997
Honda (MC)	315			VFR800		1998–1999
Honda (MC)	294			VT600		1991–1998
Hyundai	269			Elantra		1992–1995
Jaguar	78			Sovereign		1993
Jaguar	411			S-Type		2000–2002
Jaguar		41		XJ6		1979–1986
Jaguar	47			XJ6		1987
Jaguar	215			XJ6 Sovereign		1988
Jaguar		40		XJS		1980–1987
Jaguar	175			XJS		1991
Jaguar	129			XJS		1992
Jaguar	195			XJS		1994–1996
Jaguar	336			XJS, XJ6		1988–1990
Jaguar	330			XK–8		1998
Jeep	254			Cherokee		1993
Jeep	180			Cherokee		1995
Jeep	211			Cherokee (European market)		1991
Jeep	164			Cherokee (Venezuelan)		1992
Jeep	224			CJ–7		1979
Jeep	404			Grand Cherokee		1994
Jeep	431			Grand Cherokee		1997
Jeep	382			Grand Cherokee		2001
Jeep	217			Wrangler		1993
Jeep	255			Wrangler		1995
Jeep	341			Wrangler		1998
Jeep	389			Grand Cherokee (LHD) (Japanese market).		1997
Kawasaki (MC)	233			EL250		1992–1994

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Kawasaki (MC)	190			KZ550B		1982
Kawasaki (MC)	182			ZX1000–B1		1988
Kawasaki (MC)	222			ZX400		1987–1997
Kawasaki (MC)	312			ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999
Kawasaki (MC)	288			ZX600		1985–1998
Kawasaki (MC)	247			ZZR1100		1993–1998
Ken-Mex	187			T800		1990–1996
Kenworth	115			T800		1992
KTM (MC)	363			Duke II		1995–2000
Lamborghini	416			Diablo (except 1997 Coupe)		1996–1997
Lamborghini			26	Diablo Coupe		1997
Land Rover	212			Defender 110		1993
Land Rover	432			Defender 90 (manufactured before 9/1/1997).		1997
Land Rover	338			Discovery		1994–1998
Land Rover	437			Discovery (II)		2000
Lexus	293			GS300		1993–1996
Lexus	307			RX300		1998–1999
Lexus	225			SC300, SC400		1991–1996
Lincoln	144			Mark VII		1992
Magni (MC)	264			Australia, Sfida		1996–1999
Maserati	155			Bi-Turbo		1985
Mazda	413			MPV		2000
Mazda	184			MX–5 Miata		1990–1993
Mazda		42		RX–7		1979–1981
Mazda	199			RX–7		1986
Mazda	279			RX–7		1987–1995
Mazda	351			Xedos 9		1995–2000
Mercedes Benz		54		190	201.022	1984
Mercedes Benz		54		190 D	201.126	1984–1989
Mercedes Benz		54		190 D (2.2)	201.122	1984–1989
Mercedes Benz		54		190 E	201.028	1986–1989
Mercedes Benz	22			190 E	201.024	1990
Mercedes Benz	45			190 E	201.024	1991
Mercedes Benz	71			190 E	201.028	1992
Mercedes Benz	126			190 E	201.018	1992
Mercedes Benz		54		190 E (2.3)	201.024	1983–1989
Mercedes Benz		54		190 E (2.6)	201.029	1986–1989
Mercedes Benz		54		190 E 2.3 16	201.034	1984–1989
Mercedes Benz		52		200	123.020	1979–1980
Mercedes Benz		52		200	123.220	1979–1985
Mercedes Benz		55		200	124.020	1985
Mercedes Benz		52		200 D	123.120	1980–1982
Mercedes Benz	17			200 D	124.120	1986
Mercedes Benz	11			200 E	124.021	1989
Mercedes Benz	109			200 E	124.012	1991
Mercedes Benz	75			200 E	124.019	1993
Mercedes Benz	3			200 TE	124.081	1989
Mercedes Benz	168			220 E		1993
Mercedes Benz	167			220 TE Station Wagon		1993–1996
Mercedes Benz		52		230	123.023	1979–1985
Mercedes Benz		52		230 C	123.043	1979–1980
Mercedes Benz		52		230 CE	123.243	1980–1984
Mercedes Benz	84			230 CE	124.043	1991
Mercedes Benz	203			230 CE		1992
Mercedes Benz		52		230 E	123.223	1979–1985
Mercedes Benz		55		230 E	124.023	1985–1987
Mercedes Benz	1			230 E	124.023	1988
Mercedes Benz	20			230 E	124.023	1989
Mercedes Benz	19			230 E	124.023	1990
Mercedes Benz	74			230 E	124.023	1991
Mercedes Benz	127			230 E	124.023	1993
Mercedes Benz		52		230 T	123.083	1979–1985
Mercedes Benz		52		230 TE	123.283	1979–1985
Mercedes Benz		55		230 TE	124.083	1985
Mercedes Benz	2			230 TE	124.083	1989
Mercedes Benz		52		240 D	123.123	1979–1985
Mercedes Benz		52		240 TD	123.183	1979–1985
Mercedes Benz		52		250	123.026	1979–1985
Mercedes Benz	172			250 D		1992
Mercedes Benz	245			250 E		1990–1993
Mercedes Benz		55		260 E	124.026	1985–1989

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	105			260 E	124.026	1992
Mercedes Benz	18			260 SE	126.020	1986
Mercedes Benz	28			260 SE	126.020	1989
Mercedes Benz		52		280	123.030	1979–1985
Mercedes Benz		52		280 C	123.050	1979–1980
Mercedes Benz		52		280 CE	123.053	1979–1985
Mercedes Benz		52		280 E	123.033	1979–1985
Mercedes Benz	166			280 E		1993
Mercedes Benz		51		280 S	116.020	1979–1980
Mercedes Benz		53		280 S	126.021	1980–1983
Mercedes Benz		51		280 SE	116.024	1979–1988
Mercedes Benz		53		280 SE	126.022	1980–1985
Mercedes Benz		51		280 SEL	116.025	1979–1980
Mercedes Benz		53		280 SEL	126.023	1980–1985
Mercedes Benz		44		280 SL	107.042	1979–1985
Mercedes Benz		44		280 SLC	107.022	1979–1981
Mercedes Benz		52		280 TE	123.093	1979–1985
Mercedes Benz		52		300 CD	123.150	1979–1985
Mercedes Benz		55		300 CE	124.050	1988–1989
Mercedes Benz	64			300 CE	124.051	1990
Mercedes Benz	83			300 CE	124.051	1991
Mercedes Benz	117			300 CE	124.050	1992
Mercedes Benz	94			300 CE	124.061	1993
Mercedes Benz		52		300 D	123.133	1979–1985
Mercedes Benz		52		300 D	123.130	1979–1985
Mercedes Benz		55		300 D	124.130	1985–1986
Mercedes Benz		55		300 D Turbo	124.133	1985–1989
Mercedes Benz		55		300 E	124.030	1985–1989
Mercedes Benz	114			300 E	124.031	1992
Mercedes Benz	192			300 E 4-Matic		1990–1993
Mercedes Benz		53		300 SD	126.120	1981–1989
Mercedes Benz		53		300 SE	126.024	1985–1989
Mercedes Benz	68			300 SE	126.024	1990
Mercedes Benz		53		300 SEL	126.025	1986–1989
Mercedes Benz	21			300 SEL	126.025	1990
Mercedes Benz		44		300 SL	107.041	1986–1988
Mercedes Benz	7			300 SL	107.041	1989
Mercedes Benz	54			300 SL	129.006	1992
Mercedes Benz		52		300 TD	123.193	1979–1985
Mercedes Benz		55		300 TD Turbo	124.193	1986–1989
Mercedes Benz		55		300 TE	124.090	1986–1989
Mercedes Benz	40			300 TE	124.090	1990
Mercedes Benz	193			300 TE		1992
Mercedes Benz	310			320 CE		1993
Mercedes Benz	142			320 SL		1992–1993
Mercedes Benz		51		350 SE	116.028	1979–1980
Mercedes Benz		51		350 SEL	116.029	1979–1980
Mercedes Benz		44		350 SLC	107.023	1979
Mercedes Benz		53		380 SE	126.032	1979–1989
Mercedes Benz		53		380 SE	126.043	1982–1989
Mercedes Benz		53		380 SEL	126.033	1980–1989
Mercedes Benz		44		380 SL	107.045	1980–1989
Mercedes Benz		44		380 SLC	107.025	1981–1989
Mercedes Benz	296			400 SE		1992–1994
Mercedes Benz	169			420 E		1993
Mercedes Benz		53		420 SE	126.034	1985–1989
Mercedes Benz	230			420 SE		1990–1991
Mercedes Benz	209			420 SEC		1990
Mercedes Benz		53		420 SEL	126.035	1986–1989
Mercedes Benz	48			420 SEL	126.035	1990
Mercedes Benz		44		420 SL	107.047	1986
Mercedes Benz		51		450 SE	116.032	1979–1980
Mercedes Benz		51		450 SEL	116.033	1979–1988
Mercedes Benz		51		450 SEL (6.9)	116.036	1979–1988
Mercedes Benz		44		450 SL	107.044	1979–1989
Mercedes Benz		44		450 SLC	107.024	1979–1989
Mercedes Benz	56			500 E	124.036	1991
Mercedes Benz		53		500 SE	126.036	1980–1986
Mercedes Benz	35			500 SE	126.036	1988
Mercedes Benz	154			500 SE		1990
Mercedes Benz	26			500 SE	140.050	1991
Mercedes Benz		53		500 SEC	126.044	1981–1989

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	66			500 SEC	126.044	1990
Mercedes Benz		53		500 SEL	126.037	1980–1989
Mercedes Benz	153			500 SEL		1990
Mercedes Benz	63			500 SEL	126.037	1991
Mercedes Benz		44		500 SL	107.046	1980–1989
Mercedes Benz	23			500 SL	129.066	1989
Mercedes Benz	33			500 SL	126.066	1991
Mercedes Benz	60			500 SL	129.006	1992
Mercedes Benz		44		500 SLC	107.026	1979–1981
Mercedes Benz		53		560 SEC	126.045	1986–1989
Mercedes Benz	141			560 SEC	126.045	1990
Mercedes Benz	333			560 SEC		1991
Mercedes Benz		53		560 SEL	126.039	1986–1989
Mercedes Benz	89			560 SEL	126.039	1990
Mercedes Benz		44		560 SL	107.048	1986–1989
Mercedes Benz		43		600	100.012	1979–1981
Mercedes Benz		43		600 Landaulet	100.015	1979–1981
Mercedes Benz		43		600 Long 4dr	100.014	1979–1981
Mercedes Benz		43		600 Long 6dr	100.016	1979–1981
Mercedes Benz	185			600 SEC Coupe		1993
Mercedes Benz	271			600 SEL	140.057	1993–1998
Mercedes Benz	121			600 SL	129.076	1992
Mercedes Benz		77		All other models except Model ID 114 and 115 with sales designations.		1979–1989
Mercedes Benz	331			C Class		1994–1999
Mercedes Benz	441			C–320	203	2001–2002
Mercedes Benz	277			CL500		1998
Mercedes Benz	370			CL500		1999–2001
Mercedes Benz	370			CL600		1999–2001
Mercedes Benz	380			CLK		1999–2001
Mercedes Benz	357			CLK320		1998
Mercedes Benz	401			E Class	W210	1996–2002
Mercedes Benz	429			E Class	211	2003–2004
Mercedes Benz	354			E Series		1991–1995
Mercedes Benz	207			E200		1994
Mercedes Benz	278			E200		1995–1998
Mercedes Benz	168			E220		1994–1996
Mercedes Benz	245			E250		1994–1995
Mercedes Benz	166			E280		1994–1996
Mercedes Benz	240			E320		1994–1998
Mercedes Benz	418			E320	211	2002–2003
Mercedes Benz	318			E320 Station Wagon		1994–1999
Mercedes Benz	169			E420		1994–1996
Mercedes Benz	163			E500		1994
Mercedes Benz	304			E500		1995–1997
Mercedes Benz			11	G-Wagon	463	1996
Mercedes Benz			15	G-Wagon	463	1997
Mercedes Benz			16	G-Wagon	463	1998
Mercedes Benz			18	G-Wagon	463	1999–2000
Mercedes Benz			5	G-Wagon 300	463.228	1990–1992
Mercedes Benz			3	G-Wagon 300	463.228	1993
Mercedes Benz			5	G-Wagon 300	463.228	1994
Mercedes Benz			6	G-Wagon 320 LWB	463	1995
Mercedes Benz			21	G-Wagon 5 DR LWB	463	2001
Mercedes Benz	392			G-Wagon 5 DR LWB	463	2002
Mercedes Benz			13	G-Wagon LWB V–8	463	1992–1996
Mercedes Benz			14	G-Wagon SWB	463	1990–1996
Mercedes Benz			25	G-Wagon SWB Cabriolet & 3DR	463	2001–2003
Mercedes Benz	423			S Class	140	1991–1994
Mercedes Benz	395			S Class		1993
Mercedes Benz	342			S Class		1995–1998
Mercedes Benz	325			S Class		1998–1999
Mercedes Benz	387			S Class	W220	1999–2002
Mercedes Benz	442			S Class	220	2002–2004
Mercedes Benz	85			S280	140.028	1994
Mercedes Benz	236			S320		1994–1998
Mercedes Benz	267			S420		1994–1997
Mercedes Benz	235			S500		1994–1997
Mercedes Benz	371			S500		2000–2001
Mercedes Benz	297			S600		1995–1999
Mercedes Benz	371			S600		2000–2001

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	185			S600 Coupe		1994
Mercedes Benz	214			S600L		1994
Mercedes Benz	343			SE Class		1992–1994
Mercedes Benz	343			SEL Class		1992–1994
Mercedes Benz	329			SL Class		1993–1996
Mercedes Benz	386			SL Class	W129	1997–2000
Mercedes Benz			19	SL Class	R230	2001–2002
Mercedes Benz	257			SLK		1997–1998
Mercedes Benz	381			SLK		2000–2001
Mitsubishi	13			Galant Super Salon		1989
Mitsubishi	8			Galant VX		1988
Mitsubishi	170			Pajero		1984
Moto Guzzi (MC)	403			California EV		2002
Moto Guzzi (MC)	118			Daytona		1993
Moto Guzzi (MC)	264			Daytona RS		1996–1999
MV Agusta	420			F4		2000
Nissan	162			240SX		1988
Nissan	198			300ZX		1984
Nissan		75		Fairlady, Fairlady Z		1979
Nissan			17	GTS, GTR (RHD)		1990–1999
Nissan	138			Maxima		1989
Nissan	316			Pathfinder		1987–1995
Nissan	412			Pathfinder		2002
Nissan	139			Stanza		1987
Nissan		75		Z, 280Z		1979–1981
Peugeot	65			405		1989
Plymouth	353			Voyager		1996
Pontiac (MPV)	189			Trans Sport		1993
Porsche	346			911		1997–2000
Porsche	439			911 (996) Carrera		2002–2004
Porsche	438			911 (996) GT3		2004
Porsche	29			911 C4		1990
Porsche		56		911 Cabriolet		1984–1989
Porsche		56		911 Carrera		1979–1989
Porsche	165			911 Carrera		1993
Porsche	103			911 Carrera		1994
Porsche	165			911 Carrera		1995–1996
Porsche	52			911 Carrera 2 & Carrera 4		1992
Porsche		56		911 Coupe		1979–1989
Porsche		56		911 Targa		1979–1989
Porsche		56		911 Turbo		1979–1989
Porsche	125			911 Turbo		1992
Porsche	347			911 Turbo		2001
Porsche		59		924 Coupe		1979–1989
Porsche		59		924 S		1987–1989
Porsche		59		924 Turbo Coupe		1979–1989
Porsche	266			928		1991–1996
Porsche	272			928		1993–1998
Porsche		60		928 Coupe		1979–1989
Porsche		60		928 GT		1979–1989
Porsche		60		928 S Coupe		1983–1989
Porsche		60		928 S4		1979–1989
Porsche	210			928 S4		1990
Porsche		61		944 Coupe		1982–1989
Porsche	97			944 S Cabriolet		1990
Porsche		61		944 S Coupe		1987–1989
Porsche	152			944 S2 (2-door Hatchback)		1990
Porsche		61		944 Turbo Coupe		1985–1989
Porsche	116			946 Turbo		1994
Porsche		79		All models except Model 959		1979–1989
Porsche	390			Boxster		1997–2001
Porsche	390			Boxster (manufactured before 9/1/2002).		2002
Porsche			20	GT2		2001
Porsche	388			GT2		2002
Rolls Royce	340			Bentley		1987–1989
Rolls Royce	186			Bentley Brooklands		1993
Rolls Royce	258			Bentley Continental R		1990–1993
Rolls Royce	53			Bentley Turbo		1986
Rolls Royce	291			Bentley Turbo R		1992–1993
Rolls Royce	243			Bentley Turbo R		1995
Rolls Royce	122			Camargue		1984–1985

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Rolls Royce	339			Corniche		1979–1985
Rolls Royce		62		Silver Shadow		1979
Rolls Royce	188			Silver Spur		1984
Saab	426			9.3		2003
Saab	158			900		1983
Saab	270			900 S		1987–1989
Saab	219			900 SE		1990–1994
Saab	213			900 SE		1995
Saab	219			900 SE		1996–1997
Saab	59			9000		1988
Saab	334			9000		1994
Smart Car			27	City-Coupe, City-Coupe Glass Top, & Cabrio.		2002–2004
Sprite (trailer)			12	Musketeer		1980
Suzuki (MC)	111			GS 850		1985
Suzuki (MC)	287			GSF 750		1996–1998
Suzuki (MC)	208			GSX 750		1983
Suzuki (MC)	227			GSX–R 1100		1986–1997
Suzuki (MC)	275			GSX–R 750		1986–1998
Suzuki (MC)	417			GSX–R 750		1999–2003
Toyota	308			Avalon		1995–1998
Toyota		63		Camry		1987–1988
Toyota	39			Camry		1989
Toyota		64		Celica		1987–1988
Toyota		65		Corolla		1987–1988
Toyota	320			Land Cruiser		1979–1980
Toyota	252			Land Cruiser		1981–1988
Toyota	101			Land Cruiser		1989
Toyota	218			Land Cruiser		1990–1996
Toyota	324			MR2		1990–1991
Toyota	326			Previa		1991–1992
Toyota	302			Previa		1993–1997
Toyota	328			RAV4		1996
Toyota	200			Van		1987–1988
Triumph (MC)	311			Thunderbird		1995–1999
Triumph (MC)	409			TSS		1982
Vespa (MC)	378			ET2, ET4		2001–2002
Volkswagen	237			Beetle Convertible		1979
Volkswagen	306			Eurovan		1993–1994
Volkswagen	159			Golf		1987
Volkswagen	80			Golf		1988
Volkswagen	92			Golf III		1993
Volkswagen	73			Golf Rallye		1988
Volkswagen	149			GTI (Canadian)		1991
Volkswagen	274			Jetta		1994–1996
Volkswagen	148			Passat 4-door Sedan		1992
Volkswagen	42			Scirocco		1986
Volkswagen	427			Transporter		1979–1980
Volkswagen	284			Transporter		1988–1989
Volkswagen	251			Transporter		1990
Volvo	43			262C		1981
Volvo	137			740 GL		1992
Volvo	87			740 Sedan		1988
Volvo	286			850 Turbo		1995–1998
Volvo	137			940 GL		1992
Volvo	95			940 GL		1993
Volvo	132			945 GL		1994
Volvo	176			960 Sedan & Wagon		1994
Volvo	434			C70		2000
Volvo	335			S70		1998–2000
Yamaha (MC)	113			FJ1200 (4 CR)		1991
Yamaha (MC)			23	FJR 1300		2002
Yamaha (MC)	360			R1		2000
Yamaha (MC)	171			RD–350		1983
Yamaha (MC)	301			Virago		1990–1998

Issued on: September 24, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–21978 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1039, 1101, 1105, 1150, 1185, and 1201

[STB Ex Parte No. 652]

Revision of Exemption Authority Citations.

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board or STB) is amending its regulations to change incorrect citations to its authority to exempt rail transportation, and to update miscellaneous references. The Board is also making changes to its authority citations.

DATES: These rules are effective on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), recodified former 49 U.S.C. 10505 as 49 U.S.C. 10502 with minor changes. This section deals with the authority of the Board to exempt railroad transportation. A number of the Board's regulations still refer to 49 U.S.C. 10505. Accordingly, the Board will correct those citations.

Four rules refer to "former 49 U.S.C. 10505". *See* 49 CFR 1185.1(b), 1185.5(b), 1300.1(d), and 1313.1(b). These citations to former section 10505 are appropriate and will not be changed. However, section 1185.5(b) refers "to an exemption authorized by the STB under former 49 U.S.C. 10505.* * *" The reference to the STB rather than the Interstate Commerce Commission (ICC) is incorrect; when the regulation was issued, it correctly stated "ICC" rather than "STB".[1] Similarly, in section 1185.5(a) there is another instance where "STB" is incorrectly used in lieu of "ICC", this time in reference to former 49 U.S.C. 11343–44.[2] The Board will change both references to read "ICC".

In section 1150.1(a), there is a reference to "49 U.S.C. 11343". ICCTA recodified former section 11343 as section 11323. Accordingly, that reference will be updated to read "49 U.S.C. 11323". References to outdated telephone numbers in section 1105.12 will also be removed.

The authority citations in Part 1105 will be modified to more accurately reference the provisions that authorize agencies to comply with the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The new language will reference 16 U.S.C. 1456 and 1536, respectively, rather than 16 U.S.C. 1451 (definitions) and 1531 (definitions and policy). Also, for clarity, the parenthetical to the reference to 49 U.S.C. 701 note (1995) will be modified to read "(Savings Provisions)".

The Board is also revising certain authority citations that cite the Administrative Procedure Act (APA). APA references are being removed where "the APA does not provide an independent basis of authority."[3]

Finally, the Board will not presently make corrections in two sections: 49 CFR 1039.17 and 1090.2. Section 1039.17 deals with the exemption of contracts for protective services. The regulations at 49 CFR 1090.2 concern the exemption of rail and highway trailer-on-flatcar/container-on-flatcar service. The Board will not here update references in these sections because more significant changes may have to be made to them. Thus, these changes will be considered in separate proceedings.

Because these rule changes revise regulations to provide updated statutory references and make revisions that are not substantive, good cause is found to dispense with notice and comment. *See* 5 U.S.C. 553(b)(B). Moreover, good cause is found for making these rules effective on less than 30 days' notice under 5 U.S.C. 553(d) to change the incorrect references as soon as possible.

The Board certifies that these changes in the rules will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, and Railroads.

49 CFR Part 1101

Administrative practice and procedure.

49 CFR Part 1105

Environmental Impact Statements, Reporting and recordkeeping requirements.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1185

Administrative practice and procedure, Antitrust, and Railroads.

49 CFR Part 1201

Railroads, Uniform System of Accounts.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, Parts 1039, 1101, 1105, 1150, and 1185 of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

PART 1039—EXEMPTIONS

■ 1. The authority citation for Part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10502, 13301.

§ 1039.10 [Amended]

■ 2. In § 1039.10, remove the reference "10505" in the text following the table, and in its place add "10502".

§ 1039.20 [Amended]

■ 3. In § 1039.20, remove the reference "10505" and in its place add "10502".

PART 1101—DEFINITIONS AND CONSTRUCTION

■ 4. The authority citation for Part 1101 continues to read as follows:

Authority: 49 U.S.C. 721.

§ 1101.2 [Amended]

■ 5. In § 1101.2(e)(5) remove the reference "10505" and in its place add "10502".

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

■ 6. The authority citation for Part 1105 is revised to read as follows:

Authority: 16 U.S.C. 470f, 1456, and 1536; 42 U.S.C. 4332 and 6362(b); and 49 U.S.C. 701 note (1995) (Savings Provisions), 721(a), 10502, and 10903–10905.

[1] *See Revision of Regulations for Interlocking Rail Officers*, 1 S.T.B. 1087, 1099 (*1996*).

[2] *Id.*

[3] *Revision of Authority Citations*, 2 S.T.B. 622, 623 (1997) (footnote omitted).

§ 1105.7 [Amended]

■ 7. In § 1105.7(e)(5)(i)(C) and (e)(5)(ii)(C) remove the reference "10505" and in its place add "10502".

Appendix to § 1105.12 [Amended]

■ 8. In the appendix to § 1105.12, in the second sample newspaper notice remove the reference "10505" and in its place add "10502", and in both sample newspaper notices remove "202–927–6211." and in its place add "[INSERT TELEPHONE NUMBER]."

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

■ 9. The authority citation for Part 1150 is revised to read as follows:

Authority: 49 U.S.C. 721(a), 10502, 10901, and 10902.

§ 1150.1 [Amended]

■ 10. In § 1150.1(a) remove the reference "49 U.S.C. 11343" and in its place add "49 U.S.C. 11323", and remove the reference "10505" and in its place add "10502".

§ 1150.32 [Amended]

■ 11. In § 1150.32(c) remove the reference "10505(d)" and in its place add "10502(d)".

§ 1150.34 [Amended]

■ 12. In § 1150.34 remove the reference "10505(d)" in the concluding paragraph, and in its place add "10502(d)".

§ 1150.35 [Amended]

■ 13. In § 1150.35(f) remove the reference "10505(d)" and in its place add "10502(d)".

PART 1185—INTERLOCKING OFFICERS

■ 14. The authority citation for Part 1185 is revised to read as follows:

Authority: 49 U.S.C. 721, 10502, and 11328.

§ 1185.5 [Amended]

■ 15. In § 1185.5(a) remove the first reference to "STB" and in its place add "ICC", and in paragraph (b) remove the first reference to "STB" and in its place add "ICC".

PART 1201—RAILROAD COMPANIES

■ 16. The authority citation for Part 1201 is revised to read as follows:

Authority: 49 U.S.C. 11142 and 11164.

[FR Doc. 04–21798 Filed 9–29–04; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1114

[STB Ex Parte No. 638]

Procedures To Expedite Resolution of Rail Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board is amending its regulations regarding discovery procedures to correct an inadvertent omission.

DATES: These rules are effective on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jamie Rennert, (202) 565–1566. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In *Procedures to Expedite Resolution of Rail Rate Challenges to Be Considered Under the Stand-Alone Cost Methodology,* STB Ex Parte No. 638 (STB served Apr. 3, 2003, and published Apr. 9, 2003 (68 FR 17312)), the Board revised the procedures at 49 CFR 1114.31 dealing with discovery disputes in rail rate challenge cases considered under the stand-alone cost methodology. As relevant here, the Board added four numbered paragraphs (a)(1)–(4) to § 1114.31(a) to expedite the discovery process. However, in the course of formatting these amendments for publication in the **Federal Register**, the Board inadvertently omitted then-existing § 1114.31(a), which was to be retained as the introductory paragraph to new paragraphs (a)(1)–(4). As a result, § 1114.31(a) is being revised to reincorporate the omitted paragraph. To comply with **Federal Register** form, we are also changing "section 1104.13" to "49 CFR 1104.13" in paragraph (a)(1), and changing "subparagraph (a)(3)" to "paragraph (a)(3)" in paragraph (a)(4).

Because this rule change simply corrects a technical error that occurred during the prior rule change and makes other technical changes to conform with **Federal Register** form, it will be issued as a final rule without requesting public comment. *See* 5 U.S.C. 553(b)(A). Moreover, there is good cause to make this rule effective on less than 30 days' notice in order to correct the regulation as soon as possible. *See* 5 U.S.C. 553(d).

The Board certifies that the rule will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1114

Administrative practice and procedure.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, Part 1114 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1114—EVIDENCE; DISCOVERY

■ 1. The authority citation for Part 1114 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

§ 1114.31 [Amended]

■ 2. Revise § 1114.31(a) to read as follows:

§ 1114.31 Failure to respond to discovery.

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under § 1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to § 1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by 49 CFR 1104.13.

(2) *Reply to motion to compel in stand-alone cost rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.

(3) *Conference with parties on motion to compel.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Board staff may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost rate cases.* Within 5 business days after a conference with the parties convened pursuant to paragraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery in a stand-alone cost rate case. If no conference is convened, the Secretary will issue this summary ruling within 10 business days after the filing of the reply to the motion to compel. Appeals of a Secretary's ruling will proceed under 49 CFR 1115.9, and the Board will attempt to rule on such appeals within 20 days after the filing of the reply to the appeal.

* * * * *

[FR Doc. 04–21799 Filed 9–29–04; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 092404A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaskas

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2004 B season total allowable catch (TAC) of Pacific cod specified for vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 28, 2004, through 2400 hrs, A.l.t., December 31, 2004.

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

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

NMFS closed the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on September 10, 2004 (69 FR 55361, September 14, 2004).

NMFS has determined that approximately 730 mt of Pacific cod remain in the 2004 B season directed fishing allowance. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the 2004 B season TAC of Pacific cod specified for vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA effective 1200 hrs, A.l.t., September 28, 2004.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the fishery under the Pacific cod 2004 B season TAC specified for vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

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

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 24, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–21936 Filed 9–27–04; 1:53 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 189
Thursday, September 30, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006 and 1007

[Docket No. AO–388–A16, AO–356–A38 and AO–366–A45; DA–04–07]

Milk in the Appalachian, Florida and Southeast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held, on an emergency basis, to consider a proposal submitted by Dairy Farmers of America, Inc., Lone Star Milk Producers Inc., Maryland & Virginia Milk Producers Cooperative Association, Inc., and Southeast Milk, Inc. The proposal would implement a temporary supplemental charge on Class I milk that would be disbursed through a marketwide service payment provision in the Appalachian, Florida and Southeast orders. The proposal would provide for emergency payments to reimburse handlers the cost of additional transportation expenses incurred as a result of disruptions occurring from several hurricanes in the Southeastern United States.

DATES: The hearing will convene at 9 a.m. on Thursday, October 7, 2004.

ADDRESSES: The hearing will be held at the Sheraton Gateway Atlanta Airport Hotel, 1900 Sullivan Road, Atlanta, Georgia 30337; (770) 997–1100.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971 Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *Antoinette.Carter@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Sue L. Mosley, Market Administrator, at (770) 682–2501; e-mail *smosley@fmmatlanta.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sheraton Gateway Atlanta Airport Hotel, 1900 Sullivan Road, Atlanta, Georgia 30337; (770) 997–1100, beginning at 9 a.m. on October 7, 2004, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida and Southeast milk marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This public hearing is being conducted to collect evidence for the record concerning the need for emergency payments to reimburse handlers the cost of additional transportation expenses incurred as a result of disruptions occurring from several hurricanes in the Southeastern United States. The payments would be dispursed during the period of January 2005 through March 2005 based on transportation expenses incurred by handlers transporting milk to or from the Appalachian, Florida, and Southeast milk marketing areas, or any combination of the above.

Proposal two was submitted by Dairy Programs, Agricultural Marketing Service, to make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Evidence also will be taken at the hearing to determine whether

emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005, 1006 and 1007.

Milk marketing orders.

The authority citation for 7 CFR parts 1005, 1006 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendment, as set forth below, have not received the approval of the Department.

Proposal No. 1

Proposed by Dairy Farmers of America, Inc., Lone Star Milk Producers Inc., Maryland & Virginia Milk Producers Cooperative Association, Inc., and Southeast Milk, Inc.

The proposal would provide for emergency payments to reimburse handlers the cost of additional transportation expenses incurred as a result of disruptions occurring from several hurricanes in the Southeastern United States.

1. Section 1005.60 is amended by:

(a) Revising paragraph (a);

(b) Adding a new paragraph (g).

The revisions and additions read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus $0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus $0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to (g)(1) through (4) and (g)(6) of this section will be less than the amount computed pursuant to section (g)(5) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory for the market administrator to determine eligibility for reimbursement of transportation costs of marketwide benefit, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from an other order plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The total amount of payment to all handlers under this section shall be limited during the month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times $0.09 per hundredweight.

(6) If the cost of transportation computed pursuant to (g)(1) through (4) of this section exceeds the amount computed pursuant to (g)(5), the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to (g)(1) through (4). Transportation costs submitted pursuant to (g)(1) through (4) which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to (g)(1) through (4) until paid, or until the time period for such payments is concluded.

(7) The reimbursement of transportation costs of marketwide benefit pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection, or the miles of transportation on loads of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection multiplied by $2.25 per loaded mile, whichever is less.

* * * * *

2. Section 1006.60 is amended by:

(a) Revising paragraph (a);

(b) Adding a new paragraph (g).

The revisions and additions read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus $0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus $0.0009 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to (g)(1) through (4) and (g)(6) of this section will be less than the amount computed pursuant to section (g)(5) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory for the market administrator to determine eligibility for reimbursement of transportation costs of marketwide benefit, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant, which were delivered as

a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from an other order plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The total amount of payment to all handlers under this section shall be limited during the month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times $0.09 per hundredweight.

(6) If the cost of transportation computed pursuant to (g)(1) through (4) of this section exceeds the amount computed pursuant to (g)(5), the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to (g)(1) through (4). Transportation costs submitted pursuant to (g)(1) through (4) which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to (g)(1) through (4) until paid, or until the time period for such payments is concluded.

(7) The reimbursement of transportation costs of marketwide benefit pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection, or the miles of transportation on loads of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection multiplied by $2.25 per loaded mile, whichever is less.

* * * * *

3. Section 1007.60 is amended by:

(a) Revising paragraph (a);

(b) Adding a new paragraph (g).

The revisions and additions read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus $0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus $0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to (g)(1) through (4) and (g)(6) of this section will be less than the amount computed pursuant to section (g)(5) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory for the market administrator to determine eligibility for reimbursement of transportation costs of marketwide benefit, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from an other order plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The total amount of payment to all handlers under this section shall be limited during the month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times $0.04 per hundredweight.

(6) If the cost of transportation computed pursuant to (g)(1) through (4) of this section exceeds the amount computed pursuant to (g)(5), the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to (g)(1) through (4). Transportation costs submitted pursuant to (g)(1) through (4) which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to (g)(1) through (4) until paid, or until the time period for such payments is concluded.

(7) The reimbursement of transportation costs of marketwide benefit pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection, or the miles of transportation on loads of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection multiplied by $2.25 per loaded mile, whichever is less.

* * * * *

Proposal No. 2

Proposed by Dairy Programs, Agricultural Marketing Service

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 28, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–22055 Filed 9–28–04; 1:18 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 170

[Docket No. 2001N–0234]

Food Additives: Food Contact Substance Notification System; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of our advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** of May 21, 2002 (67 FR 35764). The ANPRM requested input on whether the agency should establish regulations permitting the licensing of the rights to manufacture and market a food contact substance (FCS) for a use that is the subject of an effective food contact notification (FCN). FDA is withdrawing the ANPRM based upon comments indicating that such a regulation would not be necessary.

DATES: The advance notice of proposed rulemaking is withdrawn September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth McAdams, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3392, e-mail: *kenneth.mcadams@cfsan.fda.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2002 (67 FR 35764), FDA published an ANPRM requesting input on whether the agency should establish regulations permitting the licensing of the rights to manufacture and market an FCS for a use that is the subject of an effective FCN. We received five comments on the ANPRM. Three of the comments, from individuals, concerned unrelated issues and did not address the ANPRM. The other two comments, from the American Plastics Council and the Society of the Plastics Industry, stated that a procedure to transfer or license the rights to an FCN is not needed because of the speed and efficiency of the current FCN system. Both comments also stated that if regulations for such a procedure are issued, they should be kept simple, requiring only notification that the transfer has occurred.

After careful consideration of these comments, FDA has concluded that a procedural regulation for transferring or licensing the rights to an FCN is not needed. Therefore, FDA is withdrawing our ANPRM.

Dated: September 17, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22013 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2003P–0564]

Microbiology Devices; Reclassification of Hepatitis A Virus (HAV) Serological Assays (IgM Antibody, IgG Antibody and Total Antibodies (IgM and IgG))

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify hepatitis A virus (HAV) serological assays from Class III (premarket approval) to class II (special controls). These devices are used for testing specimens from individuals who have signs and symptoms consistent with acute hepatitis A or for determining if an individual has been previously infected with HAV. The detection of these antibodies aids in the clinical laboratory diagnosis of an acute or past infection by HAV in conjunction with other clinical laboratory findings. FDA is proposing this action after reviewing a reclassification petition submitted by Beckman Coulter, Inc. The agency is taking this action under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a class II special controls draft guidance entitled "Class II Special Controls Guidance Document: Hepatitis A Serological Assays for the Clinical Laboratory Diagnosis of Hepatitis A Virus."

DATES: Submit written or electronic comments by December 29, 2004. See section VIII of this document for the proposed effective date of a final rule based on this proposed rule.

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

FOR FURTHER INFORMATION CONTACT: Sally Hojvat, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act, as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices generally remain in class III until the device is reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a legally marketed device. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without

submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(f)(3) allows FDA to initiate reclassification of a postamendments device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device to petition the Secretary of the Department of Health and Human Services for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. To change the classification of the device, it is necessary that the proposed new classification have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

II. Regulatory History of the Device

HAV serological assays are used for testing specimens from individuals who have signs and symptoms consistent with acute hepatitis A or for determining if an individual has been previously infected with HAV. The detection of these antibodies aids in the clinical laboratory diagnosis of an acute or past infection by HAV in conjunction with other clinical laboratory findings. These devices are postamendments devices classified into class III under section 513(f)(1) of the act and must be the subject of an approved PMA under section 515 of the act before being placed into commercial distribution, unless they are reclassified under section 513(f)(3) of the act.

In accordance with section 513(f)(3) of the act and § 860.134, Beckman Coulter, Inc., submitted a petition on October 1, 2003, requesting reclassification of HAV antibody assays from class III to class II.

III. Device Description

Hepatitis A virus serological assays are devices that consist of antigens and antisera for the detection of hepatitis A virus-specific immunoglobulin M (IgM), immunoglobulin G (IgG), or total antibodies (IgM and IgG), in human serum or plasma (Refs. 1 and 2). These devices are used for testing specimens from individuals who have signs and symptoms consistent with acute hepatitis or for determining if an individual has been previously infected with hepatitis A virus. The detection of these antibodies aids in the clinical laboratory diagnosis of an acute or past infection by the hepatitis A virus in conjunction with other clinical laboratory findings. The presence of IgM type antibodies differentiates an acute infection from past infection. These devices are not intended for screening blood or solid or soft tissue donors.

Currently marketed HAV serological assays typically are used on automated laboratory analyzers, providing reportable results within 45 minutes. FDA has also approved assays based on manual enzyme-linked immunosorbent assay (ELISA) and radioimmunoassay methods. Regardless of method, these assays typically rely on specific binding of antibodies to HAV and to fixed HAV antigen, which is then detected by a labeled secondary (anti-IgM or anti-IgG) antibody. HAV specific IgM may also be detected by the binding of human IgM to anti-human IgM bound to a solid matrix. Labeled HAV antigen is then added and if specific anti-HAV has been captured the antigen will bind. Serum and plasma are the common matrices for currently marketed assays for HAV antibodies, as antibodies reside physiologically in the liquid portion of the blood, and are therefore reliably detected there or in plasma. Currently, World Health Organization (WHO) material standards are available for standardization of anti-HAV assays (Refs. 3 and 4).

IV. Proposed Reclassification

The agency is proposing to reclassify HAV serological assays from class III to class II and has developed a guidance document which, when final, will serve as the special control. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this draft guidance for comment in accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115). We have determined that there is adequate valid scientific evidence in the public domain to support this reclassification action and, therefore, it was unnecessary to refer the petition to a classification panel for its review and recommendation.

V. Risks to Health

There are no known direct risks to an individual's health associated with the device. However, failure of HAV serological assays to perform as indicated or an error in interpretation of results may lead to improper patient management. There are no clinical features that distinguish HAV infection from infection by other etiologic agents of hepatitis such as the hepatitis B virus or hepatitis C virus. HAV serological assays are used to aid in this distinction. Therefore, false test results could contribute to misdiagnosis and improper patient management.

A false negative measurement with failure to detect HAV-specific IgM would misdiagnose an active HAV infection. False negative HAV serological assay results may place individuals infected with preexisting liver disease at risk for not receiving appropriate therapy. It has been shown that HAV infection in individuals with preexisting liver disease, e.g., HCV infection, has been associated with an increased rate of fulminant hepatitis and mortality (Refs. 5 to 7). The administration of HAV-specific hyperimmune globulin may help to prevent or improve the clinical manifestations of disease if given within 2 weeks of infection as prophylaxis, although it is generally not helpful in the acute phase of HAV infection (Ref. 8). In healthy individuals, HAV infections are generally self-limiting without serious consequences, with no chronic or persistent hepatitis (Ref. 9). The failure to detect HAV-specific total or IgG antibodies would result in misdiagnosis of past infection and may cause individuals to erroneously receive vaccination for HAV. It is believed that this would be of minimal risk because there is currently no contraindication for an individual immune to HAV receiving HAV vaccination.

A false positive measurement can result in incorrect diagnosis of active or past HAV infection. If HAV-specific total antibodies are detected erroneously, an individual may not receive the vaccine for HAV, and could continue to be at risk for HAV infection. A false positive anti-HAV IgM result also has public health considerations because the majority of state health departments are required to followup reported acute HAV infections. This would place an undue burden on state health department resources.

VI. Special Controls

In addition to general controls, FDA believes that the draft guidance entitled "Class II Special Controls Guidance Document: *Hepatitis A Serological Assays* for the Clinical Laboratory Diagnosis of Hepatitis A Virus" is an adequate special control to address the risk to health described above. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for Hepatitis A Virus (HAV) serological assays will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the assays in sections that discuss performance characteristics and labeling. The performance characteristics section describes studies integral to demonstration of appropriate performance and control against assays that may fail to perform to current standards. The labeling section addresses factors such as directions for use, quality control and precautions for use and interpretation. FDA tentatively believes that complying with the act and regulations and following the special controls guidance document will provide reasonable assurance of safety and effectiveness of these devices and adequately address the risk to health identified in section V of this document.

VII. FDA's Tentative Findings

The efficacy of diagnosis of HAV by HAV antibody detection has been well-established over the past 25 years. HAV antibody detection plays a key role in diagnosis of HAV infection, because there are no other approved clinical or laboratory methods that are specific for HAV infection. Technological improvements have increased the reliability and clinical sensitivity and specificity of performance of these devices. A technologically improved enzyme-linked immunosorbent assay (ELISA) format, new detection methodology, and the advent of monoclonal antibody technology have enhanced the sensitivity and specificity of the assays without introducing confounding issues (Ref. 10).

FDA has considered issues that could potentially complicate use or interpretation of HAV antibody assay results. There do not appear to be notable concerns for use and interpretation of HAV antibody assays because most assays are now automated, HAV infection is primarily self-limiting; and there are no specific treatment measures for HAV infection. In addition, a WHO material reference for HAV antibodies is available and assays from different manufacturers should be expected to report similarly due to standardization to this material (Refs. 3 and 4) . Because HAV antibody assays are currently the only approved specific diagnostic for HAV infection, the guidance recommends that assay results only be interpreted in the context of other laboratory findings and the total clinical status of the patient.

The FDAMA added section 510(m) to the act (21 U.S.C. 360(m)). Section 510(m) of the act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the act (21 U.S.C. 360(k)), if the agency determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. FDA review of performance characteristics will provide reasonable assurance that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on HAV antibody detection assays before marketing the device.

VIII. Effective Date

FDA proposes that any final regulation that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

IX. Environmental Impact

The agency has determined that under 21 CFR 25.34(b) that this reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $110 million. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

XI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XII. Request for Comments and Proposed Dates

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XIII. References

The following references have been placed on display in the Division of Dockets Management (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lemon, S.M., and N. Binn, "Serum Neutralizing Antibody Response to Hepatitis A Virus," *Journal of Infectious Diseases*, 14:1033–1039, 1983.

2. Lemon, S.M., "Type A Viral Hepatitis: Epidemiology, Diagnosis, and Prevention," *Clinical Chemistry*, 43:1494–1499, 1997.

3. WHO International Standard for anti-HAV Immunoglobulin; 2nd International Standard 1998, WHO/BS/98.1878, 98.1878. Add. 1 (Cited in WHO International Biological Reference

Preparations (Version 2001 Catalog, page 3 of 34 at: *http://www9.who.int/vaccines/Biologicals/KAlph.pdf*).

4. Ferguson, M., et al., "Hepatitis A Immunoglobulin: an International Collaborative Study to Establish the Second International Standard," *Biologicals*, 28:233–240, 2000.

5. Devalle, S., V.S. de Paula, J.M. de Oliveira, et. al., "Hepatitis A virus infection in hepatitis C Brazilian patients," *Journal of Infectious Diseases*, August, 47(2):125–128, 2003.

6. Koff, R.S., "Risks associated with hepatitis A and hepatitis B in patients with hepatitis C," *Journal of Clinical Gastroenerology*, July, 33(1):20–26, 2001.

7. Vento, S., "Fulminant hepatitis associated with hepatitis A virus superinfection in patients with chronic hepatitis C," *Journal of Viral Hepatitis*, May; 7 Suppl 1:7–8, 2000.

8. Stapleton, J.T., "Host immune response to hepatitis A virus," *Journal of Infectious Diseases*, 171(S1):S9–S14, 1995.

9. Hollinger, F.B. and S.U. Emerson, "Hepatitis A Virus," in D.M. Knipe et al., eds. *Fields Virology*, 4th ed. Lippincott Williams and Wilkins, Philadelphia, 799–840, 2001.

10. Brown, E.A., and J.T. Stapleton, "Hepatitis A Virus" in P.R. Murray et al., eds., Manual of Clinical Microbiology, 8th ed., ASM Press, Washington, DC, 1452–1463, 2003.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is proposed to be amended as follows:

PART 866–IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 866.3310 is added to subpart D to read as follows:

§ 866.3310 Hepatitis A Virus (HAV) serological assays.

(a) *Identification.* Hepatitis A virus serological assays are devices that consist of antigens and antisera for the detection of hepatitis A virus-specific IgM, IgG, or total antibodies (IgM and IgG), in human serum or plasma. These devices are used for testing specimens from individuals who have signs and symptoms consistent with acute hepatitis or for determining if an individual has been previously infected with hepatitis A virus. The detection of these antibodies aids in the clinical laboratory diagnosis of an acute or past infection by hepatitis A virus in conjunction with other clinical laboratory findings. These devices are not intended for screening blood or solid or soft tissue donors.

(b) *Classification.* Class II (special controls). The special control is "Class II Special Controls Guidance Document: Hepatitis A Serological Assays for the Clinical Laboratory Diagnosis of Hepatitis A Virus." See § 866.1(e) for the availability of this guidance document.

Dated: September 21, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–22009 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA65

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against First Merchant Bank OSH Ltd, Including Its Subsidiaries, FMB Finance Ltd, First Merchant International Inc, First Merchant Finance Ltd, and First Merchant Trust Ltd, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On August 24, 2004, FinCEN requested public comment on a proposed rulemaking to impose a special measure against First Merchant Bank OSH Ltd as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act. FinCEN is extending the comment period on the proposal until November 1, 2004. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Written comments on the notice of proposed rulemaking (69 FR 51979) must be submitted on or before November 1, 2004.

ADDRESSES: You may submit comments, identified by RIN 1506–AA65, by any of the following methods:

- Federal e-rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regcomments@fincen.treas.gov*. Include RIN 1506–AA65 in the subject line of the message.
- Mail: FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AA65 in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC, area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this proposed rulemaking. All comments received will be posted without change to *http://www.fincen.gov*, including any personal information provided. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, FinCEN, at (202) 354–6400 or Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: On August 24, 2004, FinCEN requested comment on a proposal to impose the special measure authorized by 31 U.S.C. 5318A(b)(5) against First Merchant Bank OSH Ltd, including its subsidiaries, FMB Finance Ltd, First Merchant International Inc, First Merchant Finance Ltd, and First Merchant Trust Ltd. That special measure authorizes the prohibition of the opening or maintaining of correspondent or payable-through accounts by any domestic financial institution or domestic financial agency for, or on behalf of, a foreign financial institution found to be of primary money laundering concern.

The proposal was published for a 30-day comment period, which closed September 23, 2004. In order to ensure that as many interested parties as possible have time to comment on the proposal, the comment period is being extended to November 1, 2004.

Dated: September 23, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 04–21879 Filed 9–29–04; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA67

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure against Infobank as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On August 24, 2004, FinCEN requested public comment on a proposed rulemaking to impose a special measure against Infobank as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act. FinCEN is extending the comment period on the proposal until November 1, 2004. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Written comments on the notice of proposed rulemaking (69 FR 51973) must be submitted on or before November 1, 2004.

ADDRESSES: You may submit comments, identified by RIN 1506–AA67, by any of the following methods:

- Federal e-rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regcomments@fincen.treas.gov*. Include RIN 1506–AA67 in the subject line of the message.
- Mail: FinCEN, P.O. Box, 39, Vienna, VA 22183. Include RIN 1506–AA67 in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC, area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this proposed rulemaking. All comments received will be posted without change to *http://www.fincen.gov*, including any personal information provided. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, FinCEN, at (202) 354–6400 or Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: On August 24, 2004, FinCEN requested comment on a proposal to impose the special measure authorized by 31 U.S.C. 5318A(h)(5) against Infobank. That special measure authorizes the prohibition of the opening or maintaining of correspondent or payable-through accounts by any domestic financial institution or domestic financial agency for, or on behalf of, a foreign financial institution found to be of primary money laundering concern.

The proposal was published for a 30-day comment period, which closed September 23, 2004. In order to ensure that as many interested parties as possible have time to comment on the proposal, the comment period is being extended to November 1, 2004.

Dated: September 23, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 04–21878 Filed 9–29–04; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 134–082; FRL–7819–9]

Revisions to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 1, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, 1001 N. Central Avenue, Suite 695, Phoenix, AZ 85004.

A copy of the rule may also be available via the Internet at *http://www.maricopa.gov/envsvc/AIR/ruledesc.asp*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415)972–3956, *Donez.Francisco@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 shows the rule addressed by this proposal with the dates that it was adopted by the local air agencies and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
MCESD	331	Solvent Cleaning	04/21/04	07/28/04

On August 26, 2004, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 331 into the SIP on April 16, 2003. The MCESD adopted revisions to the SIP-approved version on April 21, 2004 and ADEQ submitted them to us on July 28, 2004.

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. This rule applies to all cleaning operations using solvents that contain VOCs. Submitted Rule 331 makes the following changes to the SIP-approved rule.

- Sections 102.2(a), 308.1(a) and 308.1(c)(1) have been changed to specify that solvent cleaning operations must be subject to or specifically exempted by an EPA-approved version of another rule within Regulation III of the Maricopa County Air Pollution Control Rules, in order to qualify for an exemption to Rule 331.
- A reference to EPA's January 9, 1995, guidance document, Guidelines for Determining Capture Efficiency, has been added to sections 502.1(c)(2), 502.2(d), and 502.2(h).
- Sections II(2) and III(2) of the appendix to Rule 331 have been added. These sections specify that batch vapor cleaning machines and in-line vapor cleaning machines shall not be operated, unless such machines have a vapor/air interface Fahrenheit temperature no greater than 30% of the solvent's boiling point temperature or no greater than 40.0 degrees F (4.4 degrees C), whichever is lower.
- To correct a previous relaxation, the evaporative surface threshold for additional controls for certain batch vapor cleaning machines has been lowered to 10.75 square feet (1.0 square meter) in section II(3)(F) of the appendix to Rule 331.
- Other revisions to the rule language have been made, to improve clarity and increase rule enforceability.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The MCESD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rule 331 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Determination of Reasonably Available Control Technology and Best Available Control Technology for Organic Solvent Cleaning and Degreasing Operations," California Air Resources Board, July 18, 1991.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The rule revisions correct the deficiencies highlighted by EPA in its limited disapproval of the SIP-approved rule. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

EPA has no recommended changes for future revisions of Rule 331.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP. This action would permanently terminate all sanction and FIP implications of our limited disapproval of a previous version of this rule.

III. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely

proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: September 10, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–21825 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0003; FRL–7822–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Longmont Revised Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On April 12, 2004, the Governor of Colorado submitted a revised maintenance plan for the Longmont carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains revised transportation conformity motor vehicle emission budgets for the years 2010 through 2014 and 2015 and beyond. EPA is proposing approval of the Longmont CO revised maintenance plan and the revised transportation conformity motor vehicle emission budgets. This action is being taken under section 110 of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before November 1, 2004.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–200_–CO–000_, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *russ.tim@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6479, and e-mail at: *russ.tim@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: September 22, 2004.

Kerrigan G. Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 04–21927 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

[DFARS Case 2001–D015]

Defense Federal Acquisition Regulation Supplement; Patent Rights—Ownership by the Contractor

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a clause pertaining to patent rights under contracts awarded to large business concerns for experimental, developmental, or research work. The clause is substantially the same as a clause that is presently found in the Federal Acquisition Regulation (FAR), but has been proposed for removal from the FAR because it applies only to DoD.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 1, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2001-D015, 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 2001-D015 in the subject line of the message.
- *Fax:* Primary: (703) 602–7887; Alternate: (703) 602–0350.
- *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, 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. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed FAR rule published at 68 FR 31790 on May 28, 2003, under FAR Case 1999–402, included changes that would remove the clause presently found at FAR 52.227–12, Patent Rights—Retention by the Contractor (Long Form), as DoD is the only agency that uses the clause. The clause is included in contracts awarded to large business concerns for experimental, developmental, or research work.

This proposed DFARS rule contains a clause that is substantially the same as the clause at FAR 52.227–12, but contains changes for consistency with current statutory provisions and the FAR changes proposed under FAR Case 1999–402.

- The definitions of "made" and "subject invention" in paragraph (a) of the clause have been revised to reflect that the term "date of determination" is no longer defined in Title 7 of the United States Code. The substance of the previously codified definition has been incorporated into the definition of "made," and the obsolete statutory reference "7 U.S.C. 2401(d)" has been removed from the definition of "subject invention."
- "Domestic university" has been changed to "university" in the definition of "nonprofit organization" in paragraph (a) of the clause. The modifier "domestic" does not appear in the statutory definition at 35 U.S.C. 201(i), the implementing Department of Commerce regulations at 37 CFR 401.2(h), or the clause at FAR 52.227–11. The term "nonprofit organization" is used in the proposed DFARS clause only to refer to the application of the clause at FAR 52.227–11, which is not limited to domestic nonprofit organizations.
- The term "small business concern" has been excluded from the definitions in paragraph (a) of the clause. The proposed FAR changes under FAR Case 1999–402 move the definition of "small business concern" from FAR Part 19 to Part 2, since the term is used in Part 19 and Part 27. Accordingly, this definition will be made applicable throughout the FAR and DFARS via FAR 2.101 and the clause at FAR 52.202–1 and is unnecessary for inclusion in this DFARS clause.
- In paragraph (b)(1) of the clause, the reference to 35 U.S.C. 203 has been excluded, consistent with the proposed changes to FAR 52.227–11(b)(1) under FAR Case 1999–402. Paragraph (b)(1) of the proposed DFARS clause provides that the contractor may retain ownership of a subject invention in accordance with the provisions of the clause. 35 U.S.C. 203 is referenced in paragraph (h) of the proposed clause; therefore, there is no need to restate this reference in paragraph (b) of the clause.
- In paragraph (c) of the clause, the terms "provisional" and "nonprovisional" have been used to describe a patent application to be filed, instead of the term "initial," which is presently used in paragraph (c)(3) of the clause at FAR 52.227–12. The terms "provisional" and "nonprovisional" have been used by the U.S. Patent and Trademark Office (see 35 U.S.C. 111) since 1995 (previously, there was no such thing as a "provisional" application). They are used in this clause to avoid any misunderstanding as to whether the term "initial" refers to either one or both of these types of filing. This change is consistent with the proposed change to paragraph (c)(3) of the clause at FAR 52.227–11 under FAR Case 1999–402.
- In paragraph (d) of the clause, the term "convey" has been replaced with the term "assign" with regard to transfer of title to a subject invention. The term "assign" is more technically accurate to describe the legal instrument used to transfer title or ownership.

A prescription for the DFARS clause has been added at 227.303(2). The references to FAR 27.303(c) and (e), in the text at 227.303(2)(i)(B), correspond to the proposed FAR changes published on May 28, 2003, under FAR Case 1999–402.

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 clause proposed for addition to the DFARS applies only to contracts with large business concerns and is substantially the same as a FAR clause that DoD is presently using. 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 2001-D015.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies, because this rule contains information collection requirements proposed for addition to the hours approved under Office of Management and Budget (OMB) Control Number 0704–0369. OMB approval for the additional hours will be obtained prior to publication of the final rule.

1. *Comments:* DoD invites comments on:

a. Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility;

b. The accuracy of the estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

2. *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 227, Patents, Data, and Copyrights, and related provisions and clauses at DFARS 252.227; OMB Control Number 0704–0369.

3. *Needs and Uses:* DoD needs this information to comply with 35 U.S.C. Chapter 18, Patent Rights in Inventions

Made with Federal Assistance. The information will enable the Government to promote the commercialization of patentable results of Federally funded research by granting contractors the title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government.

4. *Affected Public:* Large businesses.

5. *Annual Burden Hours:* 1,266.

6. *Number of Respondents:* 360.

7. *Responses Per Respondent:* Approximately 3.

8. *Annual Responses:* 1,055.

9. *Average Burden Per Response:* 1.2 hours.

10. *Frequency:* On occasion.

11. *Summary of Information Collection:* The clause at DFARS 252.227–70XX requires the contractor to—

a. Establish and maintain effective procedures for identifying and disclosing subject inventions;

b. Disclose, in writing, all subject inventions to the contracting officer, and identify any publication, on sale, or public use of the inventions;

c. Require its employees, by written agreement, to disclose subject inventions;

d. Submit interim and final reports listing subject inventions;

e. Report, upon request, on the utilization of subject inventions; and

f. Notify the contracting officer, in writing, of the award of any subcontract containing a patents right clause.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 227 and 252 as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

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

PART 227—PATENTS, DATA, AND COPYRIGHTS

2. Section 227.303 is revised to read as follows:

227.303 Contract clauses.

(1) Use the following clauses in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Ownership by the Contractor:

(i) 252.227–7034, Patents—Subcontracts.

(ii) 252.227–7039, Patents—Reporting of Subject Inventions.

(2)(i) Use the clause at 252.227–70XX, Patent Rights—Ownership by the Contractor (Large Business), instead of the clause at FAR 52.227–11, in solicitations and contracts for experimental, developmental, or research work if—

(A) The contractor is other than a small business concern or nonprofit organization; and

(B) No alternative patent rights clause is used in accordance with FAR 27.303(c) or (e).

(ii) Use the clause with its Alternate I if—

(A) The acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement;

(B) The agency head determines at the time of award that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement; or

(C) Other rights are necessary to effect a treaty or agreement, in which case Alternate I may be appropriately modified.

(iii) Use the clause with its Alternate II in long term contracts if necessary to effect treaty or agreements to be entered into.

227.304–4 [Removed].

3. Section 227.304–4 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.227–7034 is amended by revising the introductory text to read as follows:

252.227–7034 Patents—Subcontracts.

As prescribed in 227.303(1)(i), use the following clause:

* * * * *

5. Section 252.227–70XX is added to read as follows:

252.227–70XX Patent Rights—Ownership by the Contractor (Large Business).

As prescribed in 227.303(2), use the following clause:

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (XXX 2004)

(a) *Definitions.* As used in this clause—

Invention means—

(1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Nonprofit organization means—

(1) A university or other institution of higher education;

(2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or

(3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means—

(1)(i) To manufacture, in the case of a composition or product;

(ii) To practice, in the case of a process or method; or

(iii) To operate, in the case of a machine or system; and

(2) In each case, under such conditions as to establish that—

(i) The invention is being utilized; and

(ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor's rights.*

(1) *Ownership.* The Contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License.*

(i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license—

(A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part;

(B) Includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at the time of contract award; and

(C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The agency—

(A) May revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to

achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency—

(A) Will furnish the Contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the Contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The Contractor has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) *Contractor's obligations.*

(1) The Contractor shall—

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters, or within 6 months after the Contractor first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure—

(A) The inventor(s) and the contract under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (*i.e.*, sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall—

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) *Government's rights.*

(1) *Ownership.* The Contractor shall assign to the agency, upon written request, title to any subject invention—

(i) If the Contractor elects not to retain title to a subject invention;

(ii) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Contractor's failure to report or elect within the specified times;

(iii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country; and

(iv) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License.* If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest.*

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall—

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to—

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisonal patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention."

(5) The Contractor shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of—

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor shall, when licensing a subject invention, arrange to—

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were

no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The Contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) The Contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the Contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The Contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) *Reporting on utilization of subject inventions.*

(1) The Contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Contractor's permission, if the data or information is considered by the Contractor or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the Contractor or its assignee that—

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) *Withholding of payment (this paragraph does not apply to subcontracts).*

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this contract before the Contractor delivers to the Contracting Officer—

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) *Subcontracts.*

(1) The Contractor—

(i) Shall include the substance of the Patent Rights—Ownership by the Contractor clause set forth at 52.227–11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier—

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

(End of clause)

ALTERNATE I (XXX 2004)

As prescribed in 227.303(2)(ii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The license shall include the right of the Government to sublicense foreign governments, their nationals, and

international organizations pursuant to the following treaties or international agreements: _____

[Contracting Officer to complete with the names of applicable existing treaties or international agreements. This paragraph is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

ALTERNATE II (XXX 2004)

As prescribed in 227.303(2)(iii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The agency reserves the right to—

(A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract; and

(B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.

6. Section 252.227–7039 is amended by revising the introductory text to read as follows:

252.227–7039 Patents—Reporting of Subject Inventions.

As prescribed in 227.303(1)(ii), use the following clause:

* * * * *

[FR Doc. 04–21853 Filed 9–29–04; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 69, No. 189
Thursday, September 30, 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

Farm Service Agency

Information Collection: Customer Service Comment Card

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the collection of customers' opinions and comments on FSA's customer service by use of a Customer Service Comment Card. The card will allow customers to comment, either on-the-record or anonymously, directly to FSA's Washington headquarters on the quality of service they receive with respect to FSA programs. Customers can mail or fax the post-paid card, deliver it to their local Service Center or submit it on the Internet.

DATES: Comments on this notice must be received on or before November 29, 2004 to be assured consideration. Comments received after that date will be considered to the extent practicable. Comments should reference the title and number of the information collection to which they pertain.

ADDRESSES: Comments should be sent to Ronald W. Holling, Director of Minority and Socially Disadvantaged Farmers Assistance, Office of Business and Program Integration, Farm Service Agency, STOP 0501, 1400 Independence Avenue, SW., Washington, DC 20250–0501, (202) 720–8530; e-mail *Ronald.Holling@usda.gov,* and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. All comments will become a matter of public record. For further information, contact Ronald Holling at the address listed above.

SUPPLEMENTARY INFORMATION:

Title: FSA Customer Service Card.

Expiration Date: October 31, 2004.

OMB Number: 0560–0242.

Type of Request: Extension of a currently approved information collection.

Abstract: This information collection is necessary to monitor customer satisfaction with FSA customer service, information, procedures, and facilities and to provide a means to improve customer service. This information collection complies with the issuance of Executive Order 12862 on September 11, 1993, which directs Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector and to establish and implement customer service standards.

FSA does not have an official mechanism for its customers to comment on the quality of service they receive with respect to FSA programs. FSA customers and various outreach organizations have expressed the need for such a mechanism. They also indicated, and FSA employees have noticed, that some customers are reluctant to submit customer service comments at their local Service Center. The form will allow customers to comment, either on-the-record or anonymously, directly to FSA's Washington headquarters on the quality of service they receive with respect to FSA programs.

All information on the form will be optional. The information to be requested on the card will be: Name and location of the Service Center visited, date of visits, purpose of visit, customer name and address and customer ratings of several aspects of the service received. The ratings will be measured on a one to five scale for:

1. Service,
2. Response time to the customer's request,
3. The servicing employee's courtesy, ability and helpfulness, and
4. The overall quality of service normally received.

In addition, a space will be provided to write any other comments the customer desires.

Customers can mail or fax the post-paid card to FSA's Director of Minority and Socially Disadvantaged Farmers Assistance in Washington, DC, send it electronically on the Internet or deliver it to their local Service Center. Comments will be handled by Headquarters staff and may be referred to FSA State and county offices, as appropriate. The data collected will be used as well to address customer concerns and improve customer service.

The USDA is requesting a 3-year approval.

Respondents: Individuals; potential or actual program participants.

Estimated annual number of respondents: 100,000.

Estimated annual number of forms filed per person: 1.

Estimated average time to respond: 5 minutes (0.083 hours).

Estimated total annual burden hours: 8,333.

Comments are being solicited to determine: (1) Whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility; (2) the accuracy of FSA's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Signed at Washington, DC, on September 23, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–21876 Filed 9–29–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Clearwater and Nez Perce National Forests; Revised Land and Resource Management Plans for the Nez Perce and Clearwater National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service intends to prepare an Environmental Impact Statement (EIS) on a proposal to revise land and resource management plans (forest plans) for the Nez Perce and Clearwater National Forests pursuant to 16 U.S.C. 1604(f)(5) and USDA Forest Service National Forest System Land and Resource Management Planning regulations (36 CFR part 219). The revised forest plans will supersede the current forest plans, which the Regional Forester approved in 1987. A Notice of Intent to revise the Clearwater National Forest Plan was published May 8, 1995, in the **Federal Register**, vol. 60, no. 45, p. 12733. This is a modification of that notice and adds the Nez Perce National Forest in this notice in order to provide a proposed action covering both forests for public review and comment. This notice describes the preliminary issues which will be emphasized, the estimated dates for filing the EIS, the information concerning public participation, and the names and addresses of the responsible agency official and the individual who can provide additional information.

DATES: The agency must receive comments on or before December 29, 2004. The Draft EIS is expected to be available for public review by July 2005. The Final EIS and revised forest plans are expected to be completed by October 2006.

ADDRESSES: Send written comments to: Nez Perce and Clearwater National Forests, Forest Plan Revision Content Analysis Team, Route 2 Box 191, Kamiah, ID 83536 or fax them to: (208) 935–2956. Comments may also be submitted using the comment form at *http://www.fs.fed.us/cnpz/forest/contact/index.shtml.*

FOR FURTHER INFORMATION CONTACT: Elayne Murphy, Forest Plan Revision Public Affairs Officer, (208) 935–2513. Additional information will also be posted on the Clearwater and Nez Perce National Forests' planning Web page at *http://www.fs.fed.us/cnpz/.*

SUPPLEMENTARY INFORMATION: The Regional Forester for the Northern Region gives notice of the agency's intent to prepare an EIS to revise forest plans for the Nez Perce and Clearwater National Forests. This notice revises the Notice of Intent for the Clearwater National Forest published on May 8, 1995, in **Federal Register**, vol. 60, no. 45, p. 12733, by adding the Nez Perce National Forest in order to provide a proposed action covering both forests for public review and comment. The Regional Forester approved the original forest plans for both the Nez Perce and Clearwater National Forests in 1987. These plans guide the overall management of the Nez Perce and Clearwater National Forests. Indicators of the need to revise these plans are: (1) Changes in forest conditions; (2) changes in public demands and expectations; (3) changes in law, policy or regulatory direction; (4) results of monitoring and evaluation of implementation under the current forest plans; (5) new science that indicates emerging issues, concerns or opportunities that are not adequately addressed in the current forest plans.

Vision for Forest Plan Revision—Over the next 15 years, the agency proposes to utilize a variety of management tools to maintain healthy, resilient landscapes and watersheds that provide diverse recreation opportunities and a sustainable flow of forest products and amenities. To achieve this, the agency intends to retain the parts of existing forest plans that are current and working well, incorporate new information and make improvements where needed. Revised plans will reflect the main scientific, social and resource changes. Several major changes are proposed.

Change in Format

Current Forest Plan Direction—Current plans communicate primarily through text and tables, supported with single maps of management areas.

Why Change?—Geographic Information System (GIS) technology makes it possible to display most information and management direction on maps. This visual display is more meaningful for most people.

Proposed Change—Forest plans will include more visual elements. Information and management direction will be displayed with maps whenever possible.

Change in Type of Direction

Current Forest Plan Direction—Current forest plans are detail-oriented, often providing specific direction for particular areas. In many cases they prescribe the management tools that should be used.

Why Change?—The Northern Region Revision Strategy emphasizes the strategic nature of forest plans with an emphasis on desired future conditions. Site-specific decisions need to be made through project analysis. Managers need the option to use a variety of management tools.

Proposed Change—Focus on developing strategic direction that emphasizes desired future conditions and objectives for larger areas of land with fewer standards and guidelines.

Change in Focus

Current Forest Plan Direction—Direction was developed to achieve various levels of goods and services (outputs). Links to resource capabilities were not well established.

Why Change?—Management emphasis has evolved over the years. Ecological principles are the basis for management actions. Outputs are the result of sound ecosystem management practices.

Proposed Change—Focus on developing management strategies that result in healthy, resilient ecosystems where outputs are within long-term resource capability and sustainability.

Change From Management Areas to Geographic Areas

Current Forest Plan Direction—The size, design, and resource use emphasis of management areas in current forest plans make them difficult to locate on-the-ground. They also create challenges for integrated management of vegetation, aquatic resources, wildlife, recreation and other resources.

Why Change?—Changing from the use of management areas to geographic areas with locatable boundaries and names that make sense to the public (place-based) will make it easier to display the activities and uses that will take place in specific areas of the national forests. The change facilitates an integrated approach to resource management. It also makes it easier for the public to focus their comments on locations.

Proposed Change—Delineate the forests into twenty-seven geographic areas using locatable features such as streams, roads, or ridgelines. Identify the unique features within each geographic area as well as the desired future conditions, goals and objectives. Depict where various uses and activities are appropriate using a map, or series of maps, and tables.

Change in Emphasis

Several major changes are proposed as a result of the Analysis of the Management Situation (*http://www.fs.fed.us/cnpz/*), based on 17 years of forest plan implementation and monitoring, as well as recent scientific,

social, and resource changes. This analysis suggested five primary management revision topics: (1) Access management with a focus on motorized and non-motorized travel; (2) watersheds and aquatic ecosystems; (3) terrestrial ecosystems; (4) noxious weeds and (5) special designations and areas including management of roadless areas, historic sites, Research Natural Areas, and Wild and Scenic rivers.

Revision Topics

(1) Access Management

Forest plan revision will focus on improving management direction for motorized and non-motorized access to the two national forests. The primary focus will be to protect and maintain natural resources while allowing motorized and non-motorized access. The scope of the analysis will encompass roads, trails and cross-country travel during the non-winter and winter seasons.

Current Forest Plan Direction—Current forest plans contain direction that provides for both motorized and non-motorized access. Both plans allow motorized use on designated routes (roads and trails) as well as cross-country travel on thousands of acres except in areas important for wildlife habitat, special recreation areas and designated Wilderness.

Why Change?—Access to national forest lands is one of the most controversial topics in forest management today. Management strategies in 1987 forest plans need to be changed due to large increases in recreation demand, evolving technology (e.g. larger, more powerful off-highway vehicles and snowmobiles), increasing conflicts between motorized and non-motorized users and resource impacts to watersheds and wildlife resulting from cross-country travel by motorized users.

The distribution of motorized and non-motorized opportunities needs to be reviewed and updated to allow for public and tribal access while conserving or restoring forest resources.

Proposed Action—Modify access management direction to specify where motorized and non-motorized use (both non-winter and winter) is allowed, restricted or prohibited. The modifications will be applied on an area (zoning) basis and will not address individual routes. This proposed emphasizes improving recreation opportunities on authorized summer and winter motorized routes; however, it is anticipated there will be a decrease in areas open for summer motorized use and in areas available for winter snowmobile use.

(2) Watersheds and Aquatic Ecosystem Management

New information and increased awareness of physical watershed condition and aquatic animals indicate a need to strengthen forest plan direction to conserve and restore aquatic resources. Findings from landscape-scale science assessments at the river basin, subbasin, and watershed scales brought to light new information regarding aquatic ecosystem conditions across the basin. The results of these assessments provide information to consider when revising land management objectives to better meet conservation and restoration goals.

Current Forest Plan Direction—State and Federal designations under the Clean Water Act and the Endangered Species Act have resulted in changes in the amounts, types, locations, and timing of a variety of uses, including the utilization of forest products. The Clearwater and Nez Perce forest plans were amended in 1995 to incorporate riparian and stream protections to halt watershed degradation and begin recovery of aquatic ecosystems with an emphasis on recovery needs of federally listed fish species. This change in Forest plan management direction reduced timber harvest and road construction potential relative to the 1987 estimated levels. The 1995 forest plan amendments, referred to as PACFISH and INFISH, are interim direction intended to remain in effect until forest plans are amended or revised. Since the current Forest plans were approved, approximately 1,559 miles of stream segments within the Clearwater and Nez Perce National Forest have been listed as "impaired," per Section 303(d) of the Clean Water Act.

Why Change?—There is a need to develop strategic management and monitoring direction to address current State of Idaho water quality impaired waters, and future streams and water bodies that are added or removed from the 303(d) list. There is a need to integrate goals and objectives of aquatic, riparian, upland forest, shrubland and grassland components that better reflect expected outputs and allowed uses to achieve watershed management goals while meeting commitments under the Endangered Species Act.

Proposed Actions—

- Contribute to the recovery of threatened and endangered species by adopting the majority of the interim management direction contained in INFISH and PACFISH, with minor modifications, such as revised riparian management objectives.
- Establish aquatic conservation areas and associated direction. Priorities will be assigned to areas with the highest potential for improvement.
- Integrate State of Idaho Total Maximum Daily Load (TMDL) programs with management direction.

(3) Terrestrial Ecosystem Management

Current Forest Plan Directions—The use of fire for resource benefits is available on portions of the forests. Road construction and timber harvest is allowed on most of the roaded base and over half of the Inventories Roadless Areas (IRAs). Exceptions were those IRAs proposed for Wilderness and those allocated to management for high quality fish habitat, recreation uses, and some big-game winter ranges. Planned harvest was designed to optimize timber production and regenerate timber stands. Soil restoration needs were not identified in the current forest plans.

Why Change?—Both forests desire the flexibility to make more extensive use of fire to restore ecosystem functions, and reduce firefighting costs and risks to firefighter safety. During 17 years of forest plan implementation, small portions of some IRAs were developed through road construction and timber harvest; however, this level of development was much less than anticipated. Limited development was due to new scientific information, public concerns, decreasing budgets, changing priorities and changing national direction. Vegetation has changed due to wildfires, insect and disease outbreaks, fire exclusion, timber harvest, and drought. Terrestrial wildlife habitat needs were not fully integrated in management objectives. Changes have occurred in plants and animals listed as threatened, endangered or sensitive. Existing management indicator species have not been the best indicators of landscape management actions. Implementation monitoring indicates a need to adjust soil management direction in the plans.

Proposed Actions—

- Update vegetation goals, objectives and standards to reflect a desired range of variation for species composition (species representation), structure (density and size), and disturbance (primarily insects, white pine blister rust, and fire).
- Emphasize timber harvest that stimulates the effects of natural disturbances to meet ecosystem goals. Recalculate suitable acres and allowable sale quantity using updating silvicultural prescriptions and yield tables to reflect vegetation goals, objectives and standards. It is anticipated road construction and

timber harvest will be reduced in IRAs. Timber harvest will be the primary tool in the roaded front country.

- Allow wildland fire use in more backcountry areas and expand the use of prescribed fire in undeveloped areas, including Wilderness.
- Incorporate soil productivity/soil restoration goals, objectives and standards.
- Update management indicator species direction to better reflect the effects of management actions and desired future conditions. Increase the integration of terrestrial wildlife habitat needs into the vegetation and fuels management strategies for both forests.
- Fully integrate forest plan direction to contribute to the recovery needs of federally listed terrestrial, aquatic and plant species, and prevent Forest Service sensitive species from becoming listed under the Endangered Species Act.

(4) Noxious Weed Management.

The establishment and spread of noxious weeds has greatly accelerated across the range and forestlands of both national forests. There is a need to update current management direction to adequately address noxious weeds and their effects on ecosystem composition, structure and function and their effects on commercial and non-commercial use of forest resources.

Current Forest Plan Direction—Current direction regarding noxious weed invasion and the loss of native, non-forest plant species is incomplete. Some direction for cooperatively managing weeds exists, but newly developed strategies have not been incorporated into existing forest plans. There is incomplete direction for establishing integrated weed management programs.

Why Change?—Noxious weeds are crowding out native vegetation. Noxious weed management has become one of the agency's top priorities. Inter-government and agency cooperative weed management strategies have been developed. Cooperative weed management areas now exist. Prevention, education, control and restoration programs are growing.

Proposed Actions—

- Update the forest plans by incorporating the Salmon River, Clearwater River and Palouse weed management area strategies as direction for noxious weed management.
- Develop objectives and standards to integrate noxious weed prevention, education and control. Maintain or increase the restoration of native, non-forested lands within the two national forests.

(5) Special Designations and Areas

The public is interested in the designation of special areas such as Wilderness, Wild and Scenic Rivers or Research Natural Areas. Tribal governments are interested in areas with historic and cultural significance. There is ongoing national controversy about the management of inventoried roadless areas (IRAs) and recommending areas to be included in the National Wilderness Preservation System. Similarly, Forest Service recommendations for additions to the National Wild and Scenic Rivers System generate intense local, regional and national interests.

Current Forest Plan Direction—Current forest plans provide direction for a variety of special areas. On the Clearwater National Forest six roadless areas are recommended for designation as Wilderness. No areas are recommended for Wilderness designation on the Nez Perce National Forest. The Clearwater plan allows motorized use in recommended Wilderness, particularly during winter months. This is inconsistent with direction for the Great Burn area on the adjacent Lolo National Forest. Seven rivers on the Clearwater National Forest and thirteen river segments on the Nez Perce National Forest are recommended additions to the Wild and Scenic Rivers System. Nine areas on the Clearwater National Forest and eight areas on the Nez Perce National Forest are recommended as Research Natural Areas. Approximately 85,000 acres in three distinct Geographic Display Areas, are designated as Multi-Resource Development Areas (MRDAs) in the Nez Perce forest plan. These areas were incorporated into a variety of management areas. The management areas provided direction for a variety of uses and activities including timber harvest, road construction and protection of important wildlife and visual resources.

Why Change?—Planning regulations require each national forest to review and adjust areas to be recommended as Wilderness, Wild and Scenic Rivers, Research Natural Areas or other special areas. Portions of both Forests have been inventoried as roadless and need to be evaluated for recommendation as designated Wilderness. Rivers and streams need to be evaluated to determine which ones should eventually be recommended as part of the Wild and Scenic Rivers System. Potential Research National Areas need to be analyzed and recommended in the revised plan. Direction for other special areas needed to be reviewed and updated.

Proposed Actions—

- Update the areas inventoried as roadless and determine which ones will be recommended to Congress for designation as Wilderness. Bring forward Wilderness recommendations from the 1987 Clearwater and Nez Perce National Forest plans with boundary adjustments.
- Develop consistent interim management direction for roadless areas recommended for designation as Wilderness. Prohibit motorized and mechanized uses in recommended Wilderness.
- Update direction for management of roadless areas not recommended for Wilderness. Determine where motorized and non-motorized uses will be allowed.
- Review and update potential eligible rivers and streams for recommendation to be included in the Wild and Scenic Rivers System.
- Review and update management direction for the Multi-Resource Development Areas adjacent to the Gospel-Hump Wilderness.

Proposed Topics Not Identified As Revision Topics

Preliminary topics discussed in this section are also important issues to be addressed during plan revision. However, they are likely not substantial or widespread enough to be major issues in the EIS alternatives or forest-wide management area direction.

Heritage Resources

Laws and regulations provide most of the management direction for this resource. The Analysis of the Management Situation identified the need to update heritage resource definitions and modify management direction to better incorporate new information and changed conditions as needed.

Lands

Existing direction provides for land ownership adjustments to consolidate lands and provide for better management of forest resources. Existing direction will be reviewed and updated as needed.

Air Quality

The 1990 and 1999 amendments to the Clean Air Act and the formation of the Montana/Idaho State Airshed Group have changed forest management practices.

Decisions regarding wildland fire use are made within the guidelines of the Airshed Group Operating Plan. Forest plan direction needs to be reviewed and

updated to reflect the strategic intent of that operating plan.

Minerals

The existing forest plan direction will be reviewed and modified as needed to improve direction related to mining laws and public need for mineral resources. Improved direction could provide for management of discretionary and non-discretionary mineral activities. It may also address the relationship between areas with mineral potential and uses and surface resources of concern where there is existing or potential conflict.

Range Management

Allotment management plans and current policy provide most of the needed direction. Forest plan direction needs to be reviewed and updated to reflect current policy and information.

Administrative Sites

An updated forest facility master plan will provide an assessment of facility conditions and develop forest-wide priorities for funding facility improvements and new construction.

Issues Not Addressed In Forest Plan Revision

Issues addressed adequately in the current forest plan will not be revisited. Issues that relate to site-specific actions are better addressed during project analysis. Some issues, while important, are beyond the authority of the Nez Perce and Clearwater National Forests. Issues that do not pertain to decisions to be made in forest plans are excluded from further consideration. In addition, some issues, though related to forest plan revision, may not be undertaken at this time, but addressed later as a future forest plan amendment.

Range of Alternatives

The Nez Perce and Clearwater National Forests will consider a range of alternatives when revising the forest plans. Alternatives will provide different ways to address and respond to issues identified during the scoping process. A "no-action alternative" reflecting the effects of continuing current management is required. The range of alternatives will be defined within legal parameters, resource capability, and sustainability over the long-term.

Inviting Public Participation

The Nez Perce and Clearwater National Forests are now soliciting comments and suggestions from Federal agencies, governments, individuals and organizations on the scope of the analysis to be included in the draft environmental impact statement for the revised forest plan (40 CFR 1501.7). Government-to-government consultation with tribal governments is ongoing. Comments should focus on (1) the preliminary topics proposed to be emphasized in revising the forest plan, (2) possible means of addressing concerns associated with these topics, (3) potential environmental effects and other management outcomes that should be included in the analysis, and (4) any possible impacts associated with the proposal based on an individual's civil rights (race, color, national origin, age, religion, gender, disability, political beliefs, sexual orientation, marital or family status). The Nez Perce and Clearwater National Forests will encourage public participation in the environmental analysis and decision-making process.

Along with the release of this NOI, the Nez Perce and Clearwater National Forests are providing for additional public engagement through direct mailings, the Web site, and meetings when requested by individuals, groups or agencies. For further information, contact your local Forest Service office or Elayne Murphy at (208) 935–2513.

Release and Review of the Draft EIS (DEIS)

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in July 2005. At that time, the EPA will publish a notice of availability in the **Federal Register**. The comment period on the DEIS will extend 90 days from the date the EPA publishes the notice of availability in the **Federal Register**. The Final EIS and decision are expected in October 2006.

Dated: September 16, 2004.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 04–21265 Filed 9–29–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Santa Fe National Forest; New Mexico; Oil and Gas Leasing Forest Plan Amendment and Road Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The proposed action is intended to update the Santa Fe National Forest Plan by identifying stipulations on new oil and gas leases where needed to protect surface resources. The proposal also includes a new standard and guideline describing criteria for developing conditions of approval for oil and gas development, consistent with existing policies. A related action, designating specific roads to be decommissioned or closed on Cuba Ranger District, will be considered because they require unnecessary maintenance costs, pose a risk to sensitive resources, and/or risk exceeding current Forest Plan road density standards.

DATES: Comments concerning the scope of the analysis must be received by October 20, 2004. The draft environmental impact statement (EIS) is expected July 2005 and the final environmental impact statement is expected April 2006.

ADDRESSES: Send written comments to: Ellen Dietrich, Project Manager, SAIC, 2109 Air Park Road SE., Albuquerque, NM 87106.

FOR FURTHER INFORMATION CONTACT: Ellen Dietrich, Project Manager, SAIC, 2109 Air Park Road SE., Albuquerque, NM 87106; telephone (505) 842–7845.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is a need to have a more specific and up-to-date description of leasing availability and stipulations identified in the Forest Plan, as well as more comprehensive National Environmental Policy Act (NEPA) analysis of the potential cumulative effects of reasonably foreseeable future oil and gas leasing and development on the Santa Fe National Forest (SFNF). This is needed to meet the regulations at 36 CFR 228.102 regarding Forest Plan leasing analysis and decisions and the agency's policy to minimize impacts to surface resources while facilitating orderly development of oil and gas resources. The NEPA analysis (EIS) would address the Expressions of Interest in leasing specific areas that have been received by the SFNF.

The purpose and need for decommissioning certain roads on the Cuba Ranger District is to have the minimum system of open and closed roads required to meet the Forest Service Roads Policy, road densities within Forest Plan standards and guidelines, and roads that do not pose an unacceptable risk of damage to wildlife or fish habitat, watershed health, or other surface resources.

The objectives of the amendment are to:

(1) Improve the programmatic analysis of the effects of oil and gas

leasing and development on the SFNF, including a cumulative effects analysis.

(2) Improve the timeliness and efficiency in processing current and future Expressions of Interest in oil and gas leasing on the SFNF, consistent with the national energy policy.

(3) Improve the agency's ability to protect surface resources that may not be adequately addressed by standard leasing terms and conditions.

(4) Meet Forest Plan road density standards and identify which Cuba Ranger District roads would be decommissioned or closed because they are in excess of minimum road system needs for public or administrative use, private land access, or oil and gas operations.

The current Forest Plan oil and gas leasing availability categories were developed in 1979–1982 with limited inventory data or analysis. The 1987 Forest Plan leasing direction is too broad and does not reflect current resource concerns within the study area. For example, the Forest Plan does not identify the timing limitations now required for activities within the nesting habitats of Federal threatened or endangered species that occur in the study area: Mexican spotted owl (threatened), northern goshawk (sensitive), and peregrine falcon (sensitive). It does not identify any stipulations for protecting riparian areas, unstable steep slopes, significant scenic corridors or historic sites, or other resources that may not be adequately protected under standard leasing terms and conditions. Most of the oil or gas leases on the SFNF were issued prior to 1970 (prior to passage of NEPA or the National Forest Management Act), and oil-gas leasing and development in the San Juan Basin was authorized without full consideration of potential cumulative effects on surface resources.

Overall, the Forest Plan needs to be amended so it can be used when providing agency approval to BLM for issuing new leases on SFNF lands. There is a need to complete this amendment now rather than waiting for Forest Plan revision, which will not be completed until at least 2009. The SFNF has three "Expressions of Interest" in oil-gas leasing on the SFNF, and over 50% of the Forest has not yet been leased. The proposed amendment would not affect existing or transferred leases, and would only apply to new leases that may be issued in the future.

Proposed Action

The proposed action is to update the Forest Plan in terms of oil and gas leasing availability by reviewing and refining the current Forest Plan leasing analysis and decision, in addition to adding specific stipulations of "no surface occupancy," "controlled surface use," or "timing limitation" where needed to protect surface resources. The proposed stipulations describe specific limitations regarding surface occupancy or use, their purpose, and the location and/or conditions under which they apply. The proposed action would only apply to new leases, not existing leases.

The NEPA analysis for the proposed amendment will evaluate existing Expressions of Interest received from the oil and gas industry in order to provide timely recommendations to Bureau of Land Management (BLM) for issuing oil or gas leases on those SFNF lands.

New proposed stipulations include: timing limitations to protect spotted owl, northern goshawk, peregrine falcon habitats; controlled surface use for certain riparian, inventoried roadless, and scenic areas; and no surface occupancy for certain unstable slopes, roadless recreation areas, and specific heritage resource sites.

The proposal does not include any conditions of approval or mitigation measures, which are developed and applied during 2nd level NEPA analysis for Applications for Permits to Drill (APD). However, the proposal includes a Forest Plan standard/guideline that requires consistency with existing BLM and Forest Service policies for conditions of approval in the San Juan Basin (*e.g.*, for noise, air quality, reclamation, visual quality).

The proposal also includes designating specific roads to be decommissioned or closed because they require unnecessary maintenance costs and pose a risk of impacts to sensitive resources, and/or risk exceeding Forest Plan road density standards. All roads on Cuba Ranger District will be considered, including the small portion outside the oil and gas study area, as they form a connected and interrelated travel network. Where the Coyote Ranger District overlaps the northeast portion of the oil and gas study area, the analysis will consider the cumulative effects of the Coyote Ranger District's Road Decommissioning and Closure EA and NEPA decision (expected to be completed in the fall of 2004).

Lead and Cooperating Agencies

The USDA Forest Service is the lead agency and the USDI Bureau of Land Management is a cooperating agency in the preparation of this EIS.

Responsible Official

Gilbert Zepeda, Forest Supervisor, Santa Fe National Forest, 1474 Rodeo Road, Santa Fe, NM 87505–5630.

Nature of Decisions To Be Made

(1a) In accordance with 36 CFR 228.102, the Forest Supervisor will decide which areas will be:

(i) Open to development subject to standard oil and gas leasing terms and conditions.

(ii) Open to development but subject to constraints that will require the use of lease stipulations such as No Surface Occupancy or specific Controlled Surface Use constraints, with discussion as to why the constraints are necessary and justifiable.

(iii) Closed to leasing due to a specific law or regulation or Forest Service policy.

(1b) The Forest Supervisor will decide under what conditions the Forest Service will authorize the Bureau of Land Management to modify, waive, or grant an exception to a stipulation.

(1c) Per leasing analysis requirements in 36 CFR 228.102, the Forest Supervisor will consider: (i) Alternatives to the proposal, including that of: (a) Not allowing leasing; and (b) not changing current Forest Plan leasing standards/guidelines. (ii) The type and amount of post-leasing activity and associated cumulative impacts, consistent with a reasonably foreseeable oil-gas development scenario.

(2) For specific areas currently being considered for leasing, the Forest Supervisor will determine whether oil or gas leasing would be consistent with the amended Forest Plan, and if so, will authorize the Bureau of Land Management to offer those specific lands for lease.

(3) The District Ranger for the Cuba Ranger District will make a separate project-level NEPA decision as to which roads, if any, would be authorized for decommissioning or closure, consistent with the Forest Service Roads Policy.

Scoping Process

After publication of the Notice of Intent, a scoping letter describing the purpose and need for the project and the proposed action will be sent to a broad list of people who are likely to be interested in the EIS and the decisions to be made. During the scoping comment period and following distribution of the scoping letter, meetings will be held in Cuba and Santa Fe, New Mexico, with a focus on addressing questions and concerns. The Forest Service will also meet with agencies, organizations or groups in

other areas upon their request. Concerns regarding any of the proposed actions or decisions to be made may be mailed to SAIC (address above) or provided during the meetings. These comments will be reviewed and considered in the development and evaluation of alternatives in the EIS.

Preliminary Issues To Be Addressed in the EIS

Resource Protection: The EIS will address how proposed new leasing stipulations (and each alternative) would affect the protection of resources, such as archaeological resources, special status wildlife species, roadless areas, air quality, and water resources.

Oil-Gas Operations Constraints: The EIS will address how proposed new leasing stipulations (and each alternative) would affect oil and gas company operations on any new lease issued after the Forest Plan amendment is approved.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability of the DEIS in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 15-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 24, 2004.

Judy Dinwiddie,

Acting Forest Supervisor.

[FR Doc. 04–21915 Filed 9–29–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Household Water Well System Program Programmatic Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a programmatic environmental assessment.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Program, has prepared a Programmatic Environmental Assessment (PEA) for a new grant program that will implement the Household Water Well System Program (HWWSP) lending program. The PEA is available for a 30-day public review and comment period. Subsequent to the comment period RUS plans to issue a finding of no significant impact.

DATES: RUS will accept public comments until November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mark S. Plank, Senior Environmental Scientist, RUS, Water and Environmental Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, telephone: (202) 720–11649 or e-mail: *mark.plank@usda.gov*. Copies of the PEA may be obtained by contacting Mr. Plank.

SUPPLEMENTARY INFORMATION: On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law as Public Law 107–171. Section 6012 of the Farm Bill amended section 306E of the Consolidated Farm and Rural Development Act (CONACT) by adding a grant program to establish a lending program. The program will provide grants to private nonprofit organizations for the purpose of providing loans to eligible individuals for the construction, refurbishing, and servicing of individual household water well systems in rural areas that are or will be owned by the eligible individuals. The program is called the Household Water Well System Program (HWWSP). This program was authorized to appropriate up to $10,000,000 for Fiscal Years (FY) 2003 through 2007. There was no funding appropriated in FY 2003. However, the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), includes $1,000,000 for the program.

The USDA, RUS, is issuing regulations to implement the HWWSP. The final rule outlines the procedures for providing grants to eligible applicants to establish a revolving loan fund and to pay reasonable administrative expenses. The revolving loan fund will be used to make loans to eligible applicants for the construction, refurbishing, and servicing of individual household water well systems in rural areas that are or will be owned by the eligible individuals. The CONACT defines an "eligible individual" as a person who is a member of a household in which all members have a combined income that is 100 percent or less of the median non-metropolitan household income for the State or territory in which the person resides. The combined household income must be for the most recent 12-month period for which the information is available, according to the most recent decennial census of the United States. The maximum statutory limit per loan per household water well system is $8,000.

Certain financing actions taken by RUS are classified as Federal actions subject to compliance with NEPA, the Council on Environmental Quality (CEQ), Regulations for implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and RUS

Environmental Policies and Procedures (7 CFR part 1794). There are two Federal actions under the new HWWSP program being considered in this PEA: (1) Grants awarded by RUS to eligible grant recipients and (2) loans made by the grant recipient to eligible loan recipients using the direct or indirect proceeds of a HWWSP grant awarded under this program.

The level of RUS environmental reviews for agency actions are categorized in 7 CFR part 1794, subpart C, Classification of Proposals. Both agency actions for the HWWSP program are classified in 7 CFR 1794 as categorical exclusions. The first action (grant award) is classified under 7 CFR 1794.21(c)(3) categorically excluded proposals without an Environmental Report. The second (loan approvals) action is classified under 7 CFR 1794.22(b)(1) categorically excluded proposals requiring an Environmental Report.

Due to similar project activities and a limited area of potential effect of most HWWSP loan approval actions, RUS finds that a programmatic environmental analysis of the new HWWSP will reduce paperwork, duplication of effort, and promote a more efficient decision-making process for program implementation. RUS reserves the right to update this programmatic analysis to take additional information into account or develop particular elements of the analysis more fully as may be warranted in individual circumstances.

In summary, RUS has determined that the implementation of the HWWSP will not significantly affect the human or natural environment. However, to minimize any potential for adverse effects to specific environmental resources grant recipients will be required to comply with the following mitigation measures. These mitigation measures will be incorporated in executed grant agreements.

1. Floodplains

The grant recipient will complete FEMA Form 81–93, Standard Flood Hazard Determination Form for all loans. If a household is located in a special flood hazard area (Code A and V), the revolving loan fund recipient must have flood insurance and the grantee shall obtain flood insurance certifications as part of the revolving loan fund closing process.

2. Water Quality Issues

HWSPHWWSP funded projects will be built by contractors that are appropriately licensed to do the work in the State where the project is located. Water withdrawal permits will be obtained as required by the appropriate State or local regulatory agency.

3. Coastal Resources

The grant recipient will obtain written approval from the U. S. Fish and Wildlife Service before approving any proposed loans located in Coastal Barrier Resources System units.

Dated: September 24, 2004.

Gary J. Morgan,

Assistant Administrator, Water and Environmental Programs, Rural Utilities Service.

[FR Doc. 04–21886 Filed 9–29–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[I.D. 092404C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Dr. Nancy Foster Scholarship Program.

Form Number(s): CD–436, CD–511.

OMB Approval Number: 0648–0432.

Type of Request: Regular submission.

Burden Hours: 1,827.

Number of Respondents: 1,000.

Average Hours Per Response: Five hours for application package; 45 minutes for letter of recommendation; 1.5 hours for annual report; five minutes for No Concurrent Work Statement; 15 minutes for CD–346; five minutes for CD–511; and one hour for biographical sketch and photo.

Needs and Uses: The Dr. Nancy Foster Scholarship Program recognizes outstanding scholarship by providing financial support to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography, and maritime archeology. The applicants must submit information that allows NOAA to make scholarship selections. Those applicants selected to receive scholarships must submit additional information that enables NOAA to arrange funding and track their academic progress.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov.*

Dated: September 22, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21972 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–KA–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 39055) a notice announcing the initiation of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. The period of review (POR) is May 1, 2002 to April 30, 2003. On June 8, 2004, the Department published the preliminary results of its administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan (*see Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 31958 (June 8, 2004) (*Preliminary Results*). In the preliminary results, we found that U.S. sales were made below normal value (NV) by the respondent, Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing). We gave interested parties an opportunity to comment on our preliminary results; comments from petitioners and respondents are addressed in the "Issues and Decision

Memorandum," which is adopted by this notice. The Department has made no changes from the preliminary results.

EFFECTIVE DATE: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Angela Strom or Robert James, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3067, Washington, DC 20230; telephone (202) 482–2704 or (202) 482–0649.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2003, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation, Opportunity to Request Administrative Review,* 68 FR 23281. On July 1, 2003, in response to a request from petitioners, Allied Tube and Conduit Corporation, IPSCO Tubulars Inc. and Wheatland Tube Company, the Department published in the **Federal Register** our notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 39055. Petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by Yieh Hsing, covering the period of review from May 1, 2002 to April 30, 2003.

Because it was not practicable to complete this review within the normal time frame, the Department extended the time limit for the preliminary results of the administrative review to May 30, 2004. *See Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Extension of Time Limits,* 68 FR at 69987 (December 16, 2003). Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the Department has tolled the deadline for these preliminary results by one day to June 2, 2004 and issued them on that day.

On June 8, 2004, the Department published the preliminary results of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. *See Preliminary Results.* Since publication of the preliminary results, we invited parties to comment on our findings. The Department received a case brief from the petitioners on July 8, 2004 and a rebuttal brief from the respondent on July 13, 2004.

Scope of the Review

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4.5 inches in outside diameter. These products are commonly referred to in the industry as "standard pipe" and are produced to various American Society for Testing Materials specifications, most notably A–53, A–120 and A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Analysis of Comments Received

The Department received one comment in a case brief from petitioners and a rebuttal brief from the respondent, all of which are addressed in the "Issues and Decision Memorandum for the Antidumping Duty Order for Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Final Results of Antidumping Duty Administrative Review (A–583–008)" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary, Import Administration, dated September 24, 2004 (Issues and Decision Memorandum), which is hereby adopted by this notice. This memorandum is on file in the Department's Central Records Unit, located at 14th Street and Constitution Avenue, NW., Room B–099. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Import Administration Web site at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received and findings at verification, we have made no changes in the margin calculation from the preliminary results.

Final Results of Review

We determine the following dumping margin exists for the period May 1, 2002 to April 30, 2003.

Producer and exporter	Weighted average margin (percentage)
Yieh Hsing Assessment	1.61

The Department shall determine, and U.S. Customs and Border Protection (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated per-unit importer-specific assessment rates. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) For Yieh Hsing, the cash deposit rate will be 1.61 percent; (2) for previously-reviewed producers and exporters with separate rates, the cash deposit rates will be the company-specific rates established for the most recent period for which they were reviewed; and (3) for all other producers and exporters, the rate will be 9.70 percent, the "all others" rate established in the less than fair value investigation. *See Certain Welded Carbon Steel Pipes and Tubes from Taiwan: Final Determination of Sales at Less Than Fair Value,* 49 FR 9931–01 (March 16, 1984). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the

proceeding. 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 violation, which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary, Import Administration.

Appendix:

Issues and Decision Memorandum

Comment 1: Credit Expenses for Home Market Sales.

[FR Doc. E4–2443 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 6, 2004, the Department of Commerce published the preliminary results of new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The period of review (POR) is November 1, 2002, through October 31, 2003.

We invited interested parties to comment on our preliminary results. We did not make any changes to the margin calculation for the final results based on comments submitted by interested parties. We did, however, use a different surrogate value for the cost of leasing land. The final dumping margin for this review is listed in the "Final Results of Review" section below.

EFFECTIVE DATE: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1392 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2004, we published in the **Federal Register** the *Notice of Initiation of New Shipper Antidumping Duty Review: Fresh Garlic from the People's Republic of China* (69 FR 903) for entries of subject merchandise grown by Kaifeng Wangtun Fresh Vegetables Factory (Wangtun) and exported by Jinxiang Shanyang Freezing Storage Co., Ltd. (Shanyang). The POR is November 1, 2002, through October 31, 2003.

On July 6, 2004, the Department of Commerce (the Department) published the preliminary results of this new shipper review. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 69 FR 40607 (July 6, 2004) (*Preliminary Results*). We invited parties to comment on our preliminary results. We received timely comments from Shanyang and from the Fresh Garlic Producers Association and its individual members (collectively, the petitioners).

We have conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214.

Scope of the Order

The products subject to this order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum, dated September 24, 2004 (*Decision Memo*), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the *Decision Memo* is attached to this notice as an Appendix. The *Decision Memo* is a public document on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099, and is accessible on the Web at http://*www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Separate Rates

In the *Preliminary Results*, we determined that Shanyang met the criteria for the application of a separate rate. See *Preliminary Results*, 69 FR at 40608. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination.

Changes Since the Preliminary Results

We did not make any changes to the margin calculation for the final results based on comments submitted by interested parties. We did, however, use a different surrogate value for the cost of leasing land based on data collected in the final results of the immediately preceding new shipper reviews. *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 46498 (August 3, 2004) (*11/02 to 4/03 NSRs*) and the memorandum from Janis Kalnins to The File entitled "Analysis for the Final Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Shanyang Freezing Storage Co., Ltd., and Wangtun Fresh Vegetable Factory," dated September 24, 2004.

The Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information

but the information cannot be verified, then the Department shall, subject to sections 782(d) and (e) of the Act, use the facts otherwise available in reaching the applicable determination.

For the reasons outlined in the *Preliminary Results* at 69 FR 40609, we have continued to apply facts available in the final results of review for calculating the labor hours worked by Shanyang for processing activities and by Wangtun for production activities.

For the final results of this new shipper review, we have clarified that the use of facts available is appropriate for calculating a consumption factor for water. Shanyang did not report a consumption factor for the water used in the production of subject merchandise. For the preliminary results of review we calculated a consumption factor for water using the pump specifications for the model type and corresponding water flow rate (based on water depth) used by Shanyang in the production of garlic during the POR as reported in its supplemental questionnaire response. See the memorandum from Brian Ellman to The File entitled "Analysis for the Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Shanyang Freezing Storage Co., Ltd., and Wangtun Fresh Vegetable Factory," dated June 28, 2004.

In its August 5, 2004, case brief, Shanyang attempted to submit new factual information for the Department to use in our calculation of a water-usage rate for the final results. We rejected Shanyang's case brief because it contained untimely new factual information, and allowed it to submit a redacted case brief (less any new factual information).

In its case brief, Shanyang argues that the flow rate used by the Department in its calculation of a water-usage rate is incorrect because the flow rate is not based on the actual depth of the water table at Wangtun's fields. Moreover, Shanyang argues that the Department should correct its calculation for a water-usage rate by requesting data from Wangtun demonstrating the actual depth at which Wangtun's water pumps operated during the POR.

Prior to and during verification Shanyang had the opportunity to inform the Department that its actual water depth was different from the water depth indicated in its questionnaire response. As such, we determine that, in accordance with section 776(a)(2)(B) of the Act, the use of facts available is appropriate for calculating a consumption factor for water for the final results. Therefore, we will continue to calculate a consumption factor for water using the pump specifications for the model type used by Shanyang as indicated in its questionnaire response and as verified by the Department. For a complete discussion of this issue see Comment 1 of the *Decision Memo*.

Final Results of the New Shipper Review

For the final results of the new shipper review the following dumping margin exists for the period November 1, 2002, through October 31, 2003:

Grower and exporter combination	Weighted-average percentage margin
Grown by Kaifeng Wangtun Fresh Vegetables Factory and Exported by Jinxiang Shanyang Freezing Storage Co., Ltd	29.04

Duty Assessment and Cash-Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Further, the following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise grown by Kaifeng Wangtun Fresh Vegetables Factory, and exported by Jinxiang Shanyang Freezing Storage Co., Ltd., the cash-deposit rate will be the rate listed above; (2) for all other subject merchandise exported by Jinxiang Shanyang Freezing Storage Co., Ltd., the cash-deposit rate will be the PRC-wide rate, which is 376.67 percent; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3) failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 the terms of an APO is a sanctionable violation.

Bonding is no longer permitted to fulfill security requirements for shipments from Shanyang of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**.

These final results of the new shipper review and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix:

Decision Memo
1. Valuation of Water
2. Selling, General, and Administrative Expenses and Profit Calculation
3. Valuation of Leased Land
4. Valuation of Upstream Input Factors

[FR Doc. E4–2446 Filed 9–29–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 24, 2004.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2004, the Department published in the **Federal Register** (69 FR 5125) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from India for the period February 1, 2003, through January 31, 2004. On February 27, 2004, Agro Dutch Foods, Ltd. (Agro Dutch), requested an administrative review of its sales. On February 27, 2004, Premier Mushroom Fârms (Premier), requested an administrative review of its sales. Also, on February 27, 2004, the petitioner [1] requested an administrative review of the antidumping duty order for the following companies: Agro Dutch, Dinesh Agro Products, Ltd. (Dinesh Agro), Flex Foods, Ltd. (Flex Foods), Himalya International, Ltd. (Himalya), Premier, Saptarishi Agro Industries Ltd. (Saptarishi Agro), and Weikfield Agro Products Ltd. (Weikfield). On March 26, 2004, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 69 FR 15788.

On June 24, 2004, the petitioner timely withdrew its request for review with respect to Dinesh Agro, Himalya, and Saptarishi Agro. On June 22, 2004, the petitioner requested that the Department extend the deadline established under 19 CFR 351.213(d)(1) to withdraw its request for review of Flex Foods until fourteen days after the receipt of a complete electronic dataset from Flex Foods. On June 24, 2004, we granted this request for extending the deadline to withdraw the petitioner's request for review of Flex Foods until July 6, 2004. On July 6, 2004, the petitioner requested that the Department extend the previous deadline established under 19 CFR 351.213(d)(1), until July 9, 2004, for withdrawing its request for an administrative review of Flex Foods. On July 7, 2004, we granted this request. However, the petitioner never subsequently withdrew its request for an administrative review of Flex Foods.

Partial Rescission of Review

Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the petitioner withdrew its request for review of Dinesh Agro, Himalya, and Saptarishi Agro within the 90-day period. Therefore, because the petitioner was the only party to request the administrative review of these three companies, we are rescinding, in part, this review of the antidumping duty order on certain preserved mushrooms from India as to Dinesh Agro, Himalya, and Saptarishi Agro. This review will continue with respect to Agro Dutch, Flex Foods, Premier, and Weikfield.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2444 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Certain Softwood Lumber Products From Canada: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Jim Terpstra at (202) 482–3692 or (202) 482–3965, respectively, AD/CVD Enforcement, Office III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On June 30, 2004, the Department initiated an administrative review of the countervailing duty order on certain softwood lumber products from Canada. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 69 FR 39409. The preliminary results are currently due no later than January 31, 2005.

Extension of Time Limit for Preliminary Results of Review

The subsidy programs covered by this review are extraordinarily complicated. In addition, because this administrative review is being conducted on an aggregate level, the Department must analyze large amounts of data from each of the Canadian Provinces as well as data from the Canadian Federal Government. Therefore, the Department is extending the time limit for completion of the preliminary results to May 31, 2005. *See* the Decision Memorandum from Melissa G. Skinner, Director, Office of AD/CVD Enforcement IIII, to Jeffrey May, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: September 24, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2445 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092404D]

Proposed Information Collection; Comment Request; Cooperative Charting Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 29, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ken Forster, 301–713–2737, ext 130.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's National Ocean Service (NOS) produces the official nautical charts of the United States. As part of its efforts to keep the charts up-to-date, NOS has a Memorandum of Agreement with both the United States Power Squadrons and the United States Coast Guard Auxiliary that provides for members to submit chart correction data to NOS.

II. Method of Collection

The paper form (77–5) for the United States Coast Guard Auxiliary is available to download on the following website: *http://www.cgaux.org/cgauxweb/home__frame__955a.htm*. A Web version is being used for the United States Power Squadrons.

III. Data

OMB Number: 0648–0022.
Form Number: Form 77–5.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Time Per Response: 3 hours.
Estimated Total Annual Burden Hours: 45,000.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 22, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21970 Filed 9–29–04; 8:45 am]
BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092404B]

Proposed Information Collection; Comment Request; Prohibited Species Donation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 29, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certain incidental catch of fish cannot be retained by fishing vessels due to management controls, and such prohibited species are usually discarded. Under a NOAA program, these fish may be donated to certain tax-exempt groups for distribution to needy individuals. The documentation is necessary to ensure that donations go to authorized parties for legitimate purposes.

II. Method of Collection

The information is submitted to respond to requirements set forth in a regulation. There are also documentation and labeling requirements.

III. Data

OMB Number: 0648–0316.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; business or other for-profits organizations.
Estimated Number of Respondents: 79.
Estimated Time Per Response: 40 hours for an application; 40 hours for documentation by a distributor; 6 minutes for labeling and product tracking of a shipment by a vessel or processor; and 15 minutes to provide documentation on a vessel or processor.
Estimated Total Annual Burden Hours: 152.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 22, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21971 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070104A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Survey in the Eastern Tropical Pacific Ocean off Central America

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys in the eastern tropical Pacific Ocean (ETPO) off Central America. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to L-DEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than November 1, 2004.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.070104A@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 070104A. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 28, 2004, NMFS received an application from L-DEO for the taking, by harassment, of several species of marine mammals incidental to conducting a marine seismic survey program during a four-week period beginning in late November 2004 in the Exclusive Economic Zones of El Salvador, Honduras, Nicaragua, and Costa Rica. The purpose of the seismic survey is to investigate stratigraphic development in the presence of tectonic forcing in the Sandino basin off Nicaragua and Costa Rica. Because of the variations in subsidence/uplift histories within the Sandino Basin, and the inability to provide whole-basin coverage during a research cruise of reasonable length, data will be collected in two primary grids in the Sandino Basin and a third, smaller grid off Nicoya Peninsula. Grid descriptions are provided in L-DEO's application.

Description of the Activity

The seismic survey will involve one vessel. The source vessel, the *R/V Maurice Ewing*, will deploy three low-energy GI airguns as an energy source, with a total discharge volume of up to 315 in^3. As the airguns are towed along the survey lines, the towed hydrophone system will receive the returning acoustic signals.

The program will consist of a maximum of 6048 km (3266 nm) of surveys. Water depths within the survey area are up to 5000 m (16,400 ft); most of the survey will be conducted in water depths less than 2000 m (6560 ft). The area to be surveyed extends from approximately 4 to 150 km (2 to 80 nm) offshore. The airguns may also be operated closer to, and farther from, shore while the ship is maneuvering toward or between survey lines.

The proposed program will use conventional seismic methodology with a small towed array of three GI airguns as the energy source, and a towed hydrophone streamer as the receiver system. The energy to the airguns is compressed air supplied by compressors on board the source vessel. Seismic pulses will be emitted at intervals of 5 seconds. The 5–sec spacing corresponds to a shot interval of approximately 12.5 m (41 ft).

The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the ocean, is 105 in^3. The injector chamber injects air into the previously generated bubble to maintain its shape, and does not introduce appreciably more sound into the water. The three 105–in^3 GI guns will be towed behind the *Ewing*, at a depth of 2.5 m (8.2 ft). Operating pressure will be 2000 psi. The GI guns will be 7.8 m (25.6 ft) apart and will be towed 37 m (121.4 ft) behind the *Ewing*. The *Ewing* will also tow a hydrophone streamer that is up to 1500 m (4922 ft) long. As the airguns are operated along the survey lines, the hydrophone receiving system will receive and record the returning acoustic signals.

General-Injector Airguns

Three GI-airguns will be used from the *Ewing* during the proposed program. These 3 GI-airguns have a zero to peak (peak) source output of 240.7 dB re 1 microPascal-m (10.8 bar-m) and a peak-to-peak (pk-pk) level of 246 dB (21 bar-m). However, these downward-directed source levels do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined airguns in the airgun array. The actual received level at any location in the water near the airguns will not exceed the source level of the strongest individual source and actual levels experienced by any organism more than 1 m (3.3 ft) from any GI gun will be significantly lower.

Further, the root mean square (rms) received levels that are used as impact criteria for marine mammals (see Richardson *et al.*, 1995) are not directly comparable to these peak or pk-pk values that are normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. For example, a measured received level of 160 decibels rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a pk-pk measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.* 1998, 2000). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sources are towed has a major impact on the maximum near-field output, because the energy output is constrained by ambient pressure. The normal tow depth of the sources to be used in this project is 2.5 m (6.7 ft), where the ambient pressure is approximately 3 decibars. This also limits output, as the 3 decibars of confining pressure cannot fully constrain the source output, with the result that there is loss of energy at the sea surface. Additional discussion of the characteristics of airgun pulses is provided later in this document (see Characteristics of Airgun Pulses).

For the GI-airguns, the sound pressure field has been modeled by L-DEO in relation to distance and direction from the airguns, and in relation to depth. Table 1 shows the maximum distances from the airguns where sound levels of 190-, 180-, 170- and 160–dB re 1 microPa (rms) are predicted to be received.

Some empirical data concerning the 180, 170 and 160 dB distances have been acquired for several airgun configurations, including two GI-guns, based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (see Tolstoy *et al.*, 2004). Although the results are limited and do not include measurements for three GI-guns, the data for other airgun configurations showed that water depth affected the radii around the airguns where the received level would be 180 dB re 1 microPa (rms), NMFS' current injury threshold safety criterion applicable to cetaceans (NMFS, 2000). Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds. Water depths within the survey area are up to 5000 m (16400 ft), but most of the survey will be conducted in water depths less than 2000 m (6560 ft), as shown in Table 1, column 3.

TABLE 1. Estimated distances to which sound levels ≥190, 180, 170 and 160 dB re 1 μPa (rms) might be received from *(A)* three 105 in^3 GI guns and *(B)* one of those guns, as planned for the seismic survey off the west coast of Central America during November–December 2004. Distance estimates are given for operations in deep, intermediate, and shallow water. The 180- and 190-dB distances are the safety radii to be used during the survey. Three GI guns will be used for the survey and one GI gun will be used during power down.

Airgun configuration	Water depth	% of seismic survey conducted	Estimated distances at received levels (m)			
			190 dB	180 dB	170 dB	160 dB
A. 3 GI guns	>1000 m	11.6	26	82	265	823
	100–1000 m	57.9	39	123	398	1235
	<100 m	30.6	390	574	1325	2469
B. 1 GI gun	>1000 m		10	27	90	275
	100–1000 m		15	41	135	413
	<100 m		150	189	450	825

The empirical data indicate that, for deep water (greater than 1000 m (3281 ft)), the L-DEO model for the airguns tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). However, to be precautionary pending acquisition of additional empirical data, L-DEO and NMFS propose that the mitigation safety radii during airgun operations in deep water will be the values predicted by L-DEO's model (see Table 1).

The 180- and 190–dB radii were not measured for three GI- guns operating in shallow water (less than 100 m (328 ft)). However, the measured 180–dB radius for the 6–airgun array operating in shallow water was 6.8x that predicted by L-DEO's model for operation of the six-airgun array in deep water. The conservative correction factor is applied to the model estimates to predict the radii for the three GI-guns in shallow water, as shown in Table 1.

Empirical measurements were not conducted for intermediate depths (100–1000 m (328–3281 ft)). On the expectation that results will be intermediate between those from shallow and deep water, a 1.5x correction factor is applied to the estimates provided by the model for deep water situations, as shown in Table 1. This is the same factor that was applied to the model estimates during L-DEO cruises in 2003.

Bathymetric Sonar and Sub-bottom Profiler

In addition to the 3 GI-airguns, a multibeam bathymetric sonar and a low-energy 3.5–kHz sub-bottom profiler will be used during the seismic profiling and continuously when underway.

Bathymetric Sonar-Atlas Hydrosweep-The 15.5–kHz Atlas Hydrosweep sonar is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and two deep-water modes: an Omni mode (similar to the shallow-water mode but with a source output of 220 dB (rms)) and a Rotational Directional Transmission (RDT) mode. The RDT mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with small (much less than 1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the "ping," including all five successive segments, varies with water depth, but is 1 millisec in water depths less than 500 m and 10 millisec in the deepest water. For each segment, ping duration is 1/5 of these values or 2/5 for a receiver in the overlap area ensonified by two beam segments. The "ping" interval during RDT operations depends on water depth and varies from once per second in less than 500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water. During the proposed project, the Atlas Hydrosweep will generally be used in waters greater than 800 m (2624.7 ft), but whenever water depths are less than 400 m (1312 ft) the source output is 210 dB re 1 microPa-m (rms) and a single 1–ms pulse or "ping" per second is transmitted.

Sub-bottom Profiler-The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 microPa (800 watts) while nominal source output is 200 dB re 1 microPa (500 watts). Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Although the sound levels have not been measured directly for the sub-bottom profilers used by the *Ewing*, Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a sub-bottom profiler similar to the L-DEO unit with similar source output (i.e., 205 dB re 1 microPa m). For that profiler, the 160 and 180 dB re 1 microPa (rms) radii in the horizontal direction were estimated to

be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft) respectively, assuming spherical spreading. Thus the received level for the L-DEO sub-bottom profiler would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (300 beamwidth) and the measurements of Burgess and Lawson (2000).

Characteristics of Airgun Pulses

Airguns function by venting high-pressure air into the water. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by oscillation of the resulting air bubble. The resulting downward-directed pulse has a duration of only 10 to 20 ms, with only one strong positive and one strong negative peak pressure (Caldwell and Dragoset, 2000). Most energy emitted from airguns is at relatively low frequencies. For example, typical high-energy airgun arrays emit most energy at 10–120 Hz. However, the pulses contain some energy up to 500–1000 Hz and above (Goold and Fish, 1998).

The pulsed sounds associated with seismic exploration have higher peak levels than other industrial sounds to which whales and other marine mammals are routinely exposed. As mentioned previously, the pk-pk source levels of the 2 GI-gun array that will be used for the ETPO project are 231 dB re 1 microPa (peak) and 237 dB re 1 microPa (pk-pk). However, the effective source level for horizontal propagation will be lower and actual levels experienced by any marine mammal more than 1 m (3.3 ft) from either GI-gun will be significantly lower.

Several important factors need to be considered when assessing airgun impacts on the marine environment. (1) Airgun arrays produce intermittent sounds, involving emission of a strong sound pulse for a small fraction of a second followed by several seconds of near silence. In contrast, some other acoustic sources produce sounds with lower peak levels, but their sounds are continuous or discontinuous but continuing for much longer durations than seismic pulses. (2) Airgun arrays are designed to transmit strong sounds downward through the seafloor, and the amount of sound transmitted in near-horizontal directions is considerably reduced. Nonetheless, they also emit sounds that travel horizontally toward non-target areas. (3) An airgun array is a distributed source, not a point source. The nominal source level is an estimate of the sound that would be measured from a theoretical point source emitting the same total energy as the airgun array. That figure is useful in calculating the expected received levels in the far field (i.e., at moderate and long distances). Because the airgun array is not a single point source, there is no one location within the near field (or anywhere else) where the received level is as high as the nominal source level.

The strengths of airgun pulses can be measured in different ways, and it is important to know which method is being used when interpreting quoted source or received levels. Geophysicists usually quote pk-pk levels, in bar-meters or dB re 1 microPa-m. The peak level for the same pulse is typically about 6 dB less. In the biological literature, levels of received airgun pulses are often described based on the "average" or "root-mean-square" (rms) level over the duration of the pulse. The rms value for a given pulse is typically about 10 dB lower than the peak level, and 16 dB lower than the Pk-pk value (Greene, 1997; McCauley *et al.*, 1998; 2000). A fourth measure that is being used more frequently is the energy level, in dB re 1 microPa^2.s. Because the pulses are less than 1 sec in duration, the numerical value of the energy is lower than the rms pressure level, but the units are different. Because the level of a given pulse will differ substantially depending on which of these measures is being applied, it is important to be aware which measure is in use when interpreting any quoted pulse level. NMFS commonly references the rms levels when discussing levels of pulsed sounds that might harass marine mammals.

Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection from the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sounds propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. These variations in travel time have the effect of lengthening the duration of the received pulse. At the source, seismic pulses are about 10 to 20 ms in duration. In comparison, the pulse as received at long horizontal distances can have a much longer duration.

Another important aspect of sound propagation is that received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983, Richardson *et al.*, 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs. 9 or 18 m (29.5 or 59 ft) have shown that received levels are typically several decibels lower at 3 m (9.8. ft)(Greene and Richardson, 1988). For a mammal whose auditory organs are within 0.5 or 1 m (1.6 or 3.3 ft) of the surface, the received level of the predominant low-frequency components of the airgun pulses would be further reduced.

Pulses of underwater sound from open-water seismic exploration are often detected 50 to 100 km (30 to 54 nm) from the source location (Greene and Richardson, 1988; Burgess and Greene, 1999). At those distances, the received levels on an approximate rms basis are low (below 120 dB re 1 microPa). However, faint seismic pulses are sometimes detectable at even greater ranges (e.g., Bowles *et al.*, 1994; Fox *et al.*, 2002). Considerably higher levels can occur at distances out to several kilometers from an operating airgun array. Additional information is contained in the L-DEO application, especially in Appendix A (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the ETPO area and its associated marine mammals can be found in the L-DEO application and a number of documents referenced in the L-DEO application, and is not repeated here. Thirty-four species of cetaceans are known to occur in the ETPO, belonging to two taxonomic groups: odontocetes (sperm whale (*Physeter macrocephalus*), dwarf sperm whale (*Kogia sima*), pygmy sperm whale (*K. breviceps*), Cuvier's beaked whale (*Ziphius cavirostris*), Longman's beaked whale (Indopacetus pacificus), pygmy beaked whale (*Mesoplodon peruvianus*), gingko-toothed beaked whale (*M. ginkgodens*), Blainville's beaked whale (*M. densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (*S. longirostris*), striped dolphin (*S. coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), and short-finned pilot whale (*Globicephala macrorhynchus*)); and mysticetes humpback whale (*Megaptera*

novaeangliae), minke whale (*Balaenoptera acutorostrata*), sei whale (*B. borealis*), fin whale (*B. physalus*), Bryde's whale (*B. edeni*), and blue whale (*B. musculus*). Of these 34 species, L-DEO states that 27 cetacean species are likely to occur in the proposed survey area. These 27 species are shown in Table 2 of this document and are described in L-DEO (2004)).

Seven cetacean species (Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Baird's beaked whale (*Berardius bairdii*), long-beaked common dolphin (*Delphinus capensis*), dusky dolphin (*Lagenorhynchus obscurus*), southern right whale dolphin (*Lissodelphis peronii*), Burmeister's porpoise (*Phocoena spinipinnis*), and long-finned pilot whale (*Globicephala melas*)) although present in the wider ETPO, are unlikely to be found in L-DEO's proposed survey area (L-DEO, 2004). These species are mentioned briefly in L-DEO's application, but are unlikely to be taken by incidental harassment and therefore are not analyzed further in this document.

Six species of pinnipeds are known to occur in the ETPO: Guadalupe fur seal (*Arctocephalus townsendi*), California sea lion (*Zalophus californianus*), Galapagos sea lion (*Z. wollebaeki*), Galapagos fur seal (*A. galapagoensis*), southern sea lion (*Otaria flavescens*), and South American fur seal (*A. australis*). The last four species could potentially occur within the proposed seismic survey area, but they are expected to be, at most, uncommon. Ranges of the first two species are substantially north of the proposed seismic survey area and, therefore, unlikely to be taken by incidental harassment.

More detailed information on these species is contained in the L-DEO application, which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

Potential Effects on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The L-DEO application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by L-DEO. The types of effects considered here are (1) tolerance, (2) masking of natural sounds, (2) behavioral disturbance, and (3) potential hearing impairment and other non-auditory physical effects (Richardson *et al.*, 1995). Given the relatively small size of the airguns planned for the present project, its effects are anticipated to be considerably less than would be the case with a large array of airguns. L-DEO and NMFS believe it is very unlikely that there would be any cases of temporary or especially permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to distances less than 823 m (2700 ft) in deep water and 2469 m (8100 ft) in shallow water, the zones calculated for 160 dB or the onset of Level B harassment. Additional discussion on species specific effects can be found in the L-DEO application.

Tolerance

Numerous studies (referenced in L-DEO, 2004) have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers, but that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. However, most measurements of airgun sounds that have been reported concerned sounds from larger arrays of airguns, whose sounds would be detectable farther away than that planned for use in the proposed survey. Although various baleen whales, toothed whales, and pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales. Given the relatively small and low-energy airgun source planned for use in this project, mammals are expected to tolerate being closer to this source than would be the case for a larger airgun source typical of most seismic surveys.

Masking

Masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited (due in part to the small size of the GI airguns), although there are very few specific data on this. Given the small source planned for use in the ETPO, there is even less potential for masking of baleen or sperm whale calls during the present research than in most seismic surveys (L-DEO, 2004). Seismic sounds are short pulses generally occurring for less than 1 sec every 5 seconds or so. The 5–sec spacing corresponds to a shot interval of

approximately 12.5 m (41 ft). Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multibeam sonar as received at any one location would actually be only 1/5 or at most 2/5 of 1–10 msec, given the segmented nature of the pulses.)

Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995, Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Given the relatively small source planned for use during this survey, there is even less potential for masking of sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the airguns to be used in the ETPO. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These low frequencies are mainly used by mysticetes, but generally not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the marine mammal signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals relative to airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; as reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing, pre-adaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995) and the relatively low-power acoustic sources being used in this survey, would all reduce the importance of masking marine mammal vocalizations.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. However, there are difficulties in defining which marine mammals should be counted as "taken by harassment". For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of a disruption of a behavioral pattern. However, if a sound source would displace marine mammals from an important feeding or breeding area, such a disturbance would constitute Level B harassment under the MMPA. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals may be present within a particular distance of industrial activities or exposed to a particular level of industrial sound. With the possible exception of beaked whales, NMFS believes that this is a conservative approach and likely overestimates the numbers of marine mammals that are affected in some biologically important manner.

The sound exposure criteria used to estimate how many marine mammals might be harassed behaviorally by the seismic survey are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed information on potential disturbance effects on baleen whales, toothed whales, and pinnipeds can be found on pages 35–37 and Appendix A in L-DEO's ETPO application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy precautionarily sets impulsive sounds equal to or greater than 180 and 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment for cetaceans and pinnipeds, respectively (NMFS, 2000). Those criteria have been used in defining the safety (shut-down) radii for seismic surveys. However, those criteria were established before there were any data on the minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in the L-DEO application and summarized here,

1. The 180 dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

Because of the small size of the 3 105 in^3 GI-airguns, along with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause even the mildest (and reversible) form of hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the 3 GI-airguns (and multibeam bathymetric sonar), and to avoid exposing them to sound pulses that might (at least in theory) cause hearing impairment. In addition, research and monitoring studies on gray whales, bowhead whales and other cetacean species indicate that many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory

physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, L-DEO and NMFS believe that it is especially unlikely that any of these non-auditory effects would occur during the proposed survey given the small size of the sources, the brief duration of exposure of any given mammal, and the planned mitigation and monitoring measures. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson et al. (1995) note that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran et al., 2002). Given the available data, the received level of a single seismic pulse might need to be on the order of 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Finneran *et al.*, 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a zone of no more than 100 m (328 ft) around a seismic vessel operating a large array of airguns. Such sound levels would be limited to distances within a few meters of the small airguns planned for use during this project.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. However, TTS is not expected to occur during this survey given the small size of the source, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured, although exposures up to 183 dB re 1 microPa (rms) have been shown to be insufficient to induce TTS in California sea lions (Finneran *et al.*, 2003). However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; Au *et al.*, 2000).

A marine mammal within a zone of less than 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. Also, around smaller arrays, such as the 3 GI-airgun array proposed for use during this survey, a marine mammal would need to be even closer to the source to be exposed to levels greater than or equal to 205 dB, at least in waters greater than 100 m (328 ft) deep. However, as noted previously, most cetacean species tend to avoid operating airguns, although not all individuals do so. In addition, ramping up airgun arrays, which is now standard operational protocol for L-DEO and other seismic operators, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. However, TTS would be more likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. During this project, the bow of the *Ewing* will be 107 m (351 ft) ahead of the airguns and the 205–dB zone would be less than 100 m (328 ft). Thus, TTS would not be expected in the case of odontocetes bow riding during airgun operations and if some cetaceans did incur TTS through exposure to airgun sounds, it would very likely be a temporary and reversible phenomenon.

Currently, NMFS believes that, to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by L-DEO during this activity are summarized in Table 1 in this document. These sound levels are not considered to be the levels at or above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS (at a time before TTS measurements for marine mammals started to become available), one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As noted here, TTS data that are now available imply that, at least for dolphins, TTS is unlikely to occur unless the dolphins are exposed to airgun pulses substantially stronger than 180 dB re 1 microPa (rms).

It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, as mentioned previously, ramping up the airgun array, which has become standard operational protocol for many seismic operators including L-DEO, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the GI airguns.

Permanent Threshold Shift (PTS)

When PTS occurs there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to pulses of airgun sounds can cause PTS in any marine mammals, even with the largest airgun arrays, physical damage to a mammal's hearing apparatus can potentially occur if it is

exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt et al., 2000; Finneran *et al.*, 2002; Nachtigall *et al.*, 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson et al., 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. Rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for odontocetes for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) (approximately 204 dB re 1 microPa rms), then the PTS threshold might be about 240 dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson et al., 1995; Caldwell and Dragoset, 2000). However, it is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance from the source. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. In summary, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient period of time) to cause permanent hearing impairment during this project. In the proposed project marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, and because of the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. This is due to the fact that even levels immediately adjacent to the 3 GI-airguns may not be sufficient to induce PTS because the mammal would not be exposed to more than one strong pulse unless it swam alongside an airgun for a period of time.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times. While there is no documented evidence that airgun arrays can cause serious injury, death, or stranding, the association of mass strandings of beaked whales with naval exercises and, recently, an L-DEO seismic survey have raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channels of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN, 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN, 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or -56 hull-mounted active sonars for a period of 16 hours. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (-53C), and 6.8 to 8.2 kHz (-56). The respective source levels were usually 235 and 223 dB re 1 μ Pa, but the -53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or perhaps died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of beaked whales (15 whales) happened on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place. Jepson *et al.* (2003) concluded that cetaceans might be subject to decompression injury (the bends or air embolism) in some

situations. If so, this might occur if the mammals ascend unusually quickly when exposed to aversive sounds. Previously, it was widely assumed that diving marine mammals are not subject to decompression injury.

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a September, 2002 stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the *Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing's* 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound might include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of the proposed L-DEO project where the airguns are small.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed), 1999; Houser *et al.*, 2001). In 2002, NMFS held a workshop (Gentry (ed.) 2002) to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. However, a paper concerning beaked whales stranded in the Canary Islands in 2002 suggests that cetaceans might be subject to decompression injury in some situations (Jepson *et al.*, 2003). If so, that might occur if they ascend unusually quickly when exposed to aversive sounds. However, the interpretation that the effect was related to decompression injury is unproven (Piantadosi and Thalmann, 2004; Fernandez *et al.*, 2004). Even if that effect can occur during exposure to mid-frequency sonar, there is no evidence that this type of effect occurs in response to low-frequency airgun sounds. It is especially unlikely in the case of the proposed L-DEO survey which involves only three GI-guns.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects. Also, the planned mitigation and monitoring measures are expected to minimize any possibility of serious injury, mortality or strandings.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2 (15.5–kHz) and a sub-bottom profiler will be operated from the source vessel essentially continuously during the planned survey. Details about these sonars were provided previously in this document.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally (1) are more powerful than the Atlas Hydrosweep sonars, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Atlas Hydrosweep). The area of possible influence for the *Ewing's* sonars is much

smaller - a narrow band below the source vessel. For the Hydrosweep there is no horizontal propagation as these signals project at an angle of approximately 45 degrees from the ship. For the deep-water mode, under the ship the 160- and 180–dB zones are estimated to be 3200 m (10500 ft) and 610 m (2000 ft), respectively. However, the beam width of the Hydrosweep signal is only 2.67 degrees fore and aft of the vessel, meaning that a marine mammal diving could receive at most 1–2 signals from the Hydrosweep and a marine mammal on the surface would be unaffected. Marine mammals that do encounter the bathymetric sonars at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses and vessel speed. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for the bathymetric sonar signals (approximately 10 ms) would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multibeam sonar.

Masking by Mid-frequency Sonar Signals

Marine mammal communications will not be masked appreciably by the multibeam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals from the Hydrosweep sonar do not overlap with the predominant frequencies of the calls, which would avoid significant masking.

For the sub-bottom profiler, marine mammal communications will not be masked appreciably because of their relatively low power output, low duty cycle, directionality (for the profiler), and the brief period when an individual mammal may be within the sonar's beam. In the case of most odonotocetes, the sonar signals from the profiler do not overlap with the predominant frequencies in their calls. In the case of mysticetes, the pulses from the pinger do not overlap with their predominant frequencies.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned strandings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the L-DEO multibeam sonar, and a given mammal would have received many pulses from the naval sonars. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by L-DEO and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case the test sounds were quite different in either duration or bandwidth as compared to those from a bathymetric sonar.

L-DEO and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 15.5 kHz frequency of the *Ewing's* multibeam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals. The pulsed signals from the sub-bottom profiler are much weaker than those from the airgun array and the multibeam sonar. Therefore, significant behavioral responses are not expected.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys on Marine Mammals). However, the multi-beam sonars proposed for use by L-DEO are quite different than sonars used for navy operations. Pulse duration of the bathymetric sonars is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beam-width. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy. Therefore, hearing impairment by multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar. Sound levels from a sub-bottom profiler similar to the one on the *Ewing* were estimated to decrease to 180 dB re 1 microPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson, 2000), and at approximately 18 m downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier discussion). Thus, it is unlikely, that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment for the ETPO Seismic Survey

Although information contained in this document indicates that injury to marine mammals from seismic sounds potentially occurs at sound pressure levels significantly higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is

typically about 10 dB less than its peak level and about 16 dB less than its pk-pk level (Greene, 1997; McCauley *et al.*, 1998; 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize or eliminate the possibility of Level A harassment or mortality. L-DEO has calculated the "best estimates" for the numbers of animals that could be taken by level B harassment during the proposed ETPO seismic survey using data on marine mammal density and abundance from marine mammal surveys in the region, and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1).

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 3 GI-gun array planned to be used for this project. The anticipated zone of influence of the multi-beam sonar is less than that for the airguns, so it is assumed that any marine mammals close enough to be affected by the multi-beam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar.

Table 2 explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB. A detailed description on the methodology used by L-DEO to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in L-DEO's IHA application for the ETPO survey.

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TABLE 2. Estimates of the possible numbers of marine mammal exposures to the different sound levels, and the numbers of different individuals that might be exposed, during L-DEO's proposed seismic survey in the ETPO off the coast of Central America in November-December 2004. The proposed sound source is a 3-GI gun configuration with a total volume of 315 in^3. Received levels of airgun sounds are expressed in dB re 1 μPa (rms, averaged over pulse duration). Species in italics are listed under the U.S. ESA as endangered. The column of numbers in boldface shows the numbers of "takes" for which authorization is requested.

Species	Number of Exposures to Sound Levels >160 dB		Number of Individuals Exposed to Sound Levels >160 dB			
			Best Estimate			
	Best Estimate[a]	Maximum Estimate[a]	Number	% of Regional Pop'n[c]	Maximum Estimate	Requested Take Authorization
Physeteridae						
Sperm whale	*51*	*82*	*33*	*0.1*	*54*	**82**
Pygmy sperm whale	0	0	0	NA[b]	0	**5**
Dwarf sperm whale	404	503	265	2.4	330	**503**
Ziphiidae						
Cuvier's beaked whale	117	133	77	0.4	87	**133**
Tropical bottlenose whale	0	0	0	NA	0	**5**
Pygmy beaked whale	0	0	0	NA	0	**14**
Blainville's beaked whale	0	0	0	NA	0	**14**
Mesoplodon sp. (unidentified)	23	28	15	0.1	18	
Delphinidae						
Rough-toothed dolphin	181	269	119	0.1	177	**269**
Bottlenose dolphin	1011	1782	663	0.3	1169	**1782**
Spotted dolphin	3349	5829	2196	0.1	3821	**5829**
Spinner dolphin	2439	6215	1599	0.1	4074	**6215**
Costa Rican spinner dolphin	280	2657	184	NA	1742	**1540**
Clymene dolphin	0	0	0	NA	0	**10**
Striped dolphin	3457	5819	2266	0.1	3815	**5819**
Short-beaked common dolphin	2816	4620	1846	0.1	3029	**4620**
Fraser's dolphin	0	0	0	NA	0	**10**
Risso's dolphin	219	391	144	0.1	256	**391**
Melon-headed whale	38	189	25	0.1	124	**189**
Pygmy killer whale	74	176	49	0.1	115	**176**
False killer whale	0	0	0	0.0	0	**5**
Killer whale	3	4	2	0.0	2	**5**
Short-finned pilot whale	307	533	201	0.1	350	**533**
Balaenopteridae						
Humpback whale	*0*	*0*	*0*	*NA*	*0*	**2**
Minke whale	0	0	0	NA	0	**2**
Bryde's whale	4	13	3	0.0	8	**13**
Sei whale	*0*	*0*	*0*	*NA*	*0*	**2**
Fin whale	*0*	*0*	*0*	*NA*	*0*	**2**
Blue whale	*4*	*11*	*3*	*0.2*	*7*	**11**
Pinnipeds						
South American fur seal	0	0	0	NA	0	**10**
Southern sea lion	0	0	0	NA	0	**10**
Galapagos fur seal	0	0	0	NA	0	**10**
Galapagos sea lion	0	0	0	NA	0	**10**

a Best estimate and maximum estimate of densities are from Table 3 in L-DEO, 2004.
b NA indicates that regional population estimates are not available.
c Regional populations are given in Table 2 in L-DEO, 2004.

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Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. However, reactions at the longer distances appear to be atypical of most species and situations, particularly when feeding whales are involved. Few mysticetes are expected to be encountered during the proposed survey in the ETPO (Table 2) and disturbance effects would be confined to shorter distances given the low-energy acoustic source to be used during this project. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers that may be harassed.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small size and the relatively low sound output of the 3 GI-guns to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds ≥ 160 dB re 1 microPa (rms) represent 0 to approximately 0.4 percent (except for approximately 2.4 percent for dwarf sperm whales) of the regional ETPO species populations (Table 2). L-DEO also estimates that approximately 0.1 percent of the estimated (corrected) regional ETPO population of approximately 26,053 sperm whales (Table 2) would be exposed to sounds ≥ 160 dB re 1 microPa (rms). In the case of endangered balaenopterids, it is most likely that no humpback, sei, or fin whales will be exposed to seismic sounds ≥ 160 dB re 1 microPa (rms), based on the reported (corrected) densities of those species in the survey region. However, L-DEO has requested an authorization to expose up to 2 individuals of each of those species to seismic sounds of ≥ 160 dB during the proposed survey given the possibility of encountering one or more groups. Best estimates of blue whales are 3 individuals that might be potentially exposed to seismic pulses with received levels ≥ 160 dB re 1 microPa (rms), representing approximately 0.2 percent of the estimated regional ETP population of approximately 1400 blue whales (Table 2).

Larger numbers of delphinids may be affected by the proposed seismic surveys, but the population sizes of species likely to occur in the survey area are large, and the numbers potentially affected are small relative to population sizes (Table 2). The best estimates of the numbers of individual delphinids that will potentially be exposed to sounds ≥ 160 dB re 1 microPa (rms) represent less than 0.1 percent of the approximately 10,000,000 dolphins estimated to occur in the ETPO, and less than 0.3 percent of the bottlenose dolphin population occurring there (Table 2).

Mitigation measures such as controlled speed, course alteration, observers, use of the PAM system, non-pursuit, ramp ups, and power downs or shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing. In all cases, the effects are expected to be short-term, with no lasting biological consequence. In light of the type of take expected and the small percentages of affected stocks of cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

It is unlikely that any pinnipeds will be encountered during the proposed survey. However, to ensure that the L-DEO project remains in compliance with the MMPA in the event that a few pinnipeds are encountered, L-DEO has requested an authorization to expose up to 10 individuals of each of four pinniped species to seismic sounds with rms levels ≥ 160 dB re 1 μPa. If pinnipeds are encountered, they will be stray individuals outside of their normal range. The proposed survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. As is the case for cetaceans, the short-term exposures to sounds from the three GI-guns are not expected to result in any long-term consequences for the individuals or their populations and the activity is expected to have no more than a negligible impact on the affected species or stocks of pinnipeds.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur at somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the passing seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term

impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's shock wave. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

There is no legal subsistence hunting for marine mammals in the ETPO off Central America, so the proposed L-DEO activities will not have any impact on the availability of these species or stocks for subsistence users.

Mitigation

For the proposed seismic survey in the ETPO off Central America, L-DEO will deploy 3 GI-airguns as an energy source, with a total discharge volume of 315 in^3. The energy from the airguns will be directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) power-down and shut-down procedures; (3) ramp-up procedures, and (4) use of passive acoustics to detect vocalizing marine mammals.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut down of the airguns).

Power-down and Shut-down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180–dB (or 190–dB) zone is decreased to the extent that marine mammals are not in the safety zone. During a power down, one GI-airgun will continue to be operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the GI-guns will be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down immediately. During a power down, one GI-airgun (i.e., 105 in^3) will be operated. If a marine mammal is detected within or near the smaller safety radius around that single GI-gun (Table 1), all guns will be shut down.

Following a power down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During airgun operations following a power-down whose duration has exceeded these specified limits, the airgun array will be ramped-up gradually. Ramp-up is described later in this document.

During a power down, the operating GI-airgun will be shut down if a marine mammal approaches and is about to enter the modeled safety radius for the operating single GI gun. For a 105 in^3 GI gun, the predicted 180–dB distances applicable to cetaceans are 27–189 m (89–620 ft), depending on water depth, and the corresponding 190–dB radii applicable to pinnipeds are 10–150 m (33–492 ft), depending on depth (Table 1). Airgun activity will not resume until the marine mammal has cleared the safety radius, as described for power-down situations.

Ramp-up Procedure

When airgun operations commence after a specified period without airgun operations, the number of guns firing will be increased gradually, or "ramped up" (also described as a "soft start"). The specified period of time for the GI-airguns varies depending on the speed of the source vessel. Under normal operational conditions (vessel speed 4.9 knots or 9 km/h), the *Ewing* would travel 574 m (1476 ft) in about 4 minutes. The 574–m distance is the calculated 180–dB safety radius for the three GI-gun array operating in shallow water. Thus, a ramp up would be required after a power down or shut down period lasting about 4 minutes or longer if the *Ewing* was traveling at 4.9 knots and was towing the three GI-airgun array. Ramp up will begin with one of the 105–in^3 GI guns. The other two GI-guns will be added at 5 min intervals. During ramp up, the safety radius for the full gun array will be maintained.

During the day, ramp-up cannot begin from a shut-down unless the entire 180–dB safety radius has been visible for at least 30 minutes prior to the ramp up (i.e., no ramp-up can begin in heavy fog or high sea states). However, ramp up may occur from a power down in heavy fog or high sea states, as long as at least one GI gun has been maintained during the interruption of seismic activity.

During nighttime operations, if the entire safety radius is visible using vessel lights and night-vision devices (NVDs) (as may be the case in deep and intermediate waters), then start up of the airguns from a shut down may occur. However, lights and NVDs will probably not be very effective as a basis for monitoring the larger safety radii around the three GI-guns operating in shallow water. It is proposed that, in shallow water, nighttime start ups of the airguns will not be authorized. However, ramp-up may occur from a power-down at night, as long as at least one GI-gun has been maintained during the interruption of the seismic signal. Also, if the airgun array has been operational before nightfall, it can remain operational throughout the night, even though the entire safety radius may not be visible.

Comments on past IHAs raised the issue of prohibiting nighttime operations as a practical mitigation measure. However, this is not practicable due to cost considerations and ship time schedules. The daily cost to the federal government to operate vessels such as *Ewing* is approximately $33,000-$35,000 /day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, each trip could require an additional three to five days to complete, or up to $175,000 more, depending on average daylight at the time of work.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would also be much reduced. Without commenting specifically on how that would affect the present project, for seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

Marine Mammal Monitoring

L-DEO must have at least three visual observers on board the *Ewing*, and at least two must be an experienced marine mammal observer that NMFS has approved in advance of the start of the ETPO cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any nighttime start-ups of the airguns and at night, whenever daytime monitoring resulted in one or more shut-down situations due to marine mammal presence. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. L-DEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210 arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the GI-airguns are powered-down or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down or shut-down if marine mammals are observed in or about to enter the safety radii. However, a biological observer must be on standby at night and available to assist the bridge watch if marine mammals are detected. If the airguns are ramped-up at night (see previous section), two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using either deck lighting or NVDs that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Post-Survey Monitoring

In addition, the biological observers will be able to conduct monitoring of most recently-run transect lines as the *Ewing* returns along a parallel transect track. A final post-survey transect will be conducted by the *Ewing* as it retrieves the hydrophone array. This will provide the biological observers with opportunities to look for injured or dead marine mammals (although no injuries or mortalities are expected during this research cruise).

Passive Acoustic Monitoring (PAM)

L-DEO has agreed to use the PAM system whenever the *Ewing* is operating in waters deep enough for the PAM hydrophone array to be towed. Passive acoustic equipment was first used on the *Ewing* during the 2003 Sperm Whale Seismic Study conducted in the Gulf of Mexico and subsequently was evaluated by L-DEO to determine whether it was practical to incorporate it into future seismic research cruises. The SEAMAP system has been used successfully in L-DEO's SE Caribbean study (69 FR 24571, May 4, 2004). The SEAMAP PAM system has four hydrophones, which allow the SEAMAP system to derive the bearing toward the a vocalizing marine mammal. In order to operate the SEAMAP system, the marine mammal monitoring contingent onboard the *Ewing* will be increased by 2 additional biologists/acousticians who will monitor the SEAMAP system. Verification of acoustic contacts will then be attempted through visual observation by the marine mammal observers. However, the PAM system by itself usually does not determine the distance that the vocalizing mammal might be from the seismic vessel. It can be used as a cue by the visual observers as to the presence of an animal and to its approximate bearing (with some ambiguity). At this time, however, it is doubtful if PAM can be used as a trigger to initiate power-down of the array. NMFS encourages L-DEO to continue to study the relationship between a signal on a passive acoustic array and distance from the array can be determined with sufficient accuracy to be used for this purpose without complementary visual observations.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has preliminarily determined that the proposed mitigation and monitoring ensures that the activity will have the least practicable impact on

the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array; if ramp-up is required, two marine mammal observers will be required to monitor the safety radii using shipboard lighting or NVDs for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible. Therefore as mentioned earlier, it is likely that the 3 GI-airgun array will not be ramped-up from a shut-down at night when in waters shallower than 100 m (328 ft).

Reporting

L-DEO will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during November and December, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, the National Science Foundation (NSF), the agency funding L-DEO, has begun consultation on the proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the ETPO oceanographic surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the ETPO off Central America may result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this preliminary determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within 100 m (328 ft) of the vessel even in shallow water; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas and will not affect marine mammals used for subsistence purposes.

Proposed Authorization

NMFS proposes to issue an IHA to L-DEO for conducting a oceanographic seismic survey in the ETPO off Central America, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: September 24, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–21973 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Sublimit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

September 28, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a sublimit.

EFFECTIVE DATE: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this sublimit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current sublimit for Category 622-N is being adjusted for carryforward. The limit and sublimit for 622 and 622-L remain unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 70494, published on

December 18, 2003; and 69 FR 10429, published on March 5, 2004.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 12, 2003 and March 1, 2004, by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain wool and man-made fiber textile products, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on September 30, 2004, you are directed to adjust the sublimit for Category 622-N, as provided for under the agreement between the Governments of the United States and Belarus dated January 10, 2003:

Category	Twelve-month restraint limit [1]
622	9,494,193 square meters of which not more than 1,590,000 square meters shall be in Category 622-L [2], and not more than 648,006 square meters shall be in Category 622-N [3].

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

[3] Category 622-N: only HTS numbers 7019.52.40.21, 7019.52.90.21, 7019.59.40.21, 7019.59.90.21.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–22098 Filed 9–29–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 10(a), that the Commodity Futures Trading Commission's Technology Advisory Committee will conduct a public meeting on Wednesday, October 13, 2004. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The meeting will begin at 1 p.m. and last until 4 p.m. The purpose of the meeting is to discuss technology-related issues involving the financial services and commodity markets.

The agenda will consist of the following:

(1) Surveillance of electronic trading.

(2) How exchanges deal with disruptions to market operations.

(3) Report on Industry-wide Disaster Recovery Test.

The meeting is open to the public. The Chairman of the Advisory Committee, Acting Commission Chairman Sharon Brown-Hruska, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: Technology Advisory Committee, c/o Acting Chairman Sharon Brown-Hruska, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Acting Chairman Brown-Hruska in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration. For further information concerning this meeting, please contact Ananda Radhakrishnan, Counsel to Acting Chairman Brown-Hruska, (202) 418–5188.

Issued by the Commission in Washington, DC, on September 27, 2004.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21995 Filed 9–28–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the North Atlantic Treaty Organization, Army element are:

1. Mr. Alfred G. Volkman, Director, International Cooperations, Office of the Under Secretary of Defense, Acquisition, Technology and Logistics.

2. Mr. Barry Pavel, Principal Director for Strategy, Office of the Secretary of Defense.

3. Mr. James J. Townsend, Principal Director for European and North Atlantic Treaty Organization Policy.

Brenda Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–21992 Filed 9–29–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Integrated Feasibility Report/Environmental Impact Statement for the Chatfield Reservoir, CO, Storage Reallocation Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Corps) is conducting a feasibility study to "reassign a portion of the storage space in the Chatfield Lake project to joint flood control-conservation purposes, including storage for municipal and industrial water supply, agriculture, and recreation and fishery habitat protection and enhancement," as authorized under Section 808 of the Water Resources Development Act of 1986. The

reallocated storage space would be filled using existing water rights. The Colorado Water Conservation Board (CWCB) is requesting the additional storage capacity from the Corps for a consortium of its users in the Denver metropolitan area. The Denver Water Department currently controls all the water rights that account for conservation storage within Chatfield Reservoir. The reservoir serves as the centerpiece for Chatfield State Park. Preliminary studies considered reallocating flood control storage for three storage scenarios reflected by three different raises in the multipurpose pool elevation, currently 5432 feet above mean sea level (m.s.l.): a rise to 5434 feet m.s.l., providing 2,900 acre-feet of storage; to 5437 feet m.s.l., providing 7,700 acre-feet of storage; and to 5444 feet m.s.l., providing 20,600 acre-feet of storage. Operational changes required with a reallocation of flood storage to joint flood control-conservation storage would produce effects on water supplies, downstream flood patterns, recreational opportunities, water quality, and fish and wildlife habitat.

DATES: Public scoping meetings will be held on:

1. October 26, 2004, 7 p.m. to 10 p.m., Littleton, CO.

2. October 27, 2004, 7 p.m. to 10 p.m., Greeley, CO.

FOR FURTHER INFORMATION CONTACT: Questions about the study elements should be directed to Mr. Martin D. Timmerwilke, Project Manager, Plan Formulation Section, Planning Branch, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, NE 68102–1618, phone: (402) 221–4020, email: *martin.d.timmerwilke@usace.army.mil.*

SUPPLEMENTARY INFORMATION: *1. Background.* The Corps operates the Chatfield Reservoir located near Denver, Colorado to provide flood protection for the greater metropolitan area. The reservoir is located on the main stem of the South Platte River; Plum Creek also contributes flow to the reservoir. Congress authorized construction of the reservoir under the Flood Control Act of 1950. The Corps began construction in 1967, and dam closure occurred in 1973. The authorized uses for Chatfield Reservoir are flood control, recreation, water supply storage, and fish and wildlife enhancement.

Under the Corps' current operating plan, conservation storage is filled by Denver Water Department water rights and used for municipal and industrial uses. The State of Colorado, Department of Natural Resources, Division of Parks and Outdoor Recreation has a park and recreation lease from the Corps for 5,381 land and water acres, including the area covered by Chatfield Reservoir. Recreation facilities at Chatfield State Park include hiking and biking trails, campgrounds, picnic areas, a stable, boat ramps, a beach, and a marina. Chatfield State Park receives over 1.5 million visitors annually and provides habitat for numerous wildlife species. The Corps has also leased portions of the Chatfield Project property to the Denver Botanical Gardens for public recreation and to the Colorado Division of Wildlife for fish production and rearing areas. Three irrigation ditches located at the base of the dam supply water to users in Aurora, Englewood and Highlands Ranch.

Population growth within the Denver, Colorado metropolitan area continues to create a demand on water suppliers. The CWCB, representing a number of smaller municipal water user groups, requested that the Corps consider reallocating space to accommodate additional conservation use. Reallocating storage capacity within the reservoir requires the preparation of a Reallocation Feasibility Report. The Feasibility Report will be completed in conjunction with an integrated environmental impact statement (EIS) developed for the project.

Chatfield Reservoir has a total gross storage of 350,043 acre-feet. This storage is distributed into four zones defined by elevation. The inactive zone extends from the bottom of the reservoir, elevation 5377 feet m.s.l. to 5385 feet m.s.l., with a storage volume of 28 acre-feet. The multipurpose zone extends from 5385 feet m.s.l. to 5432 feet m.s.l., with a storage volume of 27,018 acre-feet. The flood control zone extends from 5432 feet m.s.l. to 5500 feet m.s.l., with a storage volume of 206,729 acre-feet. The surcharge zone extends between 5500 feet m.s.l. to 5521.6 feet m.s.l., with a storage volume of 116,268 acre-feet.

Chatfield Reservoir is managed to maintain the level within the multipurpose pool from Memorial Day through Labor Day. Denver Water Department holds all of the rights for the water up to the top of multipurpose pool, 5432 feet m.s.l. The State Engineer's Office submits requests to the Corps for releases from the reservoir on behalf of Denver Water Department. Once the pool rises above 5432 feet m.s.l., the Corps is responsible for the management of water in the flood control pool. The Corps works to reduce the flood control pool as quickly as possible within the constraints established in Chatfield Reservoir's Operating Plan. Releases from Chatfield Reservoir are coordinated with releases from Cherry Creek and Bear Creek reservoirs. The Corps attempts to limit the releases so the flow of the South Platte River at the Denver gauge remains less than 5,000 cubic feet per second.

Operational changes would be required with a reallocation of flood control storage to joint flood control-conservation storage and would produce effects on water supplies, downstream flood patterns, recreational opportunities, water quality, and fish and wildlife habitat. In determining whether to reallocate storage within the reservoir and change operational regimes, the Corps must comply with requirements including but not limited to the Endangered Species Act, the National Environmental Policy Act, the National Historic Preservation Act, and the Clean Water Act.

2. Proposed Action. The Corps is studying the feasibility of reallocating some flood control storage capacity in Chatfield Reservoir to joint flood control-conservation purposes, which include water supply. The reallocation is needed to enable the CWCB to provide water to local users for municipal, industrial, agricultural, recreational, and fishery uses in response to population growth in the greater Denver metropolitan area.

3. Alternatives Considered. The Corps, working with the CWCB, has identified and conducted reservoir routing studies on three alternative increases in the multipurpose pool elevation for further consideration: A raise to 5434 feet m.s.l., providing 2,900 acre-feet of storage; to 5437 feet m.s.l., providing 7,700 acre-feet of storage; and to 5444 feet m.s.l., providing 20,600 acre-feet of storage. The three elevations considered in the preliminary study would be anticipated to have different levels of impacts on recreational facilities as well as on fish, wildlife and vegetation resources. The Corps' no action alternative will also be considered.

The three pool-raise alternatives initially identified would require changes to the operation of the reservoir, and would have different effects on the existing recreational facilities and use levels within Chatfield State Park. If the multipurpose pool is raised to 5434 feet m.s.l., recreation impacts could be mitigated without relocating the existing structures. Raising the multipurpose pool to 5437 feet m.s.l. would require expenditures to keep the existing recreational features operational. Raising the multipurpose pool to 5444 feet m.s.l. would require relocating most of the existing recreational facilities and infrastructure to other, mostly nearby, sites in

Chatfield State Park. These alternatives may also differ in the need for, and type of, modifications to existing project structures. The Corps has not yet defined specific operational regimes for the pool-raise alternatives. Additional alternatives, which could include different storage volumes and varying operational regimes, could be developed during the scoping and evaluation process.

The demand for water within a reallocated storage pool would depend on the holders of the water rights used to fill the storage space. Potential users fall into one of four groups: Municipal water suppliers, entities requiring augmentation water, entities concerned with maintaining minimum instream flows in the South Platte River, and water users for municipal, industrial, and conjunctive uses. How the water within the reallocated storage pool would be withdrawn would depend on the objective of the water users. A preliminary study of user patterns evaluated five demand scenarios that corresponded to different target release schedules as follows:

a. Supplying municipal water, with release schedules based on historic data provided by Denver Water Department.

b. Augmenting out-of-priority depletions, primarily for irrigation.

c. Minimum in-stream flows throughout the year within the South Platte River.

d. Municipal, industrial, and conjunctive use of storage within Chatfield Reservoir combined with a groundwater source.

e. Mixed use, where the reallocated storage could be used for a combination of the above uses.

4. Scoping/Public Involvement. The scoping process will provide information about the reallocation study to the public and serve as a mechanism to solicit agency and public input on alternatives and issues of concern. Two public scoping meetings are currently planned. The specific locations of the meetings will be provided in news releases issued at least 2 weeks prior to the meetings. These meetings will be conducted in an informal setting designed to present information about the reallocation study and to answer questions and accept comments from the public. The Corps invites other Federal agencies, Native American Tribes, State and local agencies and officials, private organizations, and interested individuals to attend one of the scoping meetings and provide comments. Scoping comments will also be accepted by mail, phone, or e-mail during the preparation of the Draft Feasibility Report/Draft EIS. The Draft Feasibility Report/Draft EIS will be circulated for public review and comments. It is estimated that a Draft Feasibility Report/Draft EIS will be completed in 2006.

Candace M. Gorton,

Chief, Environmental, Economics, and Cultural Resources Section, Planning Branch.

[FR Doc. 04–21993 Filed 9–29–04; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Proposed San Clemente Dam Seismic Hazard Remediation Project—Carmel Valley, Monterey County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (USACE) has received an application for Department of the Army authorization from California-American Water Company (CAW) to deposit approximately 3,200 cubic yards of fill material into wetlands and other waters of the U.S. in association with remediating the safety hazards of an existing Dam on the Carmel River. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and in accordance with the National Environment Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In accordance with NEPA, USACE has determined that the proposed action may have a significant impact on the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement (EIS). A combined Environmental Impact Report (EIR)/EIS will be prepared with the USACE as Federal lead agency and the California Department of Water Resources, San Joaquin District (DWR) as the State lead agency under the California Environment Quality Act (CEQA). The basic purpose of the proposed actions is to provide Dam safety. The overall project purpose is to have San Clemente Dam meet current standards for withstanding a Maximum Credible Earthquake (MCE) and the Probable Maximum Flood (PMF) while providing fish passage at the Dam; maintaining a point of diversion to support existing water supply facilities, water rights and services; and minimizing impacts on CAW rate payers.

DATES: A public scoping meeting for this project will be held on November 4, 2004, from 6:30 to 8:30 p.m. at the Rancho Canada Golf Club, 4860 Carmel Valley Road, Carmel Valley, California. A public agency scoping meeting for this project will be held on November 9, 2004, 10 a.m. to 12 p.m. at the same location. You may mail comments to: Phelicia Thompson, U.S. Army Corps of Engineers, Regulatory Branch, 333 Market Street, 8th Floor, San Francisco, California 94105–2197.

FOR FURTHER INFORMATION CONTACT: Phelicia Thompson, 415–977–8452, or electronic mail: *Phelicia.M.Thompson @spd02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Background:* Approximately 2.4 million cubic yards of sediment have accumulated behind San Clemente Dam since it was constructed in the early 1920s. Engineering studies of San Clemente Dam were conducted in the 1990s to evaluate seismic safety at the request of the California Department of Water Resources Division of Safety of Dams (DSOD). These studies concluded that at the maximum water surface elevation of 537 feet (the height of the Dam's crest), the Dam might not be stable under the MCE. The Dam could suffer severe structural damage leading to the potential loss of the reservoir during a MCE. In addition, under the PMF the Dam could overtop and the downstream abutment area would be susceptible to excessive erosion, leading to a risk of Dam failure. Based on these findings, DSOD has required that the San Clemente Dam be brought into safety compliance to withstand seismic loading from a MCE on nearby faults and safely pass the PMF.

2. *Description of the Proposed Action:* Dam Strengthening. CAW has proposed to meet seismic safety needs for the Dam and protect against the effects of a PMF by thickening the downstream face of the Dam with concrete. A concrete batch plant would be installed on-site to manufacture the concrete needed. Sediment accumulated behind the Dam would be left in place. However, minor sediment removal may occur to ensure proper functioning of the existing water supply intake serving the upper Carmel Valley Village area. Water in the reservoir may need to be lowered to reduce loading behind the Dam (depending on sediment levels). Inflowing streams would be diverted around the work area and the plunge pool at the base of the Dam would be dewatered during the Dam thickening. This proposed action also includes replacing the existing ladder with a new fish ladder compliant with existing

National Marine Fisheries Service (NMFS) and California Department of Fish and Game (CDFG) criteria to provide fish passage. A tower crane would be staged at the base of the Dam to move construction materials from the batch plant to the Dam face and fish ladder. Access to the Dam would be improved by building a new road along the east side of the Carmel River, between the Old Carmel River Dam and the base of San Clemente Dam. The Dam thickening project would take an estimated four years to complete.

3. *Reasonable Alternatives:* In accordance with the requirements of Section 15124 of the State CEQA Guidelines and 40 CFR 1502.14, reasonable alternatives to the proposed action will be evaluated in the Draft EIR/EIS as listed below:

a. *Dam Notching Alternative.* This alternative would meet the need to reduce seismic safety risks by notching the Dam. The action would reduce the mass sufficiently to avoid catastrophic failure of the Dam during a MCE event. Notching would also be of sufficient size to prevent overtopping of the Dam during the PMF. The gates, piers and walkway at the top of the Dam would be removed and the Dam would be notched to an elevation of about 505 feet in the area of the present spillway bays. Sediment in the reservoir would to be removed down to the level of the notch. A new intake structure would be constructed to allow the Dam to continue serving the upper Carmel Valley Village area. A new access road would be constructed to connect Carmel Valley Road to the Carmel Valley Filter Plant, to bypass the Sleepy Hollow community and to improve safety for large construction equipment. In addition, road access from the filter plant to the Dam would be improved. The existing primitive road from the Old Carmel River Dam to the base of San Clemente Dam would be rebuilt to an elevation above winter flood levels. Both the Carmel River and San Clemente Creek would be diverted around the reservoir and Dam site and the reservoir would be dewatered each year during construction. Accumulated sediment would be removed from behind the Dam over two seasons by excavation with heavy equipment and transported from the reservoir by truck or via a conveyor belt system to a disposal area near the Carmel Valley Filter Plant. The existing fish ladder would be rebuilt compliant with existing NMFS and CDFG criteria to accommodate the lowered Dam elevation. The Carmel River channel in the inundation zone would be restored. The Dam notching project would take an estimated six years to complete, depending on the effects of annual precipitation upon the construction schedule.

b. *Dam Removal Alternative.* This alternative would eliminate seismic safety and flooding risks through the removal of the Dam and the accumulated sediment behind the Dam. A new access road would be constructed to connect Carmel Valley Road to the Carmel Valley Filter Plant, to bypass the Sleepy Hollow community and to improve safety for large construction equipment. In addition, road access from the filter plant to the Dam would be improved. The existing primitive road from the Old Carmel River Dam to the base of San Clemente Dam would be rebuilt to an elevation above winter flood levels. Both the Carmel River and San Clemente Creek would be diverted around the reservoir and Dam site and the reservoir would be dewatered each year during construction. Accumulated sediment would be removed from behind the Dam over three seasons by excavation with heavy equipment and transport from the reservoir by truck or via a conveyor belt system to a disposal area near the Carmel Valley Filter Plant. The existing Dam and fish ladder would be demolished and removed from the site. A new intake structure would be constructed to allow CAW to continue serving the upper Carmel Valley Village area. The river channel would be restored through the historic inundation zone. If the Dam and sediment were removed in stages, a trap and truck facility would need to be built and operated at the Old Carmel River Dam for at least three years. The Dam removal project would take an estimated seven years to complete, depending on the effects of annual precipitation upon the construction schedule.

c. *No Action Alternative.* Under this alternative, no changes to the existing Dam would be made. The Dam would be left in place with all its existing facilities, although the fish ladder would be replaced with a new ladder compliant with existing NMFS and CDFG criteria to provide fish passage. Most of the sediment would be left in place behind the Dam. The reservoir would continue to accumulate sediment at an average rate of about 15 acre-feet per year. Minor sediment removal may occur to maintain the existing water supply intake serving the upper Carmel Valley Village acre. The existing draw down ports in the Dam and the existing fish bypass facility would both likely remain operational until the reservoir fills with sediment. The existing road between the Carmel Valley Filter Plant and the Dam would be improved to provide access to the Dam site for fish ladder construction equipment and supplies.

4. *Scoping Process:* Pursuant to NEPA, the USACE must include a scoping process for the Draft EIS/EIR. Scoping preliminarily involves determining the scope of the issues to be addresses in the Draft EIR/EIS and identifying the anticipated significant issues for in-depth analysis. The scoping process includes public participation to integrate public needs and concerns regarding the proposed action.

a. *Public Involvement Program:* Venues for public comment on the proposed action will include: Scoping meetings to be held on November 4, 2004 in Carmel Valley; preparation of a Draft EIR/EIS; and receipt of public comment in response to the Draft EIR/EIS.

b. *Significant Issues to be Analyzed in Depth in the Draft EIR/EIS include:* Impacts to the aquatic environments; impacts to endangered species, including but not limited to the California red-legged frog and the California Central Coast steelhead; water quality; cultural resources; traffic, fish and wildlife resources; public safety, including downstream flooding; and other issues identified through the public involvement process and interagency coordination.

c. *Environmental Review/Consultation Requirements:* NEPA; Section 404 of the Clean Water Act; Section 401 of the Clean Water Act; Endangered Species Act; Magnusun-Stevens Act Provision—Essential Fish Habitat; Clean Air Act; National Historic Preservation Act.

d. *Scoping Meeting/Availability of Draft EIR/EIS:* The USACE will hold a public scoping meeting to provide information on the project and receive oral or written comments on the scope of the document. This scoping meeting for the project will be held at 6:30 p.m. to Thursday, November 4, 2004, at the Rancho Canada Gold Club, 4860 Carmel Valley Road, Carmel Valley, California. The Draft EIR/EIS is expected to be available for public review in winter of 2006.

Dated: September 21, 2004.

Calvin C. Fong,

Regulatory Branch Chief.

[FR Doc. 04–21994 Filed 9–29–04; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TS04–161–000, TS04–135–000, and TS04–210–000]

Gulfstream Natural Gas System, L.L.C.; Chandeleur Pipe Line Company; Sabine Pipe Line LLC; Notice of Extension of Time

September 23, 2004.

Gulfstream Natural Gas System, L.L.C. (Gulfstream), Chandeleur Pipe Line Company (Chandeleur), and Sabine Pipe Line LLC (Sabine) (together, Movants) filed respective motions for an extension of time to comply with section 358.4 of the Commission's regulations, 18 CFR 358.4(e)(5), that requires employees to attend training on the Standards of Conduct for Transmission Providers, as directed by Commission Order No. 2004–B. In their motions, Movants state that training that had been scheduled was postponed due to the complications and aftermath of Hurricane Frances and the potential threat presented by Hurricane Ivan. The requests also state that more time will allow the Movants to manage these storm related activities and take the necessary actions to be in compliance with Order No. 2004 and part 358.

Upon consideration, notice is hereby given that Gulfstream, Chandeleur, and Sabine are granted an extension of time to and including October 31, 2004, to comply with the requirements of Commission Order No. 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2420 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–003 and CP02–93–002]

AES Ocean Express LLC; Notice of Amendments to Certificate of Public Convenience and Necessity, Section 3 Authorization and Presidential Permit

September 23 2004.

Take notice that on September 9, 2004, as supplemented on September 15, 2004, and September 20, 2004, AES Ocean Express LLC (Ocean Express), Two Alhambra Plaza, Suite 1104, Coral Gables, Florida, 33134, filed in Docket No. CP02–90–003 an application to amend the certificate of public convenience and necessity that the Commission issued on January 29, 2004, in Docket Nos. CP02–90, *et al.* Ocean Express also filed in Docket No. CP02–93–002, an application to amend the Presidential Permit and Section 3 authorization that the Commission issued on January 29, 2004. Ocean Express's proposed amendments reflect the incorporation of tunnel construction methodology for the nearshore portion of its pipeline, as well as certain other design changes, for its natural gas pipeline between the United States and The Bahamas.

Ocean Express explains that the use of the tunnel construction methodology would allow it to construct the nearshore portion of its pipeline using an estimated 14,000 foot by 13 feet—7inch diameter earth-pressure balance tunnel, with certain minor route changes to accommodate the methodology, as opposed to the horizontal directional drills that the Commission has already approved. Ocean Express also proposes to increase the pipeline diameter from 24 inches to 26 inches and internally coat the pipeline, to allow for increased hourly flow rates. Ocean Express states that it is not proposing to increase the certificated capacity (842,000 Dth/day) of its pipeline. Additionally, Ocean Express proposes to install a pressure reducing station inside the tunnel to reduce the onshore Maximum Allowable Operating Pressure (MAOP) to 1480 psig or less, from the certificated MAOP of 2200 psig. Ocean Express proposes to amend the Presidential Permit and Section 3 authorization for the natural gas facilities at the Exclusive Economic Zone boundary between the United States and The Bahamas to increase the size of the pipe from 24 inches to 26 inches. Ocean Express requests a Commission decision on its amendment applications no later than November 30, 2004.

The amendments are on file with the Commission and open to public inspection. The filings may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any questions regarding the amendment may be directed to Julie Romaniw, AES Ocean Express LLC, Two Alhambra Plaza, Suite 1104, Coral Gables, FL 33134, (305) 444–4002.

Any person who was a party to Ocean Express's proceeding in Docket No. CP02–90, *et al.*, is automatically a party to Ocean Express's proceeding as amended by Docket Nos. CP02–90–003 and CP02–93–002. Otherwise, there are two ways to become involved in the Commission's review of this amendment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this amendment should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered concerning the amendment. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this amendment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the amendment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this amendment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the

Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 13, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2442 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–554–001]

Algonquin Gas Transmission, LLC; Notice Of Proposed Changes In FERC Gas Tariff

September 23, 2004.

Take notice that on September 16, 2004, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute First Revised Sheet No. 37, to become effective October 1, 2004.

The purpose of this filing is to correct a typographical error in Algonquin's August 31, 2004, filing in this docket, which reflected the fiscal year 2004 Annual Charge Adjustment (ACA) unit charge of $0.0019 per Dth included in the Gas Program Cost Analysis in accordance with section 154.402(a) of the Commission's regulations, as noticed by the Commission on August 6, 2004.

Algonquin states that copies of the filing were served upon all affected customers of Algonquin and interested state commissions, as well as on all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2434 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–600–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Take notice that on September 17, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, the following tariff sheets to become effective October 18, 2004:

Ninth Revised Sheet No. 225
Sixth Revised Sheet No. 276
Second Revised Sheet No. 348
Fifth Revised Sheet No. 359

CIG states that these tariff sheets are filed to revise references to marketing affiliates, electronic bulletin board (EBB) posting requirements, and discounting procedures in conformance with the Commission's Order No. 2004.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2441 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–599–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Take notice that on September 15, 2004, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets proposed to become effective October 15, 2004:

Second Revised Sheet No. 1
Third Revised Sheet No. 33

Fourth Revised Sheet No. 123

Destin states that this filing, made in accordance with the provisions of Section 154.204 of the Federal Energy Regulatory Commission's (Commission) regulations, is to make minor conforming changes to its Tariff to implement the requirements of Order No. 2004, and the Standards of Conduct regulations pursuant to part 358 of the Commission's regulations, 18 CFR part 358.

A copy of this filing is available for public inspection during regular business hours at Destin's offices at 200 WestLake Park Boulevard, Houston, Texas 77079–2696. In addition, copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2440 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–362–001]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Take notice that on September 16, 2004, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to become effective July 1, 2004 and August 1, 2004.

East Tennessee states that the purpose of this filing is to reflect changes in tariff sheets that were pending before the Commission at the time East Tennessee filed on July 1, 2004, and to reflect its corporate name change.

East Tennessee states that copies of this filing have been served upon all affected customers of East Tennessee and interested state commissions, as well as all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "e-Filing" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas

Secretary.

[FR Doc. E4–2431 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–594–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on September 14, 2004, certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of October 1, 2004.

ESNG states that the purpose of this filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under their Rate Schedules FSS and SST.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2438 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Garden Banks Gas Pipeline, LLC—Docket No. RP04–592–000

Mississippi Canyon Gas Pipeline, LLC—Docket No. RP04–595–000

Nautilus Pipeline Company, LLC—Docket No. RP04–596–000

Stingray Pipeline Company, LLC—Docket No. RP04–597–000

Take notice that the above-referenced pipelines tendered for filing their tariff sheets pursuant to Section 154.402 of the Commission's Regulations to reflect the Commission's change in the unit rate for the Annual Charge Adjustment (ACA) surcharge to applied to rates for recovery of 2004 Annual Charges pursuant to Order No. 472, in Docket No. RM87–3–000. The proposed effective date of the tariff sheets is October 1, 2004.

The above-referenced pipelines state that the purpose of their filings is to reflect the revised ACA effective for the twelve-month period beginning October 1, 2004. The pipelines state that their tariff sheets reflect a decrease of $.00021 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of $.0019 Dth as specified by the Commission in its invoice dated July 30, 2004, for the Annual Charge Billing—Fiscal Year 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

Anyone filing an intervention or protest must file a separate motion to intervene or protest in each docket.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time on September 30, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2436 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–593–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Take notice that on September 14, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective October 15, 2004:

Third Revised Sheet No. 100
Second Revised Sheet No. 101
First Revised Sheet No. 170
Second Revised Sheet No. 217

GTN states that these tariff sheets are being submitted to remove marketing affiliate references contained in GTN's Tariff and to make certain minor conforming changes to its Tariff to implement the requirements of Order Nos. 2004, *et seq*.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2437 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–432–001]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

September 23, 2004.

Take notice that on September 14, 2004, Guardian Pipeline, L.L.C. (Guardian) tendered for filing to become part of Guardian's FERC Gas Tariff, Original Volume No. 1, Substitute Third Revised Sheet No. 128 effective September 1, 2004.

Guardian states that this filing is made to comply with the Commission's Letter Order dated August 31, 2004, in Docket No. RP04–432.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2433 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

September 23, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of licenses.

b. *Project Nos.:* 2497–007, 2758–008, 2766–008, 2768–008, 2770–007, 2771–007, 2772–006, and 2775–006.

c. *Date Filed:* September 21, 2004.

d. *Applicants:* Harris Energy and Realty Corporation (Harris Energy, Transferor) City of Holyoke Gas & Electric Department (HG&E, Transferee).

e. *Name and Location of Projects:* The Mt. Tom Mill, Crocker Mill (A and B Wheels), Albion Mill (D Wheel), Albion Mill (A Wheel), Crocker Mill (C Wheel), Nonotuck Mill, Gill Mill (A Wheel), and Gill Mill (D Wheel) Hydroelectric Projects (FERC Project Nos. 2497, 2758, 2766, 2768, 2770, 2771, 2772, and 2775, respectively), are located on the Holyoke Canal, a diversion of the Connecticut River in Hampden County, Massachusetts.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For Transferor: Ira H. Belsky, Harris Energy and Realty Corporation, 10 Harris Drive, P.O. Box 1280, Holyoke, MA 01041 and Fred E. Springer, Troutman Sanders LLP, 401 9th St., NW., Suite 1000, Washington, DC 20004–2134, (202) 274–2836. For Transferee: James M. Lavelle, City of Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, MA 01040 and Nancy J. Skancke, Law Offices of GKRSE, 1500 K St., NW., Suite 330, Washington, DC 20005, (202) 408–5400.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* October 25, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The applicants seek Commission approval to transfer the licenses for the projects listed in item e. from Harris Energy to HG&E.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number (P–2497 etc.) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named

documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2429 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–079—Idaho]

Idaho Power Company; Notice of Designation of Certain Commission Personnel as Non-Decisional

September 23, 2004.

Commission staff members James Hastreiter (Office of Energy Projects 503–552–2760; *james.hastreiter@ferc.gov*) and Merrill Hathaway (Office of General Counsel; 202–502–8825; *merrill.hathaway@ferc.gov*) are assigned to help resolve environmental and other issues associated with development of a settlement agreement for the Hells Canyon Project.

As "non-decisional" staff, Messrs. Hastreiter and Hathaway will not participate in an advisory capacity in the Commission's review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the relicense application.

Different Commission "advisory staff" are assigned to review any offer of settlement or settlement agreement, and to process the relicense application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the settlement and the relicense application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2427 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–135–000]

Order Instituting Section 206 Proceeding

Issued September 27, 2004.

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and all transmission owners providing access to their transmission facilities under Midwest Independent Transmission System Operator, Inc. or PJM Interconnection, L.L.C. Tariffs and all other public utility transmission owners in these regions (including the entities identified below):

Alliant Energy Corporate Services, Inc. on behalf of:
  Interstate Power and Light Company
Ameren Services Company on behalf of:
  Union Electric Company and
  Central Illinois Public Service Company
  Central Illinois Light Company
Aquila, Inc. (formerly UtiliCorp United, Inc.)
Cinergy Services, Inc.
  Cincinnati Gas & Electric Company
  PSI Energy, Inc.
  Union Light Heat & Power Company
City Water, Light & Power (Springfield, IL)
Dairyland Power Cooperative
FirstEnergy Corporation on behalf of:
  American Transmission Systems, Inc.
Great River Energy
GridAmerica LLC
Illinois Power Company
Indiana Municipal Power Agency
Indianapolis Power & Light Company
International Transmission Company
Hoosier Energy Rural Electric Cooperative
Lincoln Electric (Neb.) System
LG&E Energy Corporation on behalf of:
  Kentucky Utilities Company
  Louisville Gas & Electric Company
Michigan Electric Transmission Company, LLC
Michigan Public Power Agency
Minnesota Power, Inc.
Montana-Dakota Utilities Company
Northern Indiana Public Service Company
Northwestern Wisconsin Electric Company
Otter Tail Power Company
Southern Illinois Power Cooperative
Southern Indiana Gas & Electric Cooperative
Southern Minnesota Municipal Power Agency
Superior Water, Light & Power Company
Sunflower Electric Power Corporation
Wabash Valley Power Association, Inc.
Wolverine Power Supply Cooperative
Xcel Energy Services, Inc. on behalf of:
  Northern States Power Company (Minnesota)
  Northern States Power Company (Wisconsin)
Allegheny Electric Cooperative, Inc.
Allegheny Power
American Electric Power Service Corporation on behalf of:
  Appalachian Power Company
  Columbus Southern Power Company
  Indiana Michigan Power Company
  Kentucky Power Company
  Kingsport Power Company
  Ohio Power Company
  Wheeling Power Company
Atlantic City Electric Company
Baltimore Gas & Electric Company
Dayton Power and Light Company
Delmarva Power & Light Company
Dominion Virginia Power Company
Exelon Corporation on behalf of:
  Commonwealth Edison Company
  Commonwealth Edison Company of Indiana, Inc.
Jersey Central Power & Light Company
Metropolitan Edison Company
Old Dominion Electric Cooperative
PECO Energy Company
Pennsylvania Electric Company
Public Service Electric & Gas Company
PPL Electric Utilities Corporation
Potomac Electric Power Company
Rockland Electric Company
UGI Utilities, Inc.

1. In this order, we are instituting a Federal Power Act section 206[1] proceeding to implement a new long-term transmission pricing structure intended to eliminate seams in the PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator System, Inc. (Midwest ISO) regions, and establish a refund effective date of December 1, 2004. This order will provide the mechanism by which the Commission will implement a new pricing structure to replace existing through and out rates. This order benefits customers by ensuring a smooth transition in eliminating seams.

I. Background

2. In earlier orders in this proceeding, the Commission ordered the elimination of regional through and out rates between PJM and Midwest ISO regions effective April 1, 2004,[2] and also found unjust and unreasonable the through and out rates of individual public utilities that had not yet become members of PJM or the Midwest ISO effective April 1, 2004.[3] The Commission directed compliance filings to eliminate the through and out rates for new transactions, and allowed two-

[1] 16 U.S.C. 824e (2000).

[2] Midwest Independent Transmission System Operator, Inc., *et al.*, 104 FERC ¶ 61,105, *order on reh'g*, 105 FERC ¶ 61,212 (2003).

[3] Ameren Services Company, *et al.*, 105 FERC ¶ 61,216 (2003).

year transitional lost revenue recovery mechanisms, so-called Seams Elimination Charge/Cost Adjustments/ Assignments (SECAs), to be put in place effective April 1, 2004.[4] On December 17, 2003, the Commission clarified that the through and out rates were eliminated for reservations pursuant to requests made on or after November 17, 2003, for service commencing on or after April 1, 2004.[5]

3. Subsequently, the Commission provided time for the parties to participate in a stakeholder process to develop these transitional lost revenue recovery mechanisms. On February 6, 2004, noting that it had already allowed the parties some additional time for a stakeholder process, the Commission also established settlement judge procedures to further aid the parties in developing these transitional lost revenue recovery mechanisms.[6]

4. On February 4, 2004, the Chief Judge filed a report with the Commission on the parties' progress in the ongoing discussions, along with their agreement that the date for elimination of the through and out rates should be extended from April 1, 2004 to May 1, 2004, (but with the transition period continuing to run from April 1, 2004, *i.e.*, effectively shortening the transition period).[7] On February 6, 2004, the Commission accepted this agreement to extend the date for elimination of through and out rates to May 1, 2004, and so allowed the parties additional time to resolve matters consensually.[8]

5. On March 5, 2004, the Chief Judge filed a report and an agreement among the parties, noting that the parties had participated in fourteen full days of formal settlement negotiations (often involving over 100 participants), and that there had been numerous meetings involving individual participants or groups of participants. This resulted in an agreement, supported or joined in by 84 parties (some representing more than one utility) that was accepted by the Commission.[9]

6. This agreement established the going-forward principles and procedures that, would shorten the transition to the elimination of the through and out rates by seventeen months. This agreement retained the through and out rates until December 1, 2004, at which time they would be eliminated entirely. The agreement also provided for negotiations to continue to develop a long-term transmission pricing structure that eliminates seams in the PJM and Midwest ISO regions. The agreement provided that either one proposal or, if the parties were unable to agree to a single proposal, multiple proposals would be filed with the Commission on October 1, 2004, with a December 1, 2004 effective date.

7. On September 3, 2004, the Chief Judge issued a report [10] indicating that after further settlement and stakeholder conferences there was an impasse between two major groups of parties. The Chief Judge stated that it appeared there will be two competing proposals filed with the Commission on October 1, 2004. The Chief Judge added that additional meetings and conferences are planned in an attempt to come to further agreement. On September 16, 2004, the Chief Judge issued a further report [11] indicating that a further settlement conference had been held. He explained that, while the parties' discussions have successfully narrowed the issues and successfully narrowed the range of proposals to two, further discussions would not be productive. Accordingly, he terminated the settlement judge procedures.

II. Discussion

8. In its March 19 Order, which accepted the parties' agreement on going-forward principles and procedures, the Commission stated that "in no event will through and out rates remain in place beyond December 1, 2004 irrespective of whether there is an agreed-upon long-term transmission pricing structure." In addition, the Commission "obligate[d] itself to choose a replacement and to put that replacement in place on December 1, 2004 (subject to refund, if appropriate)."[12]

9. As noted above, the Chief Judge has reported that two alternative proposals for a long-term transmission pricing structure will likely be filed. However, the Commission anticipates that ultimately it will adopt a single long-term transmission pricing structure across the entire PJM and Midwest ISO regions. Consequently, in order to allow the Commission to adopt a single long-term transmission pricing structure, the Commission is instituting this section 206 proceeding to establish a just and reasonable long-term transmission pricing structure and is establishing a refund effective date of December 1, 2004. Doing so will ensure that the Commission has adequate authority to implement a long-term transmission pricing structure for all parties across the PJM and Midwest ISO regions. Following the filing of the two alternative proposals and comments on the proposals, the Commission will take further action in this proceeding.

10. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to the expiration of the 60 day period. In order to give maximum protection to customers, and consistent with our previous commitments on this matter, we will establish a refund effective date in Docket No. EL04–135–000 of December 1, 2004, the previously established effective date of the long-term transmission pricing structure.

11. Section 206 also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it failed to do so and shall state its best estimate of when it reasonably expects to make such a decision. In the circumstances of this proceeding, given that the parties' alternative proposals have not yet been filed, we cannot resolve this matter at this time. However, we estimate that we will be able to issue our initial order on these filings and in this proceeding prior to December 1, 2004, and, if we are not able to resolve this matter in that initial order, we estimate that we will be able to resolve this matter by July 31, 2005.

The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402 of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and

[4] *See supra* notes 1–2.

[5] Midwest Independent Transmission System Operator, Inc., *et al.*, 105 FERC ¶ 61,288 (2003).

[6] Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,105 (2004).

[7] Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 63,010 (2004).

[8] Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,106 (2004).

[9] Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,262 (2004) (March 19 Order).

[10] Midwest Independent Transmission System Operator, Inc., *et al.*, 108 FERC ¶ 63,034 (2004).

[11] Midwest Independent Transmission System Operator, Inc., *et al.*, 108 FERC ¶ 63,039 (2004).

[12] March 19 Order, 106 FERC ¶ 61,262 at P 19. The Commission also stated that it was "not obligated to adopt any particular long-term transmission pricing structure over another." *Id.* at P 19 n.19; *accord id.* at P 13 n.17.

Procedure and the regulations under the Federal Power Act (18 CFR chapter I), an investigation is hereby instituted in Docket No. EL04–135–000 concerning the justness and reasonableness of a long-term transmission pricing structure for the PJM and Midwest ISO regions that will be the successor to through and out rates, as discussed in the body of this order.

(B) The Secretary shall promptly publish a copy of the Commission's order in Docket No. EL04–135–000 in the **Federal Register**.

(C) The refund effective date in Docket No. EL04–135–000, established pursuant to section 206(b) of the Federal Power Act, will be December 1, 2004.

(D) Notices of intervention and motions to intervene in Docket No. EL04–135–000 are due on or before October 15, 2004.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–22016 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–412–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 23, 2004.

Take notice that on September 17, 2004, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68103–0330, filed in Docket No. CP04–412–000, a request pursuant to its blanket certificate issued September 1, 1982, under Docket No. CP82–401–000, for authority under Section 157.208 of the Commission's regulations (18 CFR 157.208) to reduce the maximum allowable operating pressure (MAOP) of the 16-inch diameter Omaha 2nd branchline, located in Sarpy and Douglas Counties, Nebraska.

Northern proposes to reduce the MAOP of the 16-inch diameter Omaha 2nd branchline between milepost 15.448 and milepost 20.700 from 537 psig to 360 psig. Northern states that the proposed reduction of the MAOP will still allow Northern to meet its current contractual firm obligations. Northern asserts that no construction activities will be required to facilitate the MAOP reduction.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates for Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests, comments and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages interveners to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2421 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–565–001]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Take notice that on September 15, 2004, Northwest Pipeline Corporation (Northwest) supplemented its August 31, 2004, filing in Docket No. RP04–565–000 and tendered the following pro forma tariff sheets for potential inclusion in its FERC Gas Tariff.

Third Revised Volume No. 1

Pro Forma Sheet No. 14
Pro Forma Sheet No, 231–C

Original Volume No. 2

Pro Forma Sheet No. 2.1

Northwest states that the purpose of this filing is to offer an alternative to the increased Evergreen Expansion incremental fuel surcharge included in its August 31, 2004, filing in Docket No. RP04–565–000.

Northwest states that a copy of this filing has been served upon all parties on the Commission's Official Service List in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "e-Filing" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2435 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–598–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 23, 2004.

Take notice that on September 15, 2004, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 15, 2004.

Second Revised Sheet No. 48
Second Revised Sheet No. 49

Pine Needle states that the purpose of the instant filing is to modify Pine Needle's billing provisions set forth in section 6 of the General Terms and Conditions of its tariff to provide that Pine Needle will render its bills electronically, unless a customer elects in writing to have bills rendered via U.S. mail.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2439 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–407–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

September 23, 2004.

Take notice that, on September 15, 2004, Transcontinental Gas Pipe Line Corporation (Transco) submitted Substitute First Revised Sheet No. 256A to its FERC Gas Tariff, Third Revised Volume No. 1, in response to the Commission Order issued on September 10, 2004 in Docket No. RP04–407–000. The proposed effective date of this tariff sheet is September 11, 2004.

Transco states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2432 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–159–000, et al.]

DTE Georgetown, LP, et al.; Electric Rate and Corporate Filings

September 22, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. DTE Georgetown, LP

[Docket No. EC04–159–000]

Take notice that on September 20, 2004, DTE Georgetown, LP (Georgetown), submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Georgetown will sell to the Indiana Municipal Power Agency in an asset transfer the jurisdictional facilities associated with 142 MW of electric generating capacity at Georgetown's 213 MW electric generating facility in Indianapolis, Indiana.

Comment Date: 5 p.m. eastern standard time on October 12, 2004.

2. MidAmerican Energy Company

[Docket No. ER04–627–002]

Take notice that on September 16, 2004, MidAmerican Energy Company (MidAmerican), submitted a compliance filing pursuant to the Commission's letter order issued August 17, 2004 in Docket No. ER04–627–001.

MidAmerican states that it has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission, South Dakota Public Utilities Commission, and NPPD.

Comment Date: 5 p.m. eastern standard time on October 7, 2004.

3. California Independent System Operator Corporation

[Docket No. ER04–938–002]

Take notice that on September 16, 2004, the California Independent System Operator Corporation (ISO) submitted a compliance filing pursuant to the Commission's order issued August 17, 2004 in Docket No. ER04–938–000, 108 FERC ¶ 61,193.

ISO states that this filing has been served upon all parties on the official service list for the captioned docket. In addition, the ISO has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern standard time on October 7, 2004.

4. PJM Interconnection, L.L.C.

[Docket No. ER04–1063–001]

Take notice that on September 17, 2004, PJM Interconnection, L.L.C. (PJM), supplemented its July 29, 2004 filing in Docket No. ER04–1063–000 an executed interconnection service agreement and an executed construction service agreement among PJM, Granger Energy of Morgantown, LLC, and PPL Electric Utilities Corporation.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region, and all parties on the official service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. eastern standard time on October 8, 2004.

5. Pacific Gas and Electric Company

[Docket No. ER04–1230–000]

Take notice that on September 17, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter of Agreement (LOA) between PG&E and Sacramento Municipal Utility District (SMUD) designated as Original Sheet Nos. 262A and 262B under PG&E's Second Revised Rate Schedule FERC No. 136. Parties request an effective date of September 15, 2004.

PG&E states that these filings were served upon SMUD, the California Independent System Operator, and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern standard time on October 8, 2004.

6. Southwest Power Pool, Inc.

[Docket No. ER04–1232–000]

Take notice that on September 17, 2004, Southwest Power Pool, Inc. (SPP) submitted to the Commission to its Open Access Transmission Tariff, FERC Electric Tariff Fourth Revised Volume No. 1. intended to implement a rate change for Southwestern Public Service Company. SPP requests an effective date of November 1, 2004.

SPP states that it has served a copy of its transmittal letter on each of its Members and Customers. SPP also states that a complete copy of this filing will be posted on the SPP Web site *http://www.spp.org* and is also being served on all affected state commissions.

Comment Date: 5 p.m. eastern standard time on October 8, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2419 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2726–012—Idaho]

Idaho Power Company; Notice of Availability of Final Environmental Assessment

September 23, 2004.

In accordance with the National Environmental Policy Act of 1969 and Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has reviewed the application for a subsequent license for the Malad Hydroelectric Project located on the Malad River, Gooding County, Idaho, near the town of Hagerman, and has prepared a final environmental assessment (EA) for the project. The project does not occupy any federal or tribal lands. In the final EA, the Commission staff has analyzed the potential environmental effects of the existing project and has concluded that relicensing the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the final EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The final EA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the eLibrary (formerly FERRIS) link. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

For further information, contact John Blair at 202–502–6092.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2430 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 23, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12523–000.

c. *Date filed:* July 20, 2004.

d. *Applicant:* Intermountain Hydro Resources.

e. *Name of Project:* Coffeeville L & D Hydroelectric Project.

f. *Location:* On the Tombigbee River, in Choctaw County, Alabama. The U.S. Army Corps of Engineers' (Corps) Coffeeville Lock and Dam will be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas A. Spaulding, Intermountain Hydro Resources c/o Spaulding Consultants, LLC, 1433 Utica Avenue, Suite 162, Minneapolis, MN 55416, (952) 544–8133.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12523–000) on any comments, protest, or motions filed.

k. *Description of Project:* The proposed project using the existing Corps' Coffeeville Lock and Dam and would consist of; (1) A proposed powerhouse containing several generating units having a total installed capacity of 9.55 megawatts, (2) a proposed tailrace, (3) a proposed 12.7 or 14.7 kilovolt transmission line, and (4) appurtenant facilities. The project would have an annual generation of 62 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2423 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 23, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12524–000.

c. *Date filed:* July 20, 2004.

d. *Applicant:* Intermountain Hydro Resources.

e. *Name of Project:* Demopolis Lock and Dam Project.

f. *Location:* On the Tombigbee River, in Marengo County, Alabama. The Corps of Engineers' Demopolis Lock and Dam will be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas A. Spaulding, Intermountain Hydro Resources, c/o Spaulding Consultants, LLC, 1433 Utica Avenue, Suite 162, Minnesota, MN 55416, (952) 544–8133.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing Corps of Engineers Demopolis Lock and Dam and would consist of; (1) A proposed powerhouse containing several generating units having a total installed capacity of 23.7 megawatts, (2) a proposed tailrace, (3) a proposed 12.7 kilovolt transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 155 gigawatt-hours that would be sold to a local utility.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2424 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 23, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12528–000.

c. *Date filed:* August 6, 2004.

d. *Applicant:* Fox River Paper Company.

e. *Name of Project:* Risingdale Hydroelectric Project.

f. *Location:* On the Housatonic River, in Berkshire County, Massachusetts. No federal facilities or land would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Matthew Rubin, Spruce Mountain Design, 26 State Street, Montpelier, VT 05602, (802) 223–7141.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12528–000) on any comments, protest, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) An existing 130-foot-long, 22-foot-high concrete and timber crib dam; (2) an existing impoundment having a surface area of 40 acres with negligible storage and a normal water surface elevation of 716 feet msl; (3) the existing intake structure; (4) an existing 200-foot-long, 14-foot-diameter steel penstock; (5) a proposed powerhouse containing one generating unit having an installed capacity of 1,100 kW; and (6) appurtenant facilities. The project would have an annual generation of 4.3 GWh that would be sold to a local utility. The proposed project would operate in a run-of-river mode.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to

have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2425 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 23, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

(a) *Type of Application:* Preliminary Permit.

(b) *Project No.:* 12529–000.

(c) *Date filed:* August 13, 2004.

(d) *Applicant:* Delta Dam Hydroelectric Company LLC.

(e) *Name of Project:* Delta Dam Hydroelectric Project.

(f) *Location:* On the Mohawk River, in Oneida County, New York. No federal facilities or land would be used.

(g) *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

(h) *Applicant Contact:* Mr. M. Clifford Phillips, agent for Delta Dam Hydroelectric Company LLC, Advanced Hydro Solutions LLC, 150 North Miller Road, Suite 450 C, Fairlawn, OH 44333, (330) 869–8453.

(i) FERC Contact: Robert Bell, (202) 502–6062.

(j) Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12529–000) on any comments, protest, or motions filed.

(k) *Description of Project: The proposed project would consist of:* (1) An existing 1,000-foot-long, 106-foot-high concrete dam; (2) an existing impoundment having a surface area of 2,482 acres with storage capacity of 55,310 acre-feet and a normal water surface elevation of 550 feet msl; (3) a proposed intake structure; (4) two proposed 30-foot-long, 5.5-foot-diameter steel penstocks; (5) a proposed powerhouse containing two generating units having an installed capacity of 2,000 kW; (6) a proposed Transmission line; and (7) appurtenant facilities. The project would have an annual generation of 10 GWh that would be sold to a local utility.

(l) *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

(m) Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

(n) *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

(o) *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

(p) *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

(q) *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

(r) *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take. the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

(s) Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

(t) *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2426 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

September 23, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2232–475.

c. *Date Filed:* September 14, 2004.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC 28201–1006; 704–382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Kate DeBragga at (202) 502–8961, or by e-mail: *Kate.DeBragga@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 25, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–475) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, has requested Commission approval to lease 0.491 acres of project lands for non-project use. Duke Power proposes to lease these lands to Black Forest on Lake James, LLC, for the construction of a commercial/residential marina facility and a canoe launch. The marina will consist of one cluster dock with 14 boating dock locations. The marina will include a steel frame, treated wood deck, and floats made of plastic cells. The dock will be constructed offsite and floated into place. Reflectors will be installed on the dock; no artificial lighting is proposed. The canoe launch will consist of a stationary dock with a wide ramp leading to a floating dock. No dredging is proposed. The cluster dock and canoe launch will provide access to Lake James for residents of the Black Forest development, located in McDowell County, North Carolina.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2428 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation In Conference Call Between California Independent System Operator Corporation and Market Participants

September 23, 2004.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may participate in the conference call between the California Independent System Operator Corporation and its stakeholders on September 24, 2004, to discuss issues pertaining to the status of the scheduled refund re-runs.

The discussion may address matters at issue in the following proceedings:

San Diego Gas & Electric Co. v. *Sellers of Energy & Ancillary Serv., et al.* Docket Nos., EL00–95–000, EL00–98–000, *et al.*

California Independent System Operator Corporation, Docket No. ER03–746–000, *et al.*

The conference call will begin at 12 noon p.d.t. and will last for approximately 1 hour.

For more information contact Shawn Bennett, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–8930 or *shawn.bennett@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–2422 Filed 9–29–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0310; FRL–7679–6]

Worker Protection Standard Training and Notification; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Worker Protection Standard Training and Notification" (EPA ICR No. 1759.04, OMB No. 2070–0148). This is a request to renew an existing ICR that is currently approved and due to expire February 28, 2005. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0310 must be received on or before November 29, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nathanael R. Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address:*martin.nathanael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you an employee in a farm, forest, nursey, or greenhouse. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural employers - farms.
- Support activities for agriculture and forestry (NAICS 115), e.g., agricultural employers - greenhouses and forestry.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 170, Worker Protection Standard (WPS). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

A. Docket

EPA has established an official public docket for this action under docket ID number OPP–2004–0310. 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.

B. 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'selectronic 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 II.A. 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.

III. How Can I Respond to this Action?

A. 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 III.B. 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–2004–0310. 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–2004–0310. 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 III.A. 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–2004–0310.

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–2004–0310. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. 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.**

C. 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 yourviews.

4. If you estimate potential burden or costs, explain how you arrived at the estimate thatyou provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Worker Protection Standard Training and Notification

ICR numbers: EPA ICR No. 1759.04, OMB Control No. 2070–0148

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire on February 28, 2005.

Abstract: EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The WPS, codified at 40 CFR part 170, established requirements to protect agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries, and in greenhouses. EPA regulations in 40 CFR part 170 contain the standard and workplace practices, which are designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides (restricted entry interval); basic safety training (and voluntary training verification) and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance. The training verification program facilitates compliance with the training requirements by providing a voluntary method for employers to verify that the required safety information has been provided to workers and handlers. This renewal ICR estimates the third party response burden from complying with the WPS requirements. Information is exchanged between agricultural employers and employees at farm, forest, nursery and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is 2,293,364 millions hours valued at $117,442,454 million. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Agricultural workers, pesticide handlers, employers in farms, nurseries, forestry, and greenhouse establishments.

Estimated total number of potential respondents: 3,245,393.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 3.

Estimated total annual burden hours: 2,293,364.

Estimated total annual burden costs: $117,442,454.

VI. Are There Changes in the Estimates from the Last Approval?

This ICR will decrease the burden in the previous ICR (an estimated total of 2,294,625 hours) by 1,261 hours to provide the new total estimated burden of 2,293,264 hours. This decrease represents an adjustment to the burden estimate, and is due to the removal of the cut rose exception from the burden estimate.

The cost estimates provided in this ICR are approximately $22.3 million more than the cost provided in the previous ICR due to increased wage rates use for calculating the costs associated with the burden hour impacts.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: September 23, 2004.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–21939 Filed 9–29–04; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7822–2]

Status of Motor Vehicle Budgets in Submitted State Implementation Plan for Transportation Conformity Purposes; Metropolitan Washington DC Area (DC–MD–VA) Notice of Withdrawal of Adequacy of Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of adequacy.

SUMMARY: EPA is announcing that it has withdrawn its June 22, 2000 adequacy finding on the 2015 and 2020 outyear motor vehicle emission budgets (MVEBs) for the Metropolitan Washington DC area. EPA has withdrawn the June 22, 2000 adequacy finding because the District of Columbia (DC), State of Maryland (MD), and the Commonwealth of Virginia (VA), collectively referred to as the three jurisdictions, withdrew the state implementation plan (SIP) submissions containing those MVEBs. Those SIP revisions are no longer pending before EPA. On August 26, 2004, EPA sent letters to the three jurisdictions withdrawing the June 22, 2000 adequacy finding of the 2015 and 2020 outyear MVEBs. EPA's withdrawal of its June 22, 2000 adequacy finding means that the 2015 and 2020 outyear MVEBs are no longer available for transportation conformity purposes. This withdrawal of the June 22, 2000 adequacy finding has no effect whatsoever on EPA's more recent adequacy finding of December 9, 2003, which declared the MVEBs of the three jurisdictions' 2005 Rate of Progress Plan and 2005 revised Attainment Demonstration Plan submissions adequate for conformity purposes. That December 9, 2003 adequacy finding stands and the MVEBs of the 2005 Rate of Progress Plan and 2005 revised Attainment Demonstration Plan remain available for transportation conformity determinations.

DATES: EPA's withdrawal of the June 22, 2000 adequacy finding was made in letters dated August 26, 2004 from EPA Region III to the three jurisdictions. This August 26, 2004 withdrawal of the June 22, 2000 adequacy finding is effective on October 15, 2004.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–3335 or by e-mail at *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document the term "MVEBs" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The term "the three jurisdictions" refers collectively to the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. The word "SIP" in this document refers to the revised attainment plan for the Metropolitan Washington DC area submitted to EPA as SIP revisions by the Commonwealth of Virginia, the District of Columbia, and State of Maryland on March 22, 2000, March 22, 2000, and March 31, 2000, respectively. These SIP revision submittals identified outyear MVEBs for 2015 and 2020.

I. Background

The State of Maryland, the Commonwealth of Virginia, and District of Columbia by letters dated March 2, 2004, March 10, 2004, and March 10, 2004, respectively, withdrew the previously submitted SIPs listed in the table below:

State	SIP title	Original SIP submission date
Maryland	State Implementation Plan (SIP) Revision Phase II Attainment Plan for the DC–MD–VA Nonattainment Area Establishing Outyear Mobile Emissions Budgets for Transportation Conformity.	March 31, 2000.
Virginia	Plan amendment which establishes motor vehicle emissions budgets for 2015 and 2020 consistent with the Phase II Ozone Attainment Plan.	March 22, 2000.
Washington, DC	Proposed Revision to State Implementation Plan (SIP) Revision, Phase II Attainment Plan for the DC–MD–VA Nonattainment Area Establishing Out-year Mobile Emissions Budgets for Transportation Conformity.	March 22, 2000.

These SIP withdrawals by the three jurisdictions were effective on April 30, 2004. The withdrawn SIP submissions had proposed new MVEBs for the outyears 2015 and 2020. In letters dated June 22, 2000 from Judith Katz, Air Director, EPA, Region III to the three jurisdictions, EPA had found these MVEBs adequate for transportation conformity purposes. That June 22, 2000 adequacy finding was announced in the **Federal Register** on July 3, 2000 (65 FR 41067). It is important to note that while EPA had made an adequacy finding for these budgets, they were never approved as SIP revisions by EPA. Hence, there is no SIP rulemaking required to be withdrawn by EPA in regard to these outyear MVEBs.

Because the MVEBs EPA found adequate on June 22, 2000 were contained in the SIP submissions that have been withdrawn by the three jurisdictions, those MVEBs can no longer be considered adequate for transportation conformity purposes. EPA, therefore, sent letters on August 26, 2004 to the three jurisdictions withdrawing the June 22, 2000 adequacy finding. EPA has withdrawn its June 22, 2000 adequacy finding without prior notice and comment because adequacy findings are not considered rulemakings subject to the procedural requirements of the Administrative Procedures Act. In addition, EPA does not believe notice through EPA's conformity website is necessary in advance because the withdrawn SIPs are no longer pending before EPA for consideration. Consequently, further public comment would be unnecessary and not in the public interest. By sending the August 26, 2004 letters to the three jurisdictions, EPA has also withdrawn all statements and comments previously made regarding its June 22, 2000 adequacy finding of the MVEBs budgets for transportation conformity purposes.

This is an announcement of EPA's withdrawal of its June 22, 2000 adequacy finding. As previously explained, EPA withdrew this adequacy finding in letters dated August 26, 2004 from Judith M. Katz, Director, Air Protection Division, EPA Region III to the three jurisdictions. The effective date of this withdrawal is October 15, 2004. This announcement will also be made on EPA's Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the "Conformity" button).

Dated: September 21, 2004.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–21929 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0320; FRL–7681–4]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review dimethoate issues related to hazard and dose response assessment.

DATES: The meeting will be held on November 30 and December 1, 2004, from 8:30 a.m. to approximately 5 p.m., eastern time.

Comments: The deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before October 12, 2004.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington, VA 22209. The telephone number for the Holiday Inn Rosslyn at Key Bridge is (703) 807–2000.

Comments. Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0320 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Myrta Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8498; fax number: (202) 564–8382;

e-mail addresses: *christian.myrta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attemptedto 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 DFO 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–2004–0320. 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/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available as soon as possible, but no later than mid-November 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be availableelectronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

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 EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy 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 (preferred), through hand delivery/courier, or by mail. 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. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0320.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–

2004–0320. 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 deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. 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 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–2004–0320. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please 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–2004–0320.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that s support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. 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.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0320 in the subject line on the first page of yourrequest.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, November 22, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, November 15, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Developmental neurotoxicity studies, veterinary pathology/animal studies (pup rearing issues), cholinesterase inhibition, toxicity adjustment factors, and dermal absorption. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 12, 2004. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the needs of the FIFRA SAP and includes consideration of such issues as adequately covering the areas of expertise (including the different scientific perspectives within each discipline) necessary to address the Agency's charge questions. In addition, ad hoc members of the FIFRA SAP must be available to fully participate in the review; they must not have any conflicts of interest or appearance of lack of impartiality; and they must be independent and unbiased with respect to the matter under review. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal Department or agency or their employment by a Federal department or agency (except the EPA). In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting more than 10 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality, and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review dimethoate issues related to hazard and dose response assessment. As part of tolerance reassessment activities underway at EPA's Office of Pesticide Programs as mandated by the FQPA (1996), EPA is developing a Registration Eligibility Decision document for dimethoate, an organophosphate pesticide. The purpose of this SAP meeting is to solicit comment on aspects of the dimethoate hazard and dose response assessment. In particular, the discussion will focus on the results from the developmental neurotoxicity and cross-fostering studies performed with dimethoate; and dermal absorption of dimethoate.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 21, 2004.

Thomas McClintock

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 04–21938 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0116; FRL–7683–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 9, 2004 to September 10, 2004, consists of the PMNs, and TME both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0116 and the specific PMN number or TME number, must be received on or before November 1, 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: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 OPPT–2004–0116. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME 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 OPPT–2004–0116. 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 *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0116 and PMN Number or TME Number. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20040116 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 9, 2004 to September 10, 2004, consists of the PMNs and TME both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TME both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. .

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 97 PREMANUFACTURE NOTICES RECEIVED FROM: 08/09/04 TO 09/10/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0791	08/09/04	11/06/04	CIBA Specialty Chemicals Corporation	(S) Wetting agent for inorganic fillers and pigments in unsaturated polyesters	(G) Polyether phosphonate
P–04–0792	08/09/04	11/06/04	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Halo substituted hydroxy nitrophenyl amide
P–04–0793	08/09/04	11/06/04	CBI	(G) Component of a mixture for highly dispersive applications.	(G) Essential oil
P–04–0795	08/10/04	11/07/04	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane polymer
P–04–0796	08/10/04	11/07/04	CBI	(G) Synthetic lubricant base stock	(G) Polyol ester
P–04–0797	08/10/04	11/07/04	CBI	(G) Open non-dispersive (coatings resin)	(G) Poly acrylic dispersion peroxide initiated poly acrylic esters with amine salt.
P–04–0798	08/10/04	11/07/04	CBI	(G) Open non-dispersive (crosslinker)	(G) Hydrogenated mdi based polyurethane prepolymer blocked with diethylmalonate
P–04–0799	08/10/04	11/07/04	CBI	(G) Open non-dispersive (reactant diluent)	(G) Glycidyl derivatives with adipic acid.
P–04–0800	08/10/04	11/07/04	Cytec Industries Inc.	(G) Antiscalant	(G) Modified styrene polymer

I. 97 PREMANUFACTURE NOTICES RECEIVED FROM: 08/09/04 TO 09/10/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0801	08/10/04	11/07/04	CBI	(G) Resin solution additive	(G) Aluminum alkoxide complex
P–04–0802	08/10/04	11/07/04	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane polymer
P–04–0803	08/12/04	11/09/04	E.I. Du pont De Nemours and Company Inc.	(G) Molding resin	(G) Aromatic and aliphatic polyamide
P–04–0804	08/12/04	11/09/04	E.I. Du pont De Nemours and Company Inc.	(G) Intermediate raw material for polymer production	(G) Salt of amine with aromatic acid
P–04–0805	08/12/04	11/09/04	CBI	(G) Cleaner additive	(G) Homopolymer of amino-substituted methacrylic acid
P–04–0806	08/13/04	11/10/04	CBI	(G) Friction modifier lubricant additive	(G) Phosphonic acid, alkyl-, alkyl ester
P–04–0807	08/13/04	11/10/04	Solutia Inc	(S) Scale inhibitor for industrial water treatment; scale inhibitor for oil field water treatment	(S) Inulin, carboxymethyl ether, sodium salt
P–04–0808	08/16/04	11/13/04	CBI	(G) High temperature resistant machine seals	(G) Aromatic thermoplastic polyurethane
P–04–0809	08/16/04	11/13/04	CBI	(G) Open, non-dispersive use.	(G) Polyester urethane
P–04–0810	08/16/04	11/13/04	Clariant LSM (America) Inc.	(S) Insecticide intermediate	(G) Alkylated aromatic isothiocyanate
P–04–0811	08/16/04	11/13/04	CBI	(G) Industrial coating	(S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro-.omega.-hydroxy-, polymer with 2,4-diisocyanato-1-methylbenzene, 2-hydroxyethyl acrylate-blocked
P–04–0812	08/16/04	11/13/04	Gelest, Inc.	(S) Coversion to corresponding methyl ester; research	(S) Silane, dichloromethyl[1-(methylphenyl)ethyl]-
P–04–0813	08/16/04	11/13/04	Gelest, Inc.	(S) Protective and life extending fluid for underground power cables; silicone polymers; surface treatment	(S) Silane, dimethoxymethyl[1-(methylphenyl)ethyl]-
P–04–0814	08/18/04	11/15/04	Global Matrechs, Inc.	(G) Nonisocyanate polyurethane	(G) Hybrid nonisocyanate polyurethane
P–04–0815	08/17/04	11/14/04	Johnson Polymer, LLC	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–04–0816	08/17/04	11/14/04	CBI	(G) Highly dispersive use	(G) Disubstituted furanone
P–04–0817	08/19/04	11/16/04	CBI	(G) Component of mixture for highly dispersive applications.	(G) Trimethyl acyclic alkenones
P–04–0818	08/19/04	11/16/04	CBI	(G) Resin coating	(G) Urethane acrylate
P–04–0819	08/19/04	11/16/04	CBI	(S) Resin modifier for low voc coatings	(G) Oil / phenolic modified resin
P–04–0820	08/18/04	11/15/04	CBI	(G) Water reducer in concrete	(G) Partly esterified and amidated poly (methacrylic acid) in water
P–04–0821	08/19/04	11/16/04	CBI	(S) Polymer for use in electrodeposition coatings	(G) Amine functional epoxy resin salted with an organic acid
P–04–0822	08/19/04	11/16/04	CBI	(S) Polymer for use in electrodeposition coatings	(G) Amine functional epoxy resin salted with an organic acid
P–04–0823	08/19/04	11/16/04	CBI	(S) Polymer for use in electrodeposition coatings	(G) Amine functional epoxy resin salted with an organic acid
P–04–0824	08/19/04	11/16/04	CBI	(S) Polymer for use in electrodeposition coatings	(G) Amine functional epoxy resin salted with an organic acid
P–04–0825	08/19/04	11/16/04	CBI	(S) Polymer for use in electrodeposition coatings	(G) Amine functional epoxy resin salted with an organic acid
P–04–0826	08/19/04	11/16/04	CBI	(S) Polymer for use in electrodeposition coatings	(G) Amine functional epoxy resin salted with an organic acid
P–04–0827	08/19/04	11/16/04	CBI	(G) Paint and coating additive, open, non-dispersive use	(G) Diimidazo(substituted)triphenodioxazine-(substituted)dione, (substituted)dichloro, (substituted)diethyl, (substituted)tetrahydro
P–04–0828	08/19/04	11/16/04	CBI	(G) Paint and coating additive, open, non-dispersive use	(G) Diimidazo(substituted)triphenodioxazine-(substituted)dione, (substituted)dichloro, (substituted)tetrahydro, (substituted)dimethyl

I. 97 PREMANUFACTURE NOTICES RECEIVED FROM: 08/09/04 TO 09/10/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0829	08/19/04	11/16/04	CBI	(G) Paint and coating additive, open, non-dispersive use	(G) Diimidaz-o(substituted)triphenodioxazine-(substituted)dione, (substituted)dichloro, (substituted)ethyl, (substituted)tetrahydro, (substituted)methyl
P–04–0830	08/20/04	11/17/04	CBI	(G) Reinforcing filler for rubber products	(G) Alkoxysilane modified silica
P–04–0831	08/24/04	11/21/04	CBI	(G) Coating material	(G) Aliphatic soluble acrylic polymer on the basis of isobutyl methacrylate
P–04–0832	08/24/04	11/21/04	Bedoukian Research, Inc.	(S) Fragragance uses as per federal food drug cosmetic act; flavor uses as per federal food drug cosmetic act; fragrance uses; scented papers, detergents, candles, etc.	(S) Bicyclo[2.2.1]heptan-2-ol, 2-ethyl-1,3,3-trimethyl-
P–04–0833	08/24/04	11/21/04	CBI	(S) Component of inks	(G) Alkyd resin
P–04–0834	08/24/04	11/21/04	Arch Chemicals, Inc.	(S) Used as an ingredient in 2-component polyurethane coatings	(G) Hdi biuret, hydroxyethyl methacrylate prepolymer
P–04–0835	08/24/04	11/21/04	CBI	(G) Electronics filler	(G) Functionalized collodial silica
P–04–0836	08/25/04	11/22/04	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of nylon fibers	(G) Substituted naphthalenesulfonic acid substituted azo phenyl amino triazin amino substituted phenyl compound
P–04–0837	08/26/04	11/23/04	CBI	(G) Open, non-dispersive (resin)	(G) Blocked aliphatic polyurethane resin
P–04–0838	08/26/04	11/23/04	CBI	(G) Insulation sizing	(G) Copolymer of acrylic acid and styrene
P–04–0839	08/26/04	11/23/04	CBI	(G) Insulation sizing	(G) Copolymer of acrylic acid and maleic acid
P–04–0840	08/26/04	11/23/04	CBI	(G) Insulation sizing	(G) Copolymer of maleic acid and styrene
P–04–0841	08/26/04	11/23/04	CBI	(G) Insulation sizing	(G) Copolymer of maleic acid and styrene
P–04–0842	08/26/04	11/23/04	CBI	(G) Insulation sizing	(G) Copolymer of maleic acid and styrene
P–04–0843	08/26/04	11/23/04	CBI	(G) Insulation sizing	(G) Copolymer of acrylic acid and styrene
P–04–0845	08/27/04	11/24/04	DIC International (USA), Inc.	(G) Polyester resin for coatings	(G) Alkenoic acid, polymer with alkyl methacrylate, alkenylbenzene, hydroxy alkyl methacrylate, poly (e-caprolactone) ester with hydroxy ester acrylate, peroxide-initiated.
P–04–0846	08/26/04	11/23/04	CBI	(G) Oil additive	(G) Polymer of vinyl heterocycles
P–04–0847	08/27/04	11/24/04	CBI	(G) Open non-dispersive (emulsion for leather treatment)	(G) Polyester-modified siloxanes and silicones
P–04–0848	08/27/04	11/24/04	CBI	(G) Petroleum additive	(G) Metal phenate/sulfonate complex
P–04–0849	08/27/04	11/24/04	CBI	(G) Petroleum additive	(G) Metal phenate/sulfonate/salicylate complex
P–04–0850	08/27/04	11/24/04	CBI	(G) High temperature resistant machine seals	(G) Aromatic thermoplastic polyurethane
P–04–0851	08/27/04	11/24/04	CBI	(G) Open non-dispersive (polyurethane)	(G) Ionically-modified aliphatic polyurethane - polyurea resin.
P–04–0852	08/30/04	11/27/04	CBI	(G) Resin coating	(G) Urethane acrylate
P–04–0853	08/31/04	11/28/04	CBI	(G) Open, nondispersive use; pigment additive	(G) Aluminum salt of a quinacridone derivative
P–04–0854	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0855	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0856	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0857	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0858	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0859	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Benzene alkylate
P–04–0860	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Benzene alkylate
P–04–0861	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Benzene alkylate
P–04–0862	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Benzene alkylate
P–04–0863	08/31/04	11/28/04	CBI	(G) Intermediate	(G) Benzene alkylate

I. 97 PREMANUFACTURE NOTICES RECEIVED FROM: 08/09/04 TO 09/10/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0864	08/31/04	11/28/04	Para-Chem	(G) Building materials	(G) Styrene,methyl methacrylate,butyl acrylate copolymer
P–04–0865	08/30/04	11/27/04	Virotec USA Inc.	(S) A slurry for reducing acidity and removing heavy metals in contaminated soils and water; a powder for reducing acidity and removing heavy metals in contaminated soils and water; a pellet for reducing acidity and removing heavy metals in contaminated soil and water	(S) Aluminum oxide (a1203), manufacturing. residues, red mud, neutralized, calcium and magnesium-containing
P–04–0866	08/31/04	11/28/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0867	08/31/04	11/28/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0868	08/31/04	11/28/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0869	08/31/04	11/28/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0870	08/31/04	11/28/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0871	08/31/04	11/28/04	DIC International (USA) , Inc.	(G) Alkyd resin for coatings	(G) Fatty acids, vegetable oil, polymers with aromatic carboxylic acid, alkanediol, alkanetriol, vegetable oil, tetra hydroxy alkane and carboxylic acid anhydride.
P–04–0872	09/01/04	11/29/04	CBI	(G) Open non-dispersive (footware additive)	(G) Aromatic polyester polyurethane prepolymer based on mdi
P–04–0873	09/01/04	11/29/04	CBI	(G) Coating material	(G) Acrylic polymer on the basis of isobutyl methacrylate
P–04–0874	09/01/04	11/29/04	CBI	(G) Coating material	(G) Acrylic polymer on the basis of methacrylates
P–04–0875	09/01/04	11/29/04	CBI	(G) Open non-dispersive	(G) Namox niobium ammonium oxalate
P–04–0876	08/30/04	11/27/04	Virotec USA Inc.	(S) Bauxite residue/red mud is the raw material for the production of bauxsol (tm) product.; (see associated final product pmn) 100% of the red mud diverted is converted to bauxsol (tm).	(S) Aluminum oxide (al2o3), manufacturing residue, red mud, neutralized, calcium and magnesium-containing
P–04–0877	09/02/04	11/30/04	CBI	(G) Conductive agent	(G) Substituted ppvs (poly-p-phenylen-vinylens)
P–04–0878	09/03/04	12/01/04	Mankiewicz coatings L.L.C.	(G) Resin for coatings.	(G) Hydroxyl-terminated; aliphatic polycarbonate
P–04–0879	09/03/04	12/01/04	CBI	(G) Primary usage: open, non-dispersive use; potential secondary uses: dispersive use	(G) petroleum distillated
P–04–0880	09/03/04	12/01/04	CBI	(G) Additive of ink for inkjet printer	(G) Carbomonocyclic carboxylic salt
P–04–0881	09/07/04	12/05/04	CBI	(S) Textile wet processing, surface treatment agent; homecare clothing softener for detergent	(G) Quaternary amino modified silicone-polyether copolymer
P–04–0882	09/07/04	12/05/04	CBI	(S) Textile wet processing, surface treatment agent; homecare clothing softener for detergent	(G) Quaternary amino modified silicone-polyether copolymer
P–04–0883	09/07/04	12/05/04	CBI	(S) Surface treatment additive in textile wet processing; clothing softener for detergent	(G) Quaternary amino modified silicone-polyether copolymer
P–04–0884	09/07/04	12/05/04	CBI	(G) Resin coating	(G) Urethane acrylate
P–04–0892	09/08/04	12/06/04	Henkel	(S) A component of adhesive formulations for general industrial bonding applications	(S) Hexanedioic acid, polymer with 2-butyl-2-ethyl-1,3-propanediol, 1,6-hexanediol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 1,3-butanediol- and 2-hydroxyethyl acrylate-blocked
P–04–0893	09/08/04	12/06/04	CBI	(G) Lubricant additive	(G) Alkyl dithiophosphoric acid disulfide
P–04–0894	09/10/04	12/08/04	Solutia Inc	(S) Scale inhibitor for industrial water treatment; scale inhibitor for oil field water treatment	(S) Inulin, carboxymethyl ether, sodium salt
P–04–0899	09/10/04	12/08/04	Reichhold, Inc.	(S) Intermediate for polyurethane resins	(S) Sunflower oil, ester with pentaerythritol
P–04–0900	09/10/04	12/08/04	CBI	(G) Polyurethane film	(G) Mdi based polyurethane polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICE RECEIVED FROM: 08/09/03 TO 09/10/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–04–0006	09/09/04	10/23/04	CBI	(G) Dispersant component	(G) Alkyl zirconate

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 34 NOTICES OF COMMENCEMENT FROM: 08/09/04 TO 09/10/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0691	08/16/04	08/10/04	(G) 2-anthracenesulfonic acid, 4-[[3-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-, compound with substituted amine polymer
P–01–0826	08/24/04	08/11/04	(G) Acrylamide alkyl propanesulfonic acid, vinyl alkyllactam, vinyl alkylamide, alkenamide, neutralized salt
P–02–0939	08/23/04	07/28/04	(G) Fatty acids, polymer with peroxide, alkyl acrylate, alkeneoic acid and alkenylbenzene.
P–02–0949	08/23/04	07/22/04	(G) Fatty acids, polymer with alicyclic alcohol, cyclic carboxylic acid, tetra hydroxy alkane and glycol.
P–03–0255	08/16/04	07/14/04	(G) Phenol and vinyltolvene based hydrocarbon resin.
P–03–0679	08/10/04	07/23/04	(G) Olefin acrylate copolymer
P–03–0854	08/11/04	08/05/04	(G) Polyurea
P–04–0035	08/19/04	08/09/04	(G) Cross-linked aminopolyamide resin
P–04–0077	08/18/04	07/21/04	(G) Acrylic copolymer
P–04–0078	08/18/04	07/21/04	(G) Acrylic copolymer
P–04–0124	08/19/04	07/29/04	(G) Polymethylene polyphenylene polyurea polymer
P–04–0126	08/16/04	07/23/04	(G) Diphosphoric acid, amine salt
P–04–0152	08/23/04	08/10/04	(G) Polyester acrylate
P–04–0187	08/26/04	08/19/04	(G) Modified polyester
P–04–0393	08/09/04	06/30/04	(G) Styrene acrylic copolymer
P–04–0417	08/16/04	08/04/04	(G) Polyfluoroalkylether
P–04–0427	08/09/04	07/09/04	(G) Aromatic ester
P–04–0440	08/24/04	07/08/04	(S) .alpha.-methylcyclohexanepropanol
P–04–0457	08/19/04	08/17/04	(G) Alkyl methacrylate copolymer
P–04–0466	08/11/04	07/17/04	(G) Acrylic solution polymer
P–04–0496	08/09/04	07/21/04	(G) Substituted phthalocyanine dye
P–04–0499	08/09/04	07/21/04	(G) Direct yellow azo dye
P–04–0507	08/09/04	07/21/04	(G) Acid red quinone dye
P–04–0511	08/23/04	08/17/04	(S) Terpenes and terpenoids, sunflower-oil
P–04–0526	08/13/04	08/12/04	(G) Acrylic polymer
P–04–0533	08/16/04	08/05/04	(G) Acrylic polymer
P–04–0546	08/25/04	08/11/04	(G) Polyurethane prepolymer, polyurethane hot melt adhesive
P–04–0548	08/19/04	08/04/04	(G) Pentaerythritol, mixed c7-c8 esters
P–92–0531	08/18/04	07/29/04	(G) Transition metal compound
P–92–0532	08/18/04	07/29/04	(G) Transition metal compound
P–93–0478	08/09/04	06/01/95	(G) Aromatic copolyamic acid
P–99–0258	08/13/04	08/05/04	(G) Cycloaliphatic amine adducts
P–99–0273	08/27/04	08/16/04	(G) Amidoamine
P–99–0529	08/18/04	05/10/04	(G) Polyurethane methacrylate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 21, 2004.

Anthony Cheatham,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–21940 Filed 9–29–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Previously Announced Date and Time: Tuesday, October 5, 2004. Meeting closed to the public.

This meeting was cancelled.

* * * * *

DATE AND TIME: Thursday, October 7, 2004 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2004–36: Mark Risley/Mark Risley for Congress.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–22054 Filed 9–28–04; 11:04 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 15, 2004.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Anthony S. DiSandro, Blue Bell, Pennsylvania; to acquire voting shares of PSB Bancorp, Inc., and thereby indirectly acquire voting shares of First Penn Bank, both of Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, September 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22007 Filed 9–29–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. The Tysan Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Blaine State Bank, Blaine, Minnesota.

2. United Bancorp, Ltd., Dickinson, North Dakota; to merge with Scandia American Bancorporation, Inc., and thereby indirectly acquire voting shares of Scandia American Bank and Trust, both of Stanley, North Dakota.

Board of Governors of the Federal Reserve System, September 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22008 Filed 9–29–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0937–0191]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired;

Title of Information Collection: Application packets for Real Property for Public Health Purposes;

Form/OMB No.: OS–0937–0191;

Use: State and local governments and nonprofit institutions use these applications to apply for excess/surplus, underutilized/unutilized and off-site government real property. These applications are used to determine if institutions/organizations are eligible to purchase, lease or use property under the provisions of surplus property program;

Frequency: Reporting monthly;

Affected Public: State, local, or tribal governments, not for profit institutions;

Annual Number of Respondents: 22;

Total Annual Responses: 22;

Average Burden Per Response: 200 hours;

Total Annual Hours: 4,400;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget,

Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0937–0191), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: September 21, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–21888 Filed 9–29–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0115]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 *Type of Information Collection Request:* Extension of a Currently Approved Collection;

Title of Information Collection: HHS Acquisition Regulation—Solicitation and Contracts;

Form/OMB No.: OS–0990–0115;

Use: Information is needed to evaluate feasibility of contractor(s) scientific or technical approach, management plan, and cost to accomplish the program or services required by the government.

Frequency: Recordkeeping, reporting;

Affected Public: State, local, or tribal governments and not-for-profit institutions;

Annual Number of Respondents: 5,357;

Total Annual Responses: 5,357;

Average Burden Per Response: 1 hour;

Total Annual Hours: 883,905;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer at the following address: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0115), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 21, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–21889 Filed 9–29–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Charles N. Rudick, Northwestern University: Based on the report of an investigation conducted by Northwestern University (NU Report) and additional analysis conducted by ORI in its oversight review, PHS found that Charles N. Rudick, Graduate Student, Department of Neurobiology and Physiology at NU (Respondent), engaged in scientific misconduct in research supported by National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH), grant R29 NS37324, "Estrogen-induced hippocampal seizure susceptibility," and National Institute of General Medical Sciences (NIGMS), NIH, grant T32 GM08061, "Cellular and Molecular Basis of Disease Training Program."

Specifically, PHS found that Mr. Rudick falsified illustrations in Photoshop pertaining to unpublished traces of electrophysiological recordings of inhibitory postsynaptic currents.

Mr. Rudick has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed for a period of three (3) years, beginning on September 14, 2004:

(1) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution which submits an application for PHS support for a research project on which the Respondent's participation is proposed or which uses the Respondent in any capacity on PHS supported research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent's duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution. Respondent agrees to ensure that a copy of the supervisory plan is also submitted to ORI by the institution. Respondent agrees that he will not participate in any PHS-supported research until such a supervision plan is submitted to and accepted by ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 04–21920 Filed 9–29–04; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0260]

Determination of Regulatory Review Period for Purposes of Patent Extension; AMEVIVE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for AMEVIVE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an

application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

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

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a biological drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product AMEVIVE (alefacept). AMEVIVE is indicated for the treatment of adult patients with moderate to severe chronic plaque psoriasis who are candidates for systemic therapy or phototherapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for AMEVIVE (U.S. Patent No. 5,547,853) from Biogen, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human biologic product had undergone a regulatory review period and that the approval of AMEVIVE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AMEVIVE is 2,104 days. Of this time, 1,618 days occurred during the testing phase of the regulatory review period, while 486 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective (21 U.S.C. 355(i))*: April 29, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 29, 1997.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: October 2, 2001. FDA has verified the applicant's claim that the biological license application (BLA) for Amevive (BLA 12536) was initially submitted on October 2, 2001.

3. *The date the application was approved*: January 30, 2003. FDA has verified the applicant's claim that BLA 12536 was approved on January 30, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,259 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written comments and ask for a redetermination by November 29, 2004. Furthermore, any interested person may petition FDA, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 29, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–21874 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2004M–0147, 2004M–0145, 2004M–0207, 2004M–0253, 2004M–0165, 2004M–0200, 2004M–0199, 2004M–0256, 2004M–0248, 2004M–0249, 2004M–0250, 2004M–0260, and 2004M–0259]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and

Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from April 1, 2004, through June 30, 2004. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM APRIL 1, 2004 THROUGH JUNE 30, 2004.

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P890064(S9)/2004M–0147	Digene Diagnostics, Inc.	DIGENE HYBRID CAPTURE 2 (HC2) HIGH–RISK HPV DNA TEST	March 31, 2003
P020006/2004M–0145	Enteric Medical Technologies, Inc.	ENTERYX PROCEDURE KIT	April 22, 2003
P970027/2004M–0207	Abbott Laboratories	ABBOTT AXSYM ANTIBODY TO HCV	February 5, 2004
P980007/2004M–0253	Abbott Laboratories	AXSYM FREE PSA	February 5, 2004
H020008/2004M–0165	Stryker Biotech	OP–1 PUTTY	April 7, 2004
P010014/2004M–0200	Biomet, Inc.	OXFORD MENISCAL UNICOMPARTMENTAL KNEE SYSTEM	April 21, 2004
P030032/2004M–0199	Genzyme Biosurgery	HYLAFORM (HYLAN B GEL)	April 22, 2004
P030017/2004M–0256	Advanced Bionics Corp.	Precision Spinal Cord Stimulation (SCS) System	April 27, 2004
P030023/2004M–0248	Ophtec USA, Inc.	OCULAID/STABLEYES CAPULAR TENSION RINGS	April 27, 2004
P000054/2004M–0249	Wyeth Pharmaceuticals, Inc.	INFUSE BONE GRAFT	April 30, 2004
P030035/2004M–0250	St. Jude Medical	ST. JUDE FRONTIER BIVENTRICULAR CARDIAC PACING SYSTEM	May 13, 2004
P010062/2004M–0260	Euclid Systems Corp.	EUCLID SYSTEMS ORTHOKERATOLOGY (OPRIFOCOM A) CONTACT LENS FOR OVERNIGHT WEAR	June 7, 2004
P030045/2004M–0259	Ev3 Inc.	INTRASTENT DOUBLESTRUT STENT	June 8, 2004

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html.*

Dated: September 23, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–21873 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0438]

Guidance for Industry: Use of Material from Bovine Spongiform Encephalopathy-Positive Cattle in Animal Feed; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#174) entitled "Use of Material from BSE-Positive Cattle in Animal Feed." This guidance document describes FDA's current thinking regarding the use in all animal feed of all material from cattle that test positive for BSE (bovine spongiform encephalopathy).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance via the Internet at *http://www.fda.gov/dockets/ecomments.* Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Burt Pritchett, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6860, e-mail: *burt.pritchett@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

BSE belongs to a family of animal and human diseases called transmissible spongiform encephalopathies (TSEs). These include BSE or "mad cow" disease in cattle; scrapie in sheep and goats; and classical and variant Creutzfeldt-Jakob diseases (CJD and vCJD) in humans. There is no known treatment for these diseases, and there is no vaccine to prevent them. In addition, although validated postmortem diagnostic tests are available, there are no validated diagnostic tests for BSE or other TSEs that can be used to test for the disease in live animals or humans.

Under FDA's BSE feed regulation (21 CFR 589.2000) any protein-containing portion of mammalian animals is prohibited for use in feed for ruminant animals with the exception of certain products. FDA took this action to minimize the potential for any undetected BSE infectivity in animal feed to spread to ruminants via their feed. This guidance document describes FDA's recommendations regarding the use in all animal feed of all material from cattle that test positive for BSE.

II. Paperwork Reduction Act of 1995

FDA concludes that this guidance contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation in § 10.115(21 CFR 10.115). It is being implemented immediately without prior public comment, under § 10.115(g)(2), because FDA believes that, in light of the increased BSE testing activities by the U.S. Department of Agriculture, it is of public health importance to clarify that cattle that test positive for BSE are adulterated and are not to be used in any animal feed.

This guidance represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all of FDA's guidance, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA periodically will review the comments in the docket and, where appropriate, will amend the guidance. The public will be notified of any such amendments through a document in the **Federal Register.**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Copies of this guidance document may be obtained from the Center for Veterinary Medicine home page (*http://www.fda.gov/cvm*) and from the Division of Dockets Management Web site (*http://www.fda.gov/ohrms/dockets/default.htm*).

Dated: September 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22014 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0385]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Hepatitis A Serological Assays for the Clinical Laboratory Diagnosis of Hepatitis A Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Hepatitis A Serological Assays for the Clinical Laboratory Diagnosis of Hepatitis A Virus." This draft guidance document describes a means by which in vitro diagnostic devices for the laboratory diagnosis of Hepatitis A Virus may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify these device types from class III into class II (special controls).

DATES: Submit written or electronic comments on this draft guidance by December 29, 2004.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Class II Special Controls Guidance Document: Hepatitis A Serological Assays for the Clinical Laboratory Diagnosis of Hepatitis A Virus" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sally Hojvat, Center for Devices and Radiological Health (HFZ- 440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096.

SUPPLEMENTARY INFORMATION:

I. Background

This draft document was developed as a special control to support the classification of in vitro diagnostic devices for the laboratory diagnosis of Hepatitis A Virus (HAV) into class II (special controls). Hepatitis A Virus Tests, Product Code LOL, are devices that detect immunoglobulins M, (IgM), immunoglobulin G (IgG), and total antibodies (IgM and IgG) reactive to HAV. The detection of HAV-specific antibodies in human serum or plasma is laboratory evidence of HAV infection, with the presence of IgM type antibodies differentiating an acute infection from past infection.

This draft guidance document identifies the classification regulation and product code for HAV-specific IgM, IgG, and total antibody assays. In addition, other sections of this guidance document list the risks to health identified by FDA and describe measures that, if followed by manufacturers and combined with the general controls, will generally address the risks associated with these assays and lead to a timely premarket notification (510(k)) review and clearance. This document supplements other FDA documents regarding the specific content of a premarket notification submission.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on Class II special controls for in vitro diagnostic devices for the laboratory diagnosis of Hepatitis A Virus. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Class II Special Controls Guidance Document: Hepatitis A Serological Assays for the Clinical Laboratory Diagnosis of Hepatitis A Virus" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1536 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB No. 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB No. 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 21, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–22010 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0412]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Sirolimus Test Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled "Class II Special Controls Guidance Document: Sirolimus Test Systems." This guidance document describes a means by which sirolimus test systems may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify sirolimus test systems into class II (special controls). This guidance document is immediately in effect as the special control for sirolimus test systems but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Class II Special Controls Guidance Document: Sirolimus Test Systems" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://*

www.fda.gov/dockets/ecomments. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Avis Danishefsky, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, ext. 161.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying sirolimus test systems into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for sirolimus test systems.

Many aspects of this guidance document, especially those concerning performance characteristics and risks to health, were developed using information FDA obtained from the Therapeutic Drug Management and Toxicology Roundtable, a working group composed of representatives from laboratory medicine and device manufacturers.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (§ 10.115). The guidance represents the agency's current thinking on sirolimus test systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Class II Special Controls Guidance Document: Sirolimus Test Systems" by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1300) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh.* A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html.* Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets.*

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 21, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–22012 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HRSA AIDS Drug Assistance Program Quarterly Report—New

HRSA's AIDS Drug Assistance Program (ADAP) is funded through Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, which provides grants to States and Territories. The ADAP provides medications for the treatment of HIV disease. Program funds may also be used to purchase health insurance for eligible clients for services that enhance access, adherence, and monitoring of drug treatments.

Each of the 50 states, the District of Columbia, and several territories receive ADAP grants. As part of the funding requirements, ADAP grantees submit quarterly reports that include

information on patients served, pharmaceuticals prescribed, pricing, and other sources of support to provide AIDS medication treatment, eligibility requirements, cost data, and coordination with Medicaid. Each quarterly report requests updates from programs on number of patients served, type of pharmaceuticals prescribed, and prices paid to provide medication. The first quarterly report of each ADAP fiscal year (due in July of each year) also requests information that only changes annually (*e.g.*, State funding, drug formulary, eligibility criteria for enrollment, and cost-saving strategies including coordinating with Medicaid).

The quarterly report represents the best method for HRSA to determine how ADAP grants are being expended and how to provide answers to requests from Congress and other organizations. This new quarterly report will replace two current monthly progress reports plus information currently submitted annually. The new quarterly report should reduce burden, avoid duplication of information, and provide HRSA information in a form that easily lends itself to responding to inquiries.

The estimated annual burden per ADAP grantee is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
First quarterly report	57	1	57	3	171
Second, third, & fourth quarterly reports	57	3	171	1.5	256.5
Total	57		228		427.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 23, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–21921 Filed 9–29–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

"Closing the Health Gap"—Sudden Infant Death Syndrome and Infant Mortality Initiative

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Intent to Award for Single Source Award with the Aberdeen Area Tribal Chairman's Health Board Northern Plains Healthy Start Project.

Recipient: Aberdeen Tribal Chairman's Health Board Northern Plains Healthy Start Project.

Purpose of the Award: The Indian Health Service (IHS) announces an award for single source award as established under the authority of Section 301(a) of the Public Health Service Act, as amended. The single source award is to support the Aberdeen Area Indian Health Service tribal organization, not the IHS. The Aberdeen Area Tribal Chairman's Health Board and its program the Northern Plains Healthy Start Project (NPHSP) meet the eligibility criteria for CFDA 93.933 as a demonstration project for the expressed purpose of promoting and improving health and health care services in tribal communities. The award is part of a larger Office of Minority Health initiative entitled "Closing the Health Gap" with the expressed purpose of addressing elevated infant mortality, a known health disparity for American Indians and Alaska Natives. NPHSP has been in existence for twelve years. Increased emphasis will be placed on case management and community measures to address maternal and infant health promotion and reduction of risk factors associated with sudden Infant Death Syndrome and infant mortality (SIDS/IM).

Amount of Award: $450,000 in funds will be awarded.

Project Period: There will be only one funding cycle during Fiscal Year (FY) 2004. The project will be funded in annual budget periods for up to three years depending on the defined scope of work. Continuation of the project will be based on the availability of appropriations in future years, the continuing need the IHS has for the projects, and satisfactory project performance. The Project period will run from October 1, 2004 to September 30, 2007.

Justification for the Exception to the Competition: The IHS Area with the highest IMR and SIDS rates is the Aberdeen Area. This Area includes Tribes situated in the states of Iowa, Nebraska, North Dakota and South Dakota. The Aberdeen Area Tribal Chairman's Health Board maintains a 501(c)3 status and is comprised of representatives of eighteen Tribes, sixteen of which participate in the NPHSP. NPHSP is a program within the Aberdeen Tribal Chairman's Health Board and operates in the four states. The project consists of home based interventions in the form of case management to high risk prenatal American Indian women. NPHSP has served targeted perinatal populations and their families and communities for twelve years. No other tribal program representing such a broad consortia exists. General long-term program goals of the Northern Plains Health Start Project are in alignment with those of the Office of Minority Health "Closing the Health Gap—SIDS/IMR Initiative."

Agency Contacts: For program information, contact: Judith Thierry, D.O., Maternal and Child Health Coordinator, Office of Public Health, IHS, 801 Thompson Avenue, Suite 300, Rockville, Maryland 20852; (301) 443–5070; *jthierry@na.ihs.gov;* or (301) 594–6213 (fax). For grant and business information, contact Ms. Martha Redhouse, Grants Management Specialist, Division of Grants Policy, IHS, 801 Thompson Avenue, Suite 120, Rockville, MD 20852; (301) 443–5204. (The telephone numbers for Dr. Thierry and Ms. Redhouse are not toll-free).

Dated: September 24, 2004.

Robert G. McSwain,

Acting Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 04–21891 Filed 9–29–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Inventory and Evaluation of Clinical Networks

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995, for opportunity for public comment on the proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Inventory and Evaluation of Clinical Research Networks.

Type of Information Collection Request: New.

Need and Use of Information Collection: This project is part of the NIH Roadmap to improve the speed and effectiveness of translating basic scientific discoveries into clinical products and practices that improve health care. The project, which is related to the Reengineering the Clinical Research Enterprise, has been designed to enhance the efficiency and productivity of clinical research by promoting clinical research networks to rapidly conduct high quality clinical studies where multiple research questions can be addressed. Specifically, this study involves: (1) Developing an inventory and database of clinical research networks, (2) asking representatives from these networks to respond to an Inventory Questionnaire (Tier 1) that will allow us to update information we collected from public sources and gather additional information on network characteristics, and (3) conducting more in-depth surveys (Tier 2) with ⅓ of the identified networks (Tier 2). Data will be used to characterize the selected networks in terms of network focus, on management and governance, effectiveness in changing clinical practice, information infrastructure, and training and training infrastructure. Best practices will be identified and presented at a national leadership forum.

Frequency of Response: Networks will be asked to respond to the Inventory Questionnaire (Tier 1) once. It is anticipated that 60% of the networks queried will actually meet the network eligibility criteria. A ⅓ sample of the eligible networks will also be asked to complete an additional more in-depth survey (Tier 2).

Affected Public: Staff at clinical research networks.

Type of Respondents: Staff completing the surveys will include physicians, nurses, administrators, financial analysts, information technology professionals, and clerks. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Clinical research network staff:				
Inventory Questionnaire (Tier 1)	2,000	1	2	4,000
In-depth Survey of Subsample of Networks (Tier 2)	400	1	2	800
Total				4,800

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Paul Sorlie, Division of Epidemiology and Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC #7934, Bethesda, MD, 20892–7934, or call non-toll-free number (301) 435–0707, or e-mail your request, including our address to: *sorliep@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collected are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: September 27, 2004.

Peter Savage,

Director, DECA, NHLBI, National Institutes of Health.

[FR Doc. 04–21987 Filed 9–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Pilot Study Evaluating the Cross-Cultural Equivalency of the Tobacco Use Supplement to the Current Survey (TUS–CPS); Correction

As published in the **Federal Register**, September 16, 2004 (69 FR 55824), the notice contains an error in the first sentence of the **SUMMARY** section. In referencing provisions of the Paperwork Reduction Act, we inadvertently cited section 3506(c)(2)(A). Accordingly, the referenced section is corrected to read "3507(a)(1)(D)."

Dated: September 22, 2004.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 04–21988 Filed 9–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Extramural Loan Repayment Program for Clinical Researchers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the NIH Extramural Loan Repayment Program for Clinical Researchers (LRP–CR). The Loan Repayment Program for Clinical Researchers, which is authorized by section 487F [1] of the

[1] So in law. There are two sections 487F. Section 205 of Public Law 106–505 (114 Stat. 2329), inserted section 487F after section 487E. Previously, section 1002(b) of Public Law 106–310 (114 Stat.

Public Health Service (PHS) Act (42 U.S.C. 288–5a), as added by the Clinical Research Enhancement Act of the Public Health Improvement Act of 2000 (Public Law 106–505), provides for the repayment of the existing educational loan debt of qualified health professionals who agree to conduct clinical research. The Loan Repayment Program for Clinical Researchers provides for the repayment of up to $35,000 of the principal and interest of the extant educational loans of such health professionals for each year of obligated service. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. The purpose of the Loan Repayment Program for Clinical Researchers is the recruitment and retention of highly qualified health professionals as clinical investigators. Through this notice, the NIH invites qualified health professionals who contractually agree to engage in clinical research for at least two years, and who agree to engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week, to apply for participation in the NIH Loan Repayment Program for Clinical Researchers.

DATES: Interested persons may request information about the Loan Repayment Program for Clinical Researchers on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by e-mail *MooreJ@mail.nih.gov*, by fax (301) 402–0169, or by telephone (301) 496–4607 (not a toll-free number). For program information contact Marc S. Horowitz, e-mail *lrp@nih.gov*, or telephone (301) 402–5666 (not a toll free number). Information regarding the requirements, the application deadline dates, and an online application for the Loan Repayment Program for Clinical Researchers may be obtained at the NIH Loan Repayment Program Web site, *http://www.lrp.nih.gov*.

SUPPLEMENTARY INFORMATION: The Clinical Research Enhancement Act, which is contained in the Public Health Improvement Act of 2000 (Public Law 106–505), was enacted on November 13, 2000, adding section 487F of the PHS Act (42 U.S.C. 288–5a).

Section 487F authorizes the Secretary, acting through the Director of the NIH, to carry out a program of entering into contracts with appropriately qualified health professionals. Under such contracts, qualified health professionals agree to conduct clinical research for at least two years in consideration of the Federal Government agreeing to repay, for each year of research service, not more than $35,000 of the principal and interest of the extant qualified educational loans of such health professionals. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. This program is known as the NIH Loan Repayment Program for Clinical Researchers (LRP–CR).

Eligibility Criteria

Specific eligibility criteria with regard to participation in the Loan Repayment Program for Clinical Researchers include the following:

1. Applicants must be a U.S. citizen, U.S. national, or permanent resident of the United States;

2. Applicants must have an M.D., Ph.D., Pharm. D., Psy.D., D.O., D.D.S., D.M.D., D.P.M., D.C., N.D., or equivalent doctoral degree from an accredited institution;

3. Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their institutional base salary on the date of program eligibility (the effective date that a loan repayment contract has been executed by the Secretary of Health and Human Services or designee), expected to be between July 1 and September 1, 2005. Institutional base salary is the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care, or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization. Institutional base salary may not include or comprise any income (salary or wages) earned as a Federal employee;

4. Applicants must conduct qualifying research supported by a domestic non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other Government agency (Federal, State, or local). A domestic foundation, professional association, or institution is considered to be non-profit if exempt from Federal tax under the provisions of section 501 of the Internal Revenue Code (26 U.S.C. 501);

5. Applicants must engage in qualified clinical research. Clinical research is defined as patient-oriented clinical research conducted with human subjects or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials;

6. Applicants must engage in qualified clinical research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

7. Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding source is from a non-profit source as defined in number 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

8. Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulation, or HHS/NIH policy. Recipients who receive LRP awards must conduct their research in accordance with applicable Federal, State, and local law (*e.g.*, applicable human subject protection regulations);

9. Applicants will not be excluded from consideration under the Loan Repayment Program for Clinical Researchers on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

10. No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the LRP–CR but did not receive an award are eligible to submit a new application if they meet all of the above eligibility criteria.

The following individuals are ineligible for participation in the Loan Repayment Program for Clinical Researchers:

1. Persons who are not United States citizens, nationals, or permanent residents;

2. Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

3. Any individual who owes an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or

1129), which relates to a Pediatric Research Loan Repayment Program, inserted section 487F after section 487E.

extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Loan Repayment Program for Clinical Researchers is obtained: Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program, Exceptional Financial Need (EFN) Scholarship Program, Financial Assistance for Disadvantaged Health Professions Students (FADHPS), Indian Health Service (IHS) Scholarship Program, National Health Service Corps (NHSC) Scholarship Program, National Institutes of Health Undergraduate Scholarship Program (UGSP), Physicians Shortage Area Scholarship Program, Primary Care Loan (PCL) Program, Public Health Service (PHS) Scholarship Program, and National Research Service Award (NRSA) Program;

4. Full-time employees of Federal Government agencies. Part-time Federal employees who engage in qualifying research supported by a domestic non-profit institution, as part of their non-Federal duties, for an outside entity for at least 20 hours per week, based on a 40-hour week, are eligible to apply for the LRP–CR if they meet all other eligibility requirements;

5. Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

6. Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations); and

7. Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for the Loan Repayment Program for Clinical Researchers will be reviewed for eligibility and completeness by the NIH Office of Loan Repayment. Incomplete or ineligible applications will not be processed for review. Applications that are complete and eligible will be referred to the appropriate NIH Institute or Center for peer review by the NIH Center for Scientific Review (CSR). In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a clinical research career:

a. Potential of the applicant to pursue a career in clinical research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a clinical research career.
- Suitability of the applicant's proposed clinical research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a clinical research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

Renewal applications are competitive and will be evaluated using the same criteria as new applications plus two additional criteria—an assessment of research accomplishments and development of an individual as an independent investigator.

The following information is furnished by the applicant or others on behalf of the applicant (forms are completed electronically at the NIH LRP Web site, *http://www.lrp.nih.gov*):

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

1. Applicant Information Statement.
2. Biosketch.
3. Personal Statement, which includes a discussion of career goals and academic objectives.
4. Description of Research Activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.
5. Identification of three Recommenders (one of whom is identified as research supervisor or mentor).
6. Identification of Institutional Contact.
7. Online Certification.
8. Current account statement(s) and promissory note(s) or disclosure statement(s) obtained from lending institution(s), submitted via facsimile to (866) 849–4046.
9. If applying based on NIH support, Notice of Grant/Award (or PHS Form Number 2271 for T32 recipients).

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

1. Recommendation.
2. Biosketch.
3. Assessment of the Research Activities Statement submitted by the applicant.
4. Description of the Research Environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.
5. Training or Mentoring Plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants (except for applicants with an NIH R01 or equivalent grant).
6. Biosketch of a laboratory staff member if involved in training or mentoring the applicant.

The other two Recommenders electronically transmit recommendations to the NIH Office of Loan Repayment.

Institutional Contacts electronically transmit the following to the NIH Office of Loan Repayment:

1. A certification that: (a) Assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.*, not less than 20 hours per week; (c) certifies that the institution is a domestic non-profit institution (exempt from tax under 26 U.S.C. 501) or is a U.S. Government or other Government agency (Federal, State, local); and (d) provides the applicant's institutional base salary.

Program Administration and Details

Under the Loan Repayment Program for Clinical Researchers, the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses. Individuals must have total qualified educational debt that equals or exceeds 20 percent of their *institutional base salary* on the date of program eligibility. This is called the *debt threshold*. The formula used to calculate the potential annual loan repayment amount is *total educational debt* less the *participant*

obligation (an amount equal to 10 percent of institutional base salary), which yields the *total repayable debt*; the *total repayable debt* is divided by 25 percent, which yields the potential *annual repayment amount* (up to $35,000). Participants are encouraged to pay the *participant obligation* during the contract period.

Following is an example of loan repayment calculations: An applicant has a loan debt of $100,000 and a university compensation of $40,000. Since the loan debt exceeds the *debt threshold* (20 percent of university compensation = $8,000), the applicant has sufficient debt for loan repayment consideration. The *participant obligation* is 10 percent of the institutional base salary, in this case $4,000. Thus, repayment of the $4,000 debt is the applicant's responsibility. The remaining amount, in this example $96,000 (*total repayable debt*), will be considered for repayment on a graduated basis. In this case, the maximum to be repaid in the initial two-year contract is $48,000 or $24,000 per year, plus tax reimbursement benefits.

The *total repayable debt* will be paid at the rate of one-quarter per year, subject to a statutory limit of $35,000 per year for each year of obligated service. Individuals are required to initially engage in 2 years of qualified clinical research.

Following conclusion of the initial two-year contract, participants may competitively apply for renewal contracts if they continue to engage in qualified clinical research. These continuation contracts may be approved on a year-to-year basis, subject to a finding by NIH that the applicant's clinical research accomplishments are acceptable, qualified clinical research continues, and domestic non-profit institutional or U.S. or other Government agency (Federal, State, or local) support has been assured. Renewal applications are competitively reviewed and the submission of a renewal application does not ensure the award of benefits. Renewal applications will be reviewed using the same criteria as new applications plus two additional criteria—an assessment of research accomplishments and development of an individual as an independent investigator. Funding of renewal contracts is also contingent upon an appropriation and/or allocation of funds from the U.S. Congress and/or the NIH or the NIH Institutes and Centers.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified clinical research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week based on a 40 hour week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract. Applicants must submit a signed contract, prepared by the NIH, agreeing to engage in qualified clinical research at the time they submit an application. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of educational loans from a U.S. Government entity, academic institution, or a commercial or other chartered U.S. lending institution, such as banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, and other financial or credit institutions that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business, obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private ("Alternative") Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are *NOT* repayable under the Loan Repayment Program for Clinical Researchers:

(1) Loans not obtained from a U.S. or other Government entity, domestic academic institution, or a commercial or other chartered U.S. lending institution, such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(2) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(3) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(4) Loans or portions of loans obtained for educational or living expenses, which exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(5) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
- Indian Health Service (IHS) Scholarship Program;
- National Institutes of Health Undergraduate Scholarship Program (UGSP);
- National Research Service Award (NRSA) Program;

• Physicians Shortage Area Scholarship Program (Federal or State);

• Primary Care Loan (PCL) Program; and

• Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program;

(6) Delinquent loans, loans in default, or loans not current in their payment schedule;

(7) PLUS Loans;

(8) Loans that have been paid in full; and

(9) Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.*, promissory note signed after the LRP contract has been awarded) (this provision does not apply to qualifying loan consolidations).

Before the commencement of loan repayment, or during lapses in loan repayments, due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of Leave Without Pay (LWOP) or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are *NOT* retroactive. Loan repayment for Fiscal Year 2005 will commence after a loan repayment contract has been executed, which is expected to be no earlier than July 2005.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the Loan Repayment Program for Clinical Researchers expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Loan Repayment Program for Clinical Researchers is 93.280.

Dated: September 21, 2004.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 04–21990 Filed 9–29–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Pediatric Research Loan Repayment Program

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the NIH Pediatric Research Loan Repayment Program (PR–LRP). The Pediatric Research Loan Repayment Program, which is authorized by Section 487F [1] of the Public Health Service (PHS) Act (42 U.S.C. 288–6), as added by the Children's Health Act of 2000 (Pub. L. 106–310), provides for the repayment of educational loan debt of qualified health professionals who agree to conduct pediatric research. Pediatric research is research that is directly related to diseases, disorders, and other conditions in children. The Pediatric Research Loan Repayment Program provides for the repayment of up to $35,000 of the principal and interest of the extant educational loans of such health professionals for each year of obligated service. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. The purpose of the Pediatric Research Loan Repayment Program is the recruitment and retention of highly qualified health professionals as pediatric investigators. Through this notice, the NIH invites qualified health professionals who contractually agree to engage in pediatric research for at least two years, and who agree to engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week, to apply for participation in the NIH Pediatric Research Loan Repayment Program.

DATES: Interested persons may request information about the Pediatric Research Loan Repayment Program on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by e-mail (*MooreJ@mail.nih.gov*), by fax (301) 402–0169, or by telephone (301) 496–4607 (not a toll-free number). For program information contact Marc S. Horowitz, e-mail *lrp@nih.gov*, or telephone (301) 402–5666 (not a toll free number). Information regarding the requirements, the application deadline dates, and an online application for the Loan Repayment Program for Pediatric Researchers may be obtained at the NIH Loan Repayment Program Web site, *http://www.lrp.nih.gov*.

SUPPLEMENTARY INFORMATION: The Pediatric Research Enhancement Act, which is contained in the Public Health Improvement Act of 2000 (Pub. L. 106–505), was enacted on November 13, 2000, adding section 487F of the PHS Act (42 U.S.C. 288–5a). Section 487F authorizes the Secretary, acting through the Director of the NIH, to carry out a program of entering into contracts with appropriately qualified health professionals. Under such contracts, qualified health professionals agree to conduct pediatric research for at least two years in consideration of the Federal Government agreeing to repay, for each year of research service, not more than $35,000 of the principal and interest of the extant qualified educational loans of such health professionals. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. This program is known as the NIH Extramural Pediatric Research Loan Repayment Program (PR–LRP).

Eligibility Criteria

Specific eligibility criteria with regard to participation in the Pediatric Research Loan Repayment Program include the following:

(1) Applicants must be a U.S. citizen, U.S. national, or permanent resident of the United States;

(2) Applicants must have an M.D., Ph.D., Pharm. D., Psy.D., D.O., D.D.S., D.M.D., D.P.M., D.V.M., D.C., N.D., or equivalent doctoral degree from an accredited institution;

(3) Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their institutional base salary on the date of program eligibility (the effective date that a loan repayment contract has been executed by the Secretary of Health and Human Services or designee), expected to be between July 1 and September 1, 2005. Institutional base salary is the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care, or other

[1] So in law. There are two sections 487F. Section 1002(b) of Public Law 106–310 (114 Stat. 1129), inserted section 487F above. Subsequently, section 205 of Public Law 106–505 (114 Stat. 2329), which relates to a Loan Repayment Program for Clinical Researchers, inserted a section 487F after section 487E.

activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization. Institutional base salary may not include or comprise any income (salary or wages) earned as a Federal employee;

(4) Applicants must conduct qualifying research supported by a domestic non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other government agency (Federal, State, or local). A domestic foundation, professional association, or institution is considered to be non-profit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501);

(5) Applicants must engage in qualified pediatric research. Pediatric research is defined as research that is directly related to diseases, disorders, and other conditions in children;

(6) Applicants must engage in qualified pediatric research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

(7) Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding source is from a non-profit source as defined in number 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

(8) Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulation, or HHS/NIH policy. Recipients who receive LRP awards must conduct their research in accordance with applicable Federal, State, and local law (*e.g.*, applicable human subject protection regulations);

(9) Applicants will *not* be excluded from consideration under the Pediatric Research Loan Repayment Program on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

(10) No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the PR-LRP but did not receive an award are eligible to submit a new application if they meet all of the above eligibility criteria.

The following individuals are ineligible for participation in the Pediatric Research Loan Repayment Program:

(1) Persons who are not United States citizens, nationals, or permanent residents;

(2) Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

(3) Any individual who owes an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Loan Repayment Program for Pediatric Researchers is obtained:

Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,
Exceptional Financial Need (EFN) Scholarship Program,
Financial Assistance for Disadvantaged Health Professions Students (FADHPS),
Indian Health Service (IHS) Scholarship Program,
National Health Service Corps (NHSC) Scholarship Program,
National Institutes of Health Undergraduate Scholarship Program (UGSP),
Physicians Shortage Area Scholarship Program,
Primary Care Loan (PCL) Program,
Public Health Service (PHS) Scholarship Program, and
National Research Service Award (NRSA) Program;

(4) Full-time employees of Federal Government agencies. Part-time Federal employees who engage in qualifying research supported by a domestic non-profit institution, as part of their non-Federal duties, for an outside entity for at least 20 hours per week, based on a 40-hour week, are eligible to apply for the PR-LRP if they meet all other eligibility requirements;

(5) Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

(6) Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations); and

(7) Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for the Pediatric Research Loan Repayment Program will be reviewed for eligibility and completeness by the NIH Office of Loan Repayment. Incomplete or ineligible applications will not be processed for review. Applications that are complete and eligible will be referred to the appropriate NIH Institute or Center for peer review by the NIH Center for Scientific Review (CSR). In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a pediatric research career:

(a) Potential of the applicant to pursue a career in pediatric research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a pediatric research career.
- Suitability of the applicant's proposed pediatric research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

(b) Quality of the overall environment to prepare the applicant for a pediatric research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

Renewal applications are competitive and will be evaluated using the same criteria as new applications plus two additional criteria—an assessment of research accomplishments and development of an individual as an independent investigator.

The following information is furnished by the applicant or others on behalf of the applicant (forms are completed electronically at the NIH LRP Web site, *http://www.lrp.nih.gov*):

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

(1) Applicant Information Statement.

(2) Biosketch.

(3) Personal Statement, which includes a discussion of career goals and academic objectives.

(4) Description of Research Activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant

in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.

(5) Identification of three Recommenders (one of whom is identified as research supervisor or mentor).

(6) Identification of Institutional Contact.

(7) On-line Certification.

(8) Current account statement(s) and promissory note(s) or disclosure statement(s) obtained from lending institution(s), submitted via facsimile to (866) 849–4046.

(9) If applying based on NIH support, Notice of Grant/Award (or PHS Form Number 2271 for T32 recipients).

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

(1) Recommendation.

(2) Biosketch.

(3) Assessment of the Research Activities Statement submitted by the applicant.

(4) Description of the Research Environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.

(5) Training or Mentoring Plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants (except for applicants with an NIH R01 or equivalent grant).

(6) Biosketch of a laboratory staff member if involved in training or mentoring the applicant.

The other two Recommenders electronically transmit recommendations to the NIH Office of Loan Repayment.

Institutional Contacts electronically transmit the following to the NIH Office of Loan Repayment:

(1) A certification that: (a) Assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.*, not less than 20 hours per week; (c) certifies that the institution is a domestic non-profit institution (exempt from tax under 26 U.S.C. 501) or is a U.S. Government or other government agency (Federal, State, local); and (d) provides the applicant's institutional base salary.

Program Administration and Details

Under the Pediatric Research Loan Repayment Program, the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses. Individuals must have total qualified educational debt that equals or exceeds 20 percent of their institutional base salary on the date of program eligibility. This is called the debt threshold. The formula used to calculate the potential annual loan repayment amount is total educational debt less the participant obligation (an amount equal to 10 percent of institutional base salary), which yields the total repayable debt; the total repayable debt is divided by 25 percent, which yields the potential annual repayment amount (up to $35,000). Participants are encouraged to pay the participant obligation during the contract period.

Following is an example of loan repayment calculations: An applicant has a loan debt of $100,000 and a university compensation of $40,000. Since the loan debt exceeds the debt threshold (20 percent of university compensation = $8,000), the applicant has sufficient debt for loan repayment consideration. The participant obligation is 10 percent of the institutional base salary, in this case $4,000. Thus, repayment of the $4,000 debt is the applicant's responsibility. The remaining amount, in this example $96,000 (total repayable debt), will be considered for repayment on a graduated basis. In this case, the maximum to be repaid in the initial two-year contract is $48,000 or $24,000 per year, plus tax reimbursement benefits.

The total repayable debt will be paid at the rate of one-quarter per year, subject to a statutory limit of $35,000 per year for each year of obligated service. Individuals are required to initially engage in 2 years of qualified pediatric research.

Following conclusion of the initial two-year contract, participants may competitively apply for renewal contracts if they continue to engage in qualified pediatric research. These continuation contracts may be approved on a year-to-year basis, subject to a finding by NIH that the applicant's pediatric research accomplishments are acceptable, qualified pediatric research continues, and domestic non-profit institutional or U.S. or other government agency (Federal, State, or local) support has been assured. Renewal applications are competitively reviewed and the submission of a renewal application does not ensure the award of benefits. Renewal applications will be reviewed using the same criteria as new applications plus two additional criteria—an assessment of research accomplishments and development of an individual as an independent investigator. Funding of renewal contracts is also contingent upon an appropriation and/or allocation of funds from the U.S. Congress and/or the NIH or the NIH Institutes and Centers.

In return for the repayment of their educational loans, participants must agree to: (1) Engage in qualified pediatric research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week based on a 40-hour week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract. Applicants must submit a signed contract, prepared by the NIH, agreeing to engage in qualified pediatric research at the time they submit an application. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of educational loans from a U.S. Government entity, academic institution, or a commercial or other chartered U.S. lending institution, such as banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, and other financial or credit institutions that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business, obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of: (1) The Principal Investigator, Program Director, or Research Supervisor's verification of

completion of the prior period of research; and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private ("Alternative") Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are not repayable under the Loan Repayment Program for Pediatric researchers:

(1) Loans not obtained from a U.S. or other domestic government entity, domestic academic institution, or a commercial or other chartered U.S. lending institution, such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(2) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(3) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(4) Loans or portions of loans obtained for educational or living expenses, which exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(5) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
- Indian Health Service (IHS) Scholarship Program;
- National Institutes of Health Undergraduate Scholarship Program (UGSP);
- National Research Service Award (NRSA) Program;
- Physicians Shortage Area Scholarship Program (Federal or State);
- Primary Care Loan (PCL) Program; and
- Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program;

(6) Delinquent loans, loans in default, or loans not current in their payment schedule;

(7) PLUS Loans;

(8) Loans that have been paid in full; and

(9) Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.*, promissory note signed after the LRP contract has been awarded) (this provision does not apply to qualifying loan consolidations).

Before the commencement of loan repayment, or during lapses in loan repayments, due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of Leave Without Pay (LWOP) or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are NOT retroactive. Loan repayment for Fiscal Year 2005 will commence after a loan repayment contract has been executed, which is expected to be no earlier than July 2005.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the Loan Repayment Program for Pediatric Researchers expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Loan Repayment Program for Pediatric Researchers is 93.285.

Dated: September 21, 2004.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 04–21989 Filed 9–29–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

Date: October 25–26, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Patricia A Haggerty, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 7194, MSC 7924, Bethesda, MD 20892, 301/435–0288, *haggertp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heat and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21986 Filed 9–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 on Drug Abuse Special Emphasis Panel, Member Conflict B.

Date: October 5, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: November 16–18, 2004.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401, 301–451–4530.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards, 93.278 Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: September 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21985 Filed 9–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Preventing Violence and Related Health-Risking Social Behaviors in Adolescents: An NIH State-of-the-Science Conference

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice.

Notice is hereby given of the National Institutes of Health (NIH) conference, "Preventing Violence and Related Health-Risking Social Behaviors in Adolescents: An NIH State-of-the-Science Conference," to be held October 13–15, 2004, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on October 13 and 14, and at 9 a.m. on October 15, and will be open to the public.

From a variety of studies, researchers know that approximately one in five children and adolescents display signs and symptoms of a defined emotional or psychiatric disorder during the course of a year. These signs and symptoms often signal increased risk of problems such as aggression, delinquency, drug abuse, violence, and other health-risking social behaviors that cause substantial difficulties with family and peers, at school and at work.

Many prevention and intervention programs to address violence and related youth behavior problems have developed out of need and have not been rigorously evaluated for their safety and effectiveness. Moreover, interventions with demonstrated effectiveness appear to be underutilized. Research has progressed at a rapid pace; it is now appropriate to assess the state of science with regard to interventions to reduce the risk for youth violence and related behavior problems, as well as to reduce problem behavior once it has been initiated. While research focused on what works is critical, it is equally important to assess what has been learned about interventions that do not work.

During the first day-and-a-half of the conference, experts will present the latest research findings on preventing violence and related health-risking behaviors in adolescents to an independent panel. After weighing all of the scientific evidence, the panel will draft a statement, addressing the following key questions:

—What are the factors that contribute to violence and associated adverse health outcomes in childhood and adolescence?

—What are the patterns of co-occurrence of these factors?

—What evidence exists on the safety and effectiveness of interventions for violence?

—Where evidence of safety and effectiveness exists, are there other outcomes beyond reducing violence? If so, what is known about effectiveness by age, sex, and race/ethnicity?

—What are the commonalities among interventions that are effective and those that are ineffective?

—What are the priorities for future research?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Institute of Mental Health and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling (888) 644–2667 or by sending e-mail to *preventingviolence@air.org.* American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov.*

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorssecurity.htm.*

Dated: September 23, 2004.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 04–21991 Filed 9–29–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–77]

Notice of Proposed Information Collection; Comment Request; HUD Forms for Applications for Federal Assistance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. The proposal includes two of forms to be required as standard documentation for grant applications.

DATES: Comments due: November 29, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, AYO, Department or Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room PL 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374 (this is not a toll-free number) for copies of the proposed forms and other available information. This documentation can also be downloaded from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Forms for Applications for Federal Assistance.

OMB Control Number, If Applicable: 2501–0017.

Description of the Need for the Information and Proposed Use: HUD is requesting renewal of approval for two forms—Grant Application Detailed Budget and the Detailed Budget Worksheet. These forms are proposed to support a consolidated and streamlined grant application processes in accordance with the provisions of Public Law 106–107, The Federal Financial Assistance Improvement Act of 1999. The forms a similar to those used in previous annual grant application processes.

Agency Form Numbers, If Applicable: HUD–424–CB, HUD–424–CBW.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: An estimation of the total number of hours needed to prepare the forms for each grant application is 6 hours, however, the burden will be assessed against each individual grant program submission under the Paperwork Reduction Act; estimated number of respondents is 9,000; frequency of response is on the occasion of application for benefits.

Status of the Proposed Information Collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: September 23, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–21887 Filed 9–29–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Pocosin Lakes National Wildlife Refuge

ACTION: Notice of Application for a Natural Gas Pipeline Right-of-Way on Pocosin Lakes National Wildlife Refuge, Tyrrell County, North Carolina.

SUMMARY: Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449: 30 U.S.C. 185), as amended by Public Law 93–153, the Eastern North Carolina Natural Gas Company has applied for a permit to construct an 8-inch natural gas Pipeline in a 35 foot wide right-of-way which will run approximately 2100 feet or 0.4 of a mile. The requested right-of-way contains approximately 1.70 acres for actual pipeline and (2100′ x 35′), and 0.07 acre for the valve site (20′ x 162′), for a total right-of-way of 1.77 acres.

This pipeline right-of-way will be on, under, and across a strip of land lying in the Township of Columbia, Tyrrell County, State of North Carolina.

The purpose of this notice is to inform the public that the Fish and Wildlife Service is currently considering the merits of approving this application.

DATES: Interested persons desiring to comment on this application should do so within thirty (30) days following the date of publication of this notice.

ADDRESSES: Comments or requests for additional information should be addressed to Ms. Jackie Cumpton, Refuges and Wildlife (Realty), Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345, telephone 404–679–7160; fax 404–679–7273.

If you wish to comment, you may do so by one of the following methods. You may mail comments to the above address. You may also comment via the Internet at the following address: *Jackie_cumpton@fws.gov.* Please include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us at the above phone number or address. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

The Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

Dated: August 25, 2004.

Sam D. Hamilton,

Regional Director.

[FR Doc. 04–21924 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the proposal by fax (202) 395–6566 or e-mail *oira_docket@omb.eop.gov* to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department. Send copies of your comments to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, or e-mail *jcordyac@usgs.gov*.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: User Survey for National Biological Information Infrastructure (NBII).

OMB Approval No.: 1028–0069

Summary: The collection of information referred herein applies to a voluntary survey that allows visitors to the NBII World-Wide Web site (*www.nbii.gov*) the opportunity to provide feedback on the utility and effectiveness of the NBII operation and contents in meeting their needs.

Estimated Completion Time: 3 minutes.

Estimated Annual Number of Respondents: 3000.

Frequency: Once.

Estimated Annual Burden Hours: 150 hours.

Affected Public: Public and private, individuals and institutions.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or go to the Web site *http://www.nbii.gov*.

Dated: August 27, 2004.

Susan Haseltine,

Associate Director for Biology.

[FR Doc. 04–21872 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–939–04–1610–00]

Correction to 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 correction.

SUMMARY: This notice is a correction to a Notice of Availability of the California Coastal National Monument Draft Resource Management Plan which was originally published in the **Federal Register** on September 17, 2004 (69 FR 56077–56078). The **Federal Register** Notice has an incorrect reference to the California Coastal National Monument (CCNM) website address in the final sentence of the Notice. The correct website address for the CCNM is: *http://www.ca.blm.gov/pa/coastal_monument/*.

FOR FURTHER INFORMATION 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*.

Dated: September 22, 2004.

J. Anthony Danna,

Deputy State Director, Natural Resources.

[FR Doc. 04–21916 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Park Service

[NM–930–04–1610–DR]

Notice of Availability of Record of Decision for El Camino Real de Tierra Adentro National Historic Trail Comprehensive Management Plan (CMP) and Resource Management Plan Amendment (RMPA) for Mimbres, White Sands, and Taos RMPs

AGENCY: Bureau of Land Management, National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Bureau of Land Management (BLM) and National Park Service (NPS) management policies, the NPS and the BLM announce the availability of the ROD/CMP/RMPA for El Camino Real de Tierra Adentro National Historic Trail (NHT), which follows the Rio Grande valley from El Paso, Texas to San Juan Pueblo, New Mexico. The ROD/CMP/RMPA becomes effective immediately and amends the Mimbres, White Sands, and Taos RMPs.

ADDRESSES: Copies of El Camino Real de Tierra Adentro NHT CMP/ROD/RMPA are available upon request from Sarah Schlanger, New Mexico State Office, Bureau of Land Management, at mailing address P.O. Box 27115, Santa Fe, NM 87502–2115 or physical address 1474 Rodeo Road, Santa Fe, NM 87505; or Harry Myers, National Trails System Office—Santa Fe, National Park Service, at mailing address P.O. Box 728, Santa Fe, NM 87504, or physical address 1100 Old Santa Fe Trail, Santa Fe, NM 87505; or via the internet at *http://www.elcaminoreal.org*.

FOR FURTHER INFORMATION CONTACT: Sarah Schlanger, Team Lead, New Mexico Bureau of Land Management, 1474 Rodeo Road, Santa Fe, NM 87505, (505) 438–7454, *Sarah_Schlanger@blm.gov*, or Harry Myers, Team Lead, National Trails System, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, NM 87505.

SUPPLEMENTARY INFORMATION: El Camino Real de Tierra Adentro NHT ROD/CMP/

RMPA was developed with broad public participation through a two-year collaborative planning process. This ROD/CMP/RMPA addresses management along a 10-mile wide corridor crossing approximately 60 miles of public land in the planning area. El Camino Real de Tierra Adentro NHT ROD/CMP/RMPA is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for the historic trail route and trail resources, including the visual resources within the trail corridor, recreation opportunities associated with the trail and other uses, energy and minerals, land and realty uses, livestock grazing, vegetation, noxious weeds, soils, water, and air quality.

The approved El Camino Real de Tierra Adentro NHT CMP/RMPA is essentially the same as the Preferred Alternative in the Proposed El Camino Real de Tierra Adentro NHT CMP/RMPA/Final Environmental Impact Statement (PCMP/FEIS), published in April 2004. BLM received no protests to the PCMP/RMPA/FEIS. No inconsistencies with State or local plans, policies, or programs were identified during the Governor consistency review of the PCMP/RMPA/FEIS. As a result, only minor editorial modifications were made in preparing the ROD/CMP/RMPA. These modifications corrected errors that were noted during review of the PCMP/RMPA/FEIS and provide further clarification for some of the decisions.

Dated: August 24, 2004.

Linda S.C. Rundell,

State Director, New Mexico BLM.

Stephen P. Martin,

Director, Intermountain Region, NPS.

[FR Doc. 04–21745 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1320–EL; WYW154595]

Notice of Availability of Decision Record for the Final Environmental Assessment, Ten Mile Rim Coal Lease by Application Tract, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of decision record.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Decision Record (DR) for the Final Environmental Assessment (FEA); Ten Mile Rim Coal Lease By Application (LBA) Tract.

ADDRESSES: The document will be available electronically on the following Web site: *http://www.wy.blm.gov/*. Copies of the DR are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Janssen, Wyoming Coal Coordinator, at (307) 775–6206 or Ms. Julie Weaver, Land Law Examiner, at (307) 775–6260. Both Mr. Janssen's and Ms. Weaver's offices are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: As stated in the FEA, a DR will be issued for the Federal coal tract considered in the FEA. The DR covered by this Notice of Availability (NOA) is for coal tract Ten Mile Rim (WYW154595) and addresses leasing an estimated 43 million tons of in-place Federal coal administered by the BLM Rock Springs Field Office underlying approximately 2242.18 acres in Sweetwater County, Wyoming. BLM's decision was to approve the Selected Alternative. A competitive lease sale will be announced in the **Federal Register** at a later date.

The DR was signed by the Wyoming State Director. Parties in interest have the right to appeal that decision pursuant to 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register**. The DR contains instructions on taking appeals to the Interior Board of Land Appeals.

Dated: August 23, 2004.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–22006 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–04; NMNM 108479]

Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 108479

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 108479 for lands in Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2003, the date of termination.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16 2/3 percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lease Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2003, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 04–22004 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–04; TXNM 108485]

Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 108485

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease TXNM

108485 for lands in Hidalgo County, Texas, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2004, the date of termination.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2004, subject to the original terms and conditions of the lease and the increased rental and royalty as rates cited above.

Gloria S. Baca,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 04–22005 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 124530]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW124530 for lands in Carbon County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW124530 effective July 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Theresa M. Stevens,

Acting Chief, Fluid Minerals Adjudication.

[FR Doc. 04–22003 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–04–1420–BJ]

Survey Plat Fllings; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of the Fourteenth Standard Parallel North, through Range 74 West, the south boundary and the subdivisional lines, Township 56 North, Range 74 West, Sixth Principal Meridian, Wyoming, was accepted September 24, 2004.

The plat and field notes representing the dependent resurvey of the east and north boundaries, and the subdivisional lines, Township 55 North, Range 75 West, Sixth Principal Meridian, Wyoming, was accepted September 24, 2004.

The plat and field notes representing the dependent resurvey of the Fourteenth Standard Parallel North, through Range 75 West, the east boundary and the subdivisional lines, Township 56 North, Range 75 West, Sixth Principal Meridian, Wyoming, was accepted September 24, 2004.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: September 24, 2004.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 04–21914 Filed 9–29–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Award of Category II Temporary Concession Contract for Belle Haven Marina, Alexandria, VA

AGENCY: National Park Service, Interior.

ACTION: Public notice of the Director's intent to award a 1-year Category II temporary concession contract at Belle Haven Marina in Alexandria, Virginia.

SUMMARY: Pursuant to 36 CFR 51.24, public notice is hereby given that the Director of the National Park Service intends to award a 1-year Category II temporary concession contract to Belle Haven Marina, Inc. in Alexandria, Virginia to avoid the interruption of visitor services. The current temporary contract between George Washington Memorial Parkway (GWMP) and Belle Haven Marina, Inc. expires December 31, 2004. The National Park Service has determined that a temporary contract is necessary in order to avoid interruption of visitor services and that all reasonable alternatives to the award of a temporary contract have been considered and found infeasible.

The term of the temporary contract will be for a period of one year. This temporary contract will provide the time for GWMP to obtain technical assistance to complete an Environmental Assessment (EA), and GWMP is planning to have the EA completed by the end of 2004. The EA will allow GWMP to make a determination of necessary and appropriate services with respect to the marina so a prospectus may be issued leading to the competitive selection of a concessioner for a new long-term concession contract for the marina.

DATES: The term of the temporary concession contract will be from January 1, 2005–December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Anne Dayton (703) 289–2536.

Dated: August 3, 2004.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 04–22041 Filed 9–29–04; 8:45 am]

BILLING CODE 3301–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Oakwood Homes LLC and Niebur Golf, Inc.*, was lodged with the United States District Court for the District of Colorado on September 17, 2004.

This proposed Consent Decree concerns a complaint filed by the United States against Oakwood Homes LLC and Niebur Golf, Inc., pursuant to 33 U.S.C. 1311(a), 1319(b) and (d), and 33 U.S.C. 1344(s)(3), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas, to perform mitigation, and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Stephen D. Taylor, Assistant United States Attorney, 1225 17th Street, Suite 700, Denver, Colorado 80202 and refer to *United States* v. *Oakwood Homes, et al.*, Civil Action No. 04–D–1918 (MJW).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, Alfred A. Arrraj United States Courthouse, 901 19th Street, Room A 105, Denver, Colorado 80294. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

John W. Suthers,

United States Attorney.

Stephen D. Taylor,

Assistant U.S. Attorney.

[FR Doc. 04–21871 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public Comments on Proposed Amended Final Judgment in United States v. Alcan Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the public comments received on the proposed Amended Final Judgment in *United States* v. *Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., Pechiney Rolled Products, LLC,* No. 1:030 CV 02012–GK filed in the United States District Court for the District of Columbia, together with the government's responses to the comments.

On September 29, 2003, the United States filed a Complaint that alleged that Alcan Inc.'s proposed acquisition of Pechiney, S.A., would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the sale of brazing sheet in North America. On May 26, 2004, the United States filed a proposed Amended Final Judgment that would require the defendants to divest either Alcan's or Pechiney's brazing sheet business to a purchaser acceptable to the United States.

Public comment was invited within the statutory 60-day comment period. The public comments and the United States's responses thereto are included within the United States's Revised Certificate of Compliance with the Antitrust Procedures and Penalties Act, which appears immediately below. After publication of this Revised Certificate of Compliance in the **Federal Register**, the United States may file a motion with the Court, urging it to conclude that the proposed Amended Final Judgment is in the public interest and to enter the proposed Amended Final Judgment. Copies of the Complaint, Revised Hold Separate Stipulation and Order, proposed Amended Final Judgment, the Revised Competitive Impact Statement, and the United States's Revised Certificate of Compliance with the Antitrust Procedures and Penalties Act are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 30530 (telephone: (202) 514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

BILLING CODE 4410–11–M

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. ALCAN INC., ALCAN ALUMINUM CORP., PECHINEY, S.A., and PECHINEY ROLLED PRODUCTS, LLC, *Defendants.*	Case No. 1:030 CV 02012-GK Judge Gladys Kessler Deck Type: Antitrust

UNITED STATES'S REVISED CERTIFICATE OF COMPLIANCE WITH THE ANTITRUST PROCEDURES AND PENALTIES ACT

The United States of America certifies that, as explained below, it has complied with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), with respect to the proposed Amended Final Judgment.

1. The Complaint in this case was filed on September 29, 2003. The proposed Amended Final Judgment (or "AFJ"), Revised Competitive Impact Statement, and Revised Hold Separate Stipulation and Order ("Revised Hold Separate Order"), by which the parties agreed to the Court's entry of the Amended Final Judgment following compliance with the APPA, were filed on May 26, 2004.

2. Pursuant to 15 U.S.C. § 16(b), the proposed Amended Final Judgment, Revised Hold Separate Order, and the Revised Competitive Impact Statement were published in the *Federal Register* on June 15, 2004 (69 Fed. Reg. 33406). A copy of the *Federal Register* notice is attached hereto as Exhibit 1.

3. Pursuant to 15 U.S.C. §16(b), the United States furnished copies of the Complaint, Revised Hold Separate Order, proposed Amended Final Judgment, and Revised Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Amended Final Judgment, Revised Hold Separate Order, and Revised Competitive Impact Statement was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, during a seven-day period in June 2004 (June 7th-13th). A copy of the Proof of Publication from *The Washington Post* is attached hereto as Exhibit 2.

5. Defendants will soon serve and file with the Court a declaration that describes their communications with employees of the United States concerning the proposed Amended Final Judgment, as required by 15 U.S.C. § 16(g).

6. The sixty-day public comment period specified in 15 U.S.C. § 16(b) began on June 15, 2004, and ended on August 16, 2004. During that period, the United States received eight comments on the proposed settlement. The United States evaluated and responded to each comment, and caused the comments and the government's responses to be published in the *Federal Register*, pursuant to 15 U.S.C. §§ 16 (b) and (d). The public comments and the United States's responses, attached hereto as Exhibits 3-10, are briefly summarized below.

A. Public Comments on the Proposed Amended Settlement

The United States received five comments from state and local government officials – *viz.*, the governor of West Virginia (Ex. 3), the mayors of Ripley and Ravenswood, West Virginia (Exs. 4 and 5), the president of the Jackson County (WV) Development Authority (Ex. 6), and the Jackson County Commission (Ex. 7) – who represent the interests of residents of towns in West

Virginia in which current or retired employees of the Ravenswood facility live. The United States also received a comment from an individual who represents the interests of retired salaried employees of the Ravenswood facility (Ex. 8).

These comments raised general questions about the necessity and scope of the divestiture relief in the proposed Amended Final Judgment, and, in particular, the possibility that under the terms of the settlement, Alcan could elect to divest Pechiney's brazing sheet business (and the Ravenswood rolling mill) instead of its own brazing sheet business. Several of the commenters asserted that the proposed Amended Final Judgment is unnecessary because Alcan's acquisition of Pechiney did not substantially diminish competition. Others contended that even if Alcan's initial acquisition was unlawful, requiring it to divest Pechiney's brazing sheet business (and the Ravenswood plant) would be excessive because brazing sheet accounts for a fraction of this rolling mill's production. Finally, these commenters asserted that requiring Alcan to divest Pechiney's brazing sheet business may risk the jobs and retirement benefits of the Ravenswood plant's current and retired workers. As they see it, any new owner of Pechiney's brazing sheet business cannot possibly be a vigorous and viable competitor – and thus would be significantly more likely to fail – since it will not have the financial wherewithal or technical expertise to develop, produce, and sell brazing sheet and other rolled aluminum products and may begin operations saddled with the former owners' "legacy costs" (*i.e.*, retiree pension and health insurance benefit obligations).

The United States also received comments from two suppliers to Pechiney's brazing sheet business, Century Aluminum (Ex. 9) and American Electric Power (Ex. 10), who expressed a somewhat different, though parallel concern, *viz.*, that if Alcan chooses to divest that business,

then it must be sold to a purchaser who possess the resources to continue operating the Ravenswood rolling mill as part of a viable, ongoing business enterprise. These commenters also questioned whether a new owner could succeed if it is burdened with the legacy costs of the Ravenswood facility's former owners, Alcan and Pechiney.

B. The United States's Responses to the Public Comments

Responding to the comments, the United States generally explained that the appropriate legal standard for assessing the proposed Amended Final Judgment is whether its entry would be in the "public interest." To make that determination the Court must carefully review the relationship between the relief in the proposed Amended Final Judgment and the allegations of the government's Complaint that initiated the case. Only if the proposed decree is ambiguous, unenforceable, "positively" injurious to others, or makes a "mockery" of judicial power – *e.g.*, by mandating relief that would not alleviate the competitive ills alleged in the complaint – should the Court decline to enter it. *Massachusetts School of Law at Andover, Inc. v. United States,* 118 F.3d 776, 783 (D.C.Cir. 1997). This "narrow," "deferential" standard of judicial review reflects the fact that a Tunney Act proceeding is not an open forum for commenters – or a court – to "second-guess" the United States's exercise of its broad discretion to file a civil complaint to enforce the nation's antitrust laws.[1] A proposed settlement cannot, as several commenters have urged, be

[1] *Id.* at 783. "The Tunney Act cannot be interpreted as an authorization for a district court to assume the role of Attorney General," *United States v. Microsoft Inc.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). "[T]he court is only authorized to review the decree itself" and has no legal authority to "effectively redraft the complaint" to inquire into matters that the government might have but did not pursue. *Id.* at 1459-60. "Such limited review is obviously appropriate for a consent decree entered into before a trial on the merits because 'the court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion in the first place,'" *Commonwealth of Massachusetts v. Microsoft,* 2004 WL 1462298, 302 (D.C.Cir. June 30, 2004) (citation omitted).

rejected simply because it provides relief that is "not necessary" or "to which the government might not be strictly entitled." *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). *See United States v. Alex Brown & Sons, Inc.*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996) (purpose of Tunney Act is to ascertain whether proposed relief is in the public interest, "not to evaluate the strength of the [g]overnment's case"). Thus, the United States is not required to prove major elements of its antitrust complaint before the Court can evaluate the appropriateness of the parties' agreed-upon relief. *Microsoft Inc.*, 56 F.3d at 1459; *Alex Brown & Sons, Inc.*, 169 F.R.D. at 541.

Applying those principles to this case, the Court's entry of the proposed Amended Final Judgment surely would be "within the reaches" of the public interest (*Bechtel Corp.* 648 F.2d at 666). The proposed Amended Final Judgment would alleviate the serious competitive concerns regarding defendants' proposal to combine two of North America's three major producers of brazing sheet by requiring Alcan promptly to divest either Alcan's or Pechiney's brazing sheet business (and the Ravenswood rolling mill), which produces all of the brazing sheet made and sold by either firm in North America. If Alcan chooses to divest Pechiney's brazing sheet business, its sale to a viable new owner would create another competitor in the North American brazing sheet market and leave competition no worse off after Alcan's acquisition of Pechiney than before it.

As to the commenters' contention that the divestiture relief in the Amended Final Judgment is too broad, the United States noted that the competitive problems created by Alcan's acquisition of Pechiney could not be cured simply by requiring a piecemeal sale or "partial divestiture" of only those portions of the Ravenswood facility devoted to developing, producing,

and selling brazing sheet. The commenters acknowledged that brazing sheet is produced on the same production lines that make many other important rolled aluminum alloy products (*e.g.*, common alloy coil and aerospace sheet) at Pechiney's Ravenswood rolling mill. The United States is unaware of – and no commenter pointed to – any evidence that would suggest that requiring Alcan to dismantle and sell off a few parts of the Ravenswood rolling mill that might be exclusively committed to producing brazing sheet would produce a viable new firm capable of replacing the significant competition that would be lost by Alcan's acquisition of Pechiney. Drawing on its considerable experience with business divestitures under the federal antitrust laws, the United States reasonably concluded that divestiture of Pechiney's entire brazing sheet business (and the Ravenswood rolling mill) as an ongoing business enterprise (AFJ, §§ II (E); IV(A); IV(J); and V(B)) is a critical prerequisite for ensuring the new owner's long-term competitive viability in the brazing sheet business. *See* Federal Trade Commission, A Study of the Commission's Divestiture Process 12 (1999) ("[D]ivestiture of an ongoing business is more likely to result in a viable operation than divestiture of a more narrowly defined package of assets and provides support for the common sense conclusion that [antitrust enforcement agencies] should prefer the divestiture of an ongoing business.")

The United States also noted that it shares the commenters' interest in ensuring that if Alcan chooses to divest Pechiney's brazing sheet business, it is sold to an owner that promises to be a viable competitor capable of long-term survival. In fact, a lynchpin of the proposed Amended Final Judgment is the requirement that Pechiney's brazing sheet business (including the Ravenswood rolling mill) must be divested to a person who, in the United States's judgment, is able to successfully operate it as part of a "viable, ongoing" business enterprise in competition

against Alcan and others. *See* AFJ §§ IV(J) and V(B). To that end, the proposed Amended Final Judgment requires Alcan to divest any tangible and intangible assets used in the development, production, or sale of Pechiney's brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop or produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Thus, the amended settlement ensures that any new owner of Pechiney's brazing sheet business will obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products sold by the Ravenswood facility (including aerospace grade aluminum plate).

Nor is there any reasonable basis for concluding, at this stage, that that business can only survive if it remains in the hands of a dominant brazing sheet manufacturing concern, such as Alcan.[2] Such a "failing firm" defense to what would otherwise be a severely anticompetitive transaction may be invoked only after there has been a compelling showing that the resources of Pechiney's brazing sheet business are so depleted and its future prospects are so bleak, that it cannot be successfully reorganized in a Chapter 11 bankruptcy proceeding *and* that every effort has been made to identify and divest Pechiney's brazing sheet business to an alternative purchaser that poses less of a threat to competition. *Citizens Pub. Co. v. United States*, 394 U.S. 131, 137-38 (1969); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C.

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[2]Several commenters implicitly assume Alcan should be permitted to retain Pechiney's brazing sheet business since it would be more likely than any other owner to maintain current levels of employment and benefits at the Ravenswood plant. That assumption runs squarely against economic reality. *Ceteris paribus,* a firm that acquires market power through acquisition will be more prone to raise its prices and reduce output, risking a *reduction* in premerger employment levels.

1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1992 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.).

In this case, one cannot conclude that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America when neither Alcan nor a trustee has been allowed to complete its search for, and negotiations with, a prospective purchaser for Pechiney's brazing sheet business.[3] The proposed amended settlement cannot be rejected on the basis of commenters' fears that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co.*, 394 U.S. at 138; *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) ("good faith attempt to locate an alternative buyer" must be pursued before anticompetitive acquisition of failing firm may be allowed); *Harbour Group Investments*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet

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[3]Nor, for that matter, has it been shown that the resources of Pechiney's brazing sheet business are so depleted that it would not survive a Chapter 11 proceeding *(Citizens Pub. Co.*, 394 U.S. at 137-38), which, ironically, could reduce the legacy costs that some assert hinder this firm's ability to succeed as a viable enterprise. Also, one cannot assume, as several commenters have, that defendants' legacy costs will automatically scare off any potential purchasers of the Ravenswood facility. Whether a prospective buyer will assume none, some, or all of the facility's legacy costs is, in our view, a matter of negotiation between the prospective buyer and Alcan (or if need be, the trustee). It should be noted, however, that under the proposed amended decree, an "acceptable purchaser" of Pechiney's brazing sheet business should not be a firm so burdened by its former owners' legacy costs that it would not be viable, ongoing enterprise. *See* AFJ, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

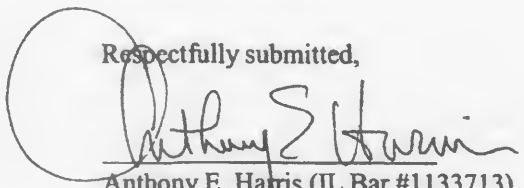
business, the United States noted, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its obligation to divest the Pechiney brazing sheet business. AFJ, § V(G). *See Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

7. The public comments did not persuade the United States to withdraw its consent to entry of the proposed Amended Final Judgment. At this stage, with the United States having published the eight comments (and the government's responses) on the proposed settlement, and the defendants having certified their pre-settlement contacts with government officials, the parties have fulfilled their obligations under the APPA. Pursuant to the terms of the Revised Hold Separate Order and 15 U.S.C. §16(e), this Court may now enter the Amended Final Judgment, if it determines that its entry would be in the public interest.

8. For the reasons set forth in the Revised Competitive Impact Statement and its responses to the public comments, the United States strongly believes that the Amended Final Judgment is in the public interest and urges the Court to enter it promptly upon receipt of defendants' certification of government contacts pursuant to 15 U.S.C. § 16(g).

Dated: September 20, 2004.

Respectfully submitted,



Anthony E. Harris (IL Bar #1133713)
U.S. Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW, Suite 3000
Washington, DC 20530
(202) 307-6583
Attorney for Plaintiff

Exhibit 1: Copy of Federal Register Notification –
Omitted, but can be found at 69 Fed. Reg. 33,406 (June 15, 2004)

Exhibit 2: Copy of Certificate of Publication in The Washington Post (Omitted)

Exhibit 3: Comment from and Response to West Va. Gov. Wise

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

The Honorable Bob Wise
Governor
State of West Virginia
Office of the Governor
Charleston, West Virginia 25305

Re: *Response to Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:03 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Governor Wise:

This letter responds to your August 13, 2004, comment on the proposed Amended Final Judgment (or "AFJ"), which reiterates concerns you expressed about the initial settlement proposed in this case. The United States's response to your comment on that proposed settlement (69 Fed. Reg. 18930, 18961-65 (Apr. 9, 2004)) fully addressed those concerns.[1] Before turning to your current comment, however, it may be helpful to briefly review the major terms of the amended settlement.

The Amended Final Judgment, if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The proposed Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[2] AFJ, §

[1]Through no fault of our own, the Federal Register refused to publish your letter of February 13, 2004, commenting on the initial settlement. It concluded that the copy of your letter that we had received and provided was not clear enough for publication. Your attorneys have since provided us an original, which, as you requested, will be published along with our response to your comment on the amended settlement.

[2]The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major

IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, § II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

In your August 13 comment, you maintain that Alcan's divestiture of Pechiney's brazing sheet business would not be in the public interest. As you see it, a viable alternative purchaser for Pechiney's brazing sheet business (and the Ravenswood plant) does not exist. We sense, however, that your major concern is that if the Pechiney brazing sheet business is divested, the new owner may consider altering or reducing the Ravenswood plant's wages or benefits to improve its ability to compete in the production and sale of brazing sheet and other rolled aluminum products.

Your basic argument is that Pechiney's brazing sheet business (and the Ravenswood plant) cannot survive unless owned by Alcan. This is, in effect, a "failing firm" defense. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969). To excuse an otherwise anticompetitive transaction on that basis requires a compelling showing that the resources of Pechiney's brazing sheet business are so depleted and its future prospects are so bleak, that the firm cannot be successfully reorganized in a Chapter 11 bankruptcy proceeding, and that every effort has been made to identify and divest Pechiney's brazing sheet business to an alternative purchaser that poses less of a threat to competition. *Citizens Pub. Co.*, 394 U.S. at 131; *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.).

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corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

Of course, there is no evidence that Pechiney's brazing sheet business is bankrupt, much less that the business cannot successfully emerge from a Chapter 11 proceeding. Perhaps more important, the terms of the Amended Final Judgment ensure that if Alcan elects to divest Pechiney's brazing sheet business, every reasonable effort will be made to find a purchaser who would continue Pechiney's competition in the market as part of a "viable, ongoing" business enterprise. *See* AFJ, §§ IV(J) and V(B). At this stage, since Alcan has not proposed a purchaser for the Ravenswood plant, much less negotiated any terms of sale, there is no factual basis for concluding that Alcan's (or a trustee's) efforts to divest Pechiney's brazing sheet business will not produce an acceptable, viable new owner capable of continuing Pechiney's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.[3] In short, the amended settlement cannot be rejected on the ground that an alternative purchaser does not exist when the reasonable canvass the decree envisions has not been allowed to run its course.

You also suggested in an earlier comment that divestiture of the Pechiney brazing sheet business is unnecessary because Alcan's original acquisition of Pechiney was not anticompetitive. There is, of course, no legal reason why the United States must prove the allegations of its original antitrust complaint before the Court rules on the appropriateness of the parties' agreed-upon relief. Indeed, to impose such a rule would, in effect, turn every settled government antitrust case into a full-blown trial on the merits of the parties' complex claims, and seriously undermine the effectiveness of antitrust enforcement by use of consent decrees.[4] It

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[3]You have speculated that some prospective purchasers may be reluctant to bid for Pechiney's brazing sheet business because they be required to assume the "legacy" costs (*e.g.*, retiree pensions and health care benefits) associated with the Ravenswood facility. The amended decree broadly provides, however, that the terms under which Pechiney's brazing sheet business is sold must not give defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively." Obviously, an "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* AFJ, § IV(J).

[4]Significantly, the increase in market concentration as a result of Alcan's acquisition of Pechiney would be at least as egregious as that held presumptively unlawful in *FTC v. Cardinal Health Inc.*, 12 F.Supp.2d 34, 53 (D.D.C. 1998) (acquisitions that would raise HHI market concentration above 3000 points "presumed" to have "pose[d] risk to competition;" the HHI in this case would increase over 600 points to over 3600 post-acquisition, Complaint, ¶ 20). The post-merger increase in concentration, however, understates the competitive significance of the transaction. The United States has charged that Alcan's acquisition of Pechiney would essentially create a brazing sheet market duopoly since capacity-constrained smaller rivals would be unable to discipline any unilateral or cooperative post-merger price increase by Alcan and the other major firm. *See* Complaint, ¶¶ 22 and 23; Revised Competitive Impact Statement, pp. 5-6. In these circumstances, the United States's challenge to Alcan's proposal to acquire Pechiney was both principled and appropriate.

would also invite the Court to impermissibly intrude on the law enforcement discretion accorded to the Executive Branch. *See United States v. Archer-Daniels-Midland Co.*, 2003-3 Trade Cas. (CCH) ¶ 74,097 at 96,872 (D.D.C. 2003) ("[C]ourt must accord due respect to the government's prediction as to the effect of the proposed remedies, its perception of the market structure, and its view as to the nature of the case. . . . [T]he court is not to review allegations and issues that were not contained in the government's complaint, . . . nor should it 'base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint . . .'") (citations omitted). *See generally, United States v. Microsoft Inc.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995); *United Sates v. Alex Brown & Sons, Inc.*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996).

As we have observed (Revised Competitive Impact Statement, pp. 14-16), in a proceeding to decide whether a proposed settlement should be entered by the Court under the Tunney Act, the United States need only show that the proposed relief lies within the "reaches of the public interest." *United States v. Bechtel Corp., Inc.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). That requires the Court to review the relationship between the relief in the Amended Final Judgment and the allegations of the government's original Complaint. In this case, the amended settlement falls well "within the reaches" of the public interest, for it would alleviate competitive concerns generated by Alcan's proposal to combine two of the three major sellers of brazing sheet in North America by requiring Alcan promptly to divest one of its brazing sheet businesses, replacing competition that would have been lost through the acquisition. A general concern that a new owner may seek to alter the divested business's labor agreements or employee benefits is no justification for concluding that entry of the Amended Final Judgment would not be in public interest, *United States v. Stroh Brewery Co.*, 1982-2 Trade Cas. (CCH) ¶ 64,782, 71,829-30, 1982 W.L. 1852 at 2-3 (D.D.C. 1982), especially where, as here, allowing the acquisition to proceed would risk an increase in prices, and a reduction in quality and innovation for domestic auto parts makers who buy brazing sheet, and hence jeopardize the jobs and financial well being of their customers and employees.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

August 13, 2004

Bob Wise
Governor

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington , DC 20530

Re: United States v. Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

United States District Court for the District of Columbia, Case No. 1:03CV02012

Dear Ms. Petrizzi:

As Governor of the State of West Virginia, I am writing to you to reiterate the vital public concerns associated with the potential divestiture of the Pechiney plant in Ravenswood, West Virginia, which concerns were originally expressed in my letter to you of February 13, 2004. That letter described the harmful effects which would result on the citizens of the State of West Virginia if the original Proposed Final Judgment was implemented. The Amended Final Judgment, filed with the Court on May 26, 2004, presents the same problems as the original proposal.

The parties have sought a modification of the Final Judgment, which would allow Alcan to sell either its own brazing sheet business or Pechiney's brazing sheet business, including the Ravenswood, West Virginia plant. Because of the continued exposure of the Ravenswood plant to divestiture, potential ownership by an inexperienced owner, and ultimate closure, the State of West Virginia has concerns and interests as great as those connected with the original Proposed Final Judgment.

The Competitive Impact Statement filed by the Department of Justice explains the background for the amendment. Alcan has proposed a plan to reorganize and, as part of that plan, to sell its own brazing sheet business, consisting of aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia.[1] It would sell these plants, in combination with an

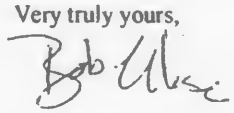
[1] At this point in time, the shareholders of Alcan have not voted on the reorganization plan.

aluminum smelter and an aluminum hot rolling mill in Europe, to a newly created entity to be owned by Alcan shareholders. The European Commission conditioned its approval of Alcan's acquisition of Pechiney on the divestiture of these European plants. If Alcan were to sell its United States brazing sheet business, the Amended Final Judgment would permit it to own the Ravenswood plant.

West Virginia welcomes Alcan's reorganization plan because it contemplates retention of the Ravenswood plant by Alcan. We support the plan, even though it calls for the sale of another West Virginia plant, the Alcan plant at Fairmont. The sale of the Fairmont plant does not present the same dangers because the purchaser would be a financially sound entity, newly created, with a strong position in the rolled products markets. Its managers would be former Alcan managers. There is no reason to believe that it would be sold to another buyer or would discontinue operations. The Justice Department is apparently satisfied that this new entity will be sufficiently removed from Alcan control to prevent any competitive problems in the brazing sheet market.

However, if Alcan's reorganization plan does not come to fruition, it would have to divest the Ravenswood plant. All of the concerns expressed in my letter to you of February 13, 2004 (which should have been, but was not, published in the Federal Register) would be again applicable. Because of that potential, I am submitting this letter to express those concerns again. I ask that you publish the previous letter of February 13, 2004, along with this letter, as required by the Tunney Act, 15 U.S.C. § 16. A copy of the letter of February 13, 2004 is enclosed.

Very truly yours,



Bob Wise
Governor

BW:jb

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

BOB WISE
GOVERNOR

February 13, 2004

VIA FAX AND OVERNIGHT COURIER

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington , DC 20530

Re: United States v. Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

United States District Court for the District of Columbia, Case No. 1:03CV02012

Dear Ms. Petrizzi:

As Governor of the State of West Virginia, I object to the proposed Final Judgment in *United States v. Alcan Aluminum Corp.* and ask the United States District Court for the District of Columbia to reject the Final Judgment as currently written and to enter a final judgment that will protect the citizens of West Virginia by allowing Alcan to own the plant of Pechiney Rolled Products. The Final Judgment is flawed and the divestiture it requires is unnecessary and contrary to the public interest.

The planned merger of Alcan and Pechiney is global in scope and involves the integration of facilities and operations all over the world. It is ironic and incredible that the Justice Department somehow sees Jackson County, West Virginia, as the only area of certain danger as a result of this merger. It is wholly unacceptable that West Virginia's economy and hundreds of its citizens may suffer because the Justice Department has chosen to bargain away their rights in exchange for an agreed order to hastily and recklessly resolve a theoretical concern. It is disappointing that the Justice Department apparently has opted for the expedience of an agreed order imposing an artificial remedy and has made West Virginia's jobs and economy a bargaining chip in the process.

West Virginia does not oppose the acquisition of Pechiney, S. A. by Alcan Aluminum Corporation. However, West Virginia is vitally concerned with that part of the proposed Final Judgment that requires Alcan to divest the plant of Pechiney Rolled Products, located at Ravenswood, West Virginia. If new owners of the plant lack the qualifications necessary for success, the plant will fail and close. That would be a disaster for many people and communities in West Virginia. The economic impact of closure of this facility would be devastating for hundreds of employees and retirees of the Ravenswood facility and the economies of Jackson County and the State as a whole.

This letter of opposition is submitted to the Court and the Justice Department under the terms of the Tunney Act, 15 U.S.C. § 16. Under that Act, the Court must determine whether the proposed Final Judgment is in the public interest, and may consider "effects of alternative remedies actually considered" and "the impact of such judgment upon the public generally."

The Final Judgment puts the public interest in serious jeopardy. If it is not implemented in the public interest, many persons are certain to suffer.

The Ravenswood Plant

The Pechiney Rolled Products plant at Ravenswood employs approximately 960 workers, 700 of whom are hourly workers. It currently has approximately 900 retirees.

The Ravenswood plant is an integrated facility that produces aluminum sheet, aluminum slab, various aluminum specialty products, and brazing sheet. The brazing sheet market is the only one that apparently concerns the Justice Department, but it makes up only a relatively small part of the plant's total output. Pechiney Rolled Products sells about 35 million pounds of brazing sheet per year. Only 28% of the plant's output is brazing sheet. Brazing sheet is a small market, and a small portion of the rolled products sales. Though the plant's larger volume products (principally aluminum plate and sheet) are not the subject of any antitrust concern, the proposed Final Judgment would affect all of the plant's products because the entire plant is to be sold pursuant to its terms.

The plant's dominant product is aluminum plate which is sold as general engineering plate and plate for the aerospace industry. Some aluminum product is produced for transportation manufacturers for railcars, tanker trailers, and wide roofs for freight trailers. The Ravenswood plant also sells rolled aluminum for building products - siding and downspouts. Aerospace customers require product that meets exacting safety standards and they rely on their suppliers for technical support. Pechiney is able to give technical customer support. It has research facilities near Grenoble, France. It has machinery for running trials. It has intellectual property rights, which it will retain after the merger. A buyer of the Ravenswood plant would have to be equally capable of meeting the demands of buyers of these products.

Brazing sheet is not a commodity product. Its production and sale are heavily dependent on technology—for product development and for customer service. There are actually forty different brazing sheet products, some of it "header stock"—the top of the radiator - and "tube stock" - the water carrying tubes that are air-cooled. Competition in the brazing sheet market

is not on price alone, but also on performance, quality, alloy development, product development, service, and long-term relationships.

Defects in the Final Judgment

The Final Judgment is defective because it compels the divestiture of the Ravenswood plant. For reasons discussed in the next section of this comment and objection, Alcan's ownership of the plant would not endanger competition in any market. The fundamental premise of the Final Judgment is erroneous.

The Final Judgment fails to account for the range of products manufactured at Ravenswood. It ignores the products other than brazing sheet. If the search for a successor fails to take the other products into account, there is substantial danger that an ostensible "new owner" found by Alcan under the Final Judgment would lack the necessary experience and technical capability of producing and selling the full range of these products.

The Final Judgment lacks adequate standards for the search for new owners of the Ravenswood plant. It provides no guidance in the event that a qualified buyer with the adequate capital capability is not found by Alcan or the trustee.

Moreover, even if a purchaser is found, it does not have to agree to be bound by the proposed Final Judgment. Consent Final Judgment, ¶¶ II.E and IV.A.

The purchaser must demonstrate only that the acquired assets will be used "as part of a viable, ongoing business, engaged in developing, manufacturing, and *selling brazing sheet* in North America." Consent Final Judgment, ¶ IV.] *This requirement ignores the important fact that brazing sheet is only one of the products (28% of the total production) manufactured at Ravenswood.* In fact, the proposed Final Judgment ignores 72% of the products made by this plant that is to be sold. The plant will not survive unless the purchaser makes a commitment to make and sell *all* of the Ravenswood products.

The Final Judgment does not require the purchaser to make its commitments for any length of time. How long the purchaser must operate the plant is not specified. The purchaser need not give assurance for sustained operation.

If the divestiture process were allowed to proceed and if Alcan is unable to find a purchaser acceptable to the Justice Department within the time allowed (120-180 days after the end of the tender offer), a trustee will be appointed to make the sale. Consent Final Judgment, ¶¶ IV.A and V. Any potential purchaser truly capable of operating the plant effectively will surely be located during the time allowed to Alcan. If the sale falls to the hands of a trustee, the likelihood of finding an effective owner of the plant is virtually nil.

The recent owners of the plant have not been able to operate it profitably. Unprofitable plants are often bought by purchasers who intend to sell off assets and go out of business. New owners might also attempt to avoid pension obligations undertaken by Pechiney, its

predecessor owners, or successors. The Final Judgment does not sufficiently guard against these disastrous possibilities.

Final Judgments like the one proposed in this case often fail to result in successful operations after the divestiture. A 1999 FTC Divestiture Study[1] found that buyers of divested assets often lack the information necessary to carry on the business successfully. They often do not fully know what assets they need to succeed in the business, or whether the assets offered by the sellers are up to the task.[2] Attempts by Alcan to find purchasers experienced in brazing sheet would identify potential buyers that might not be capable of making and selling Ravenswood's other products.

Under these circumstances, particularly in light of the inadequacy of the Final Judgment, the State of West Virginia fears that the urgency in finding a buyer for Ravenswood will lead to a sale to owners who will not keep the plant open. These real dangers make it necessary for the State of West Virginia to register these objections.[3]

The Effect of the Acquisition on Competition

Divestiture of the Ravenswood plant, part of which includes Penciney's Brazing Sheet Business, is totally unnecessary. Competition in the brazing sheet market is active now and will remain active after the purchase of Pechiney by Alcan. There is sound reason to believe that intense competition would continue in the brazing sheet market if Alcan retained ownership of Pechiney Rolled Products. The Final Judgment and the Justice Department's Competitive Impact Statement ("CIS") fail to analyze the effect of the acquisition on the markets for the products of Pechiney Rolled Products other than brazing sheet.

Competitors in the brazing sheet market are, in order of market share, Alcoa, Pechiney Rolled Products, Alcan and Corus. Alcoa obtained its position as the market leader when it acquired Alumax, which had brazing sheet production facilities at Lancaster, Pennsylvania. Alcoa has been, until now, the world's largest aluminum producer. The combination of Alcan and Pechiney takes that title away from Alcoa. The competition between Alcoa and Alcan around the world has been intense, and the rivalry would continue after this combination is formed,

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[1] FTC, "A Study of the Commission's Divestiture Process"(1999), *available at* www.ftc.gov/os/1999/9908/index.htm#6.

[2] *See* Richard Parker and David Balto, "The Evolving Approach to Merger Remedies," ANTITRUST REPORT, May 2000 (Matthew Bender), 2, 9.

[3] "One particular complication in selling Ravenswood could be the plant's capacity to produce hard alloy plate for the aerospace industry. Operating a plate mill required the support of a research and development team, according to Lloyd O'Carroll of BB&T Capital Markets, and few companies had that capability. In North America, the only company in the market besides Alcoa and Alcan-Pechiney was Houston-based Kaiser Aluminum Corp., O'Carroll said, but Kaiser was struggling to emerge from Chapter 11 bankruptcy protection and was unlikely to have the cash to finance an acquisition unless it succeeded in selling off some of its alumina assets. Anglo-Dutch steel and aluminum producer Corus Group Plc also produces plate but has said it intends to exit the aluminum business." Online American Metal Market, October 1, 2003, http://www.findarticles.com/cf_dls/m3MKT/39-3_111/108450462/p1/article.jhtml.

especially since Alcoa surely will attempt to regain its standing as the world leader in brazing sheet production.

Purchasers of brazing sheet from the Ravenswood plant and other similar facilities are Tier 1 suppliers to the automotive industry. These are large, sophisticated buyers that are capable of negotiating favorable prices. Furthermore, they must qualify to supply the automobile manufacturers, and they in turn require qualification by those who supply them with materials like brazing sheet. Each Tier 1 supplier chooses suppliers of brazing sheet from whom it will demand qualification. This means that each brazing sheet producer does not compete with all other brazing sheet sellers in seeking the business of a Tier 1 supplier, but at the most one or two of the other sellers. Purchasers want to maintain at least two reliable sources. These circumstances significantly reduce the impact of market share as a factor for analysis of the anti-competitive effects of the proposed merger.

The Justice Department asserts in its CIS that Alcan is a new "maverick" that is using low prices to gain market share in the brazing sheet market. If Alcan owned the Pechiney Rolling Products plant, the Justice Department believes it would gain that market share without price concessions. This would lead it to abandon its low-price strategy, hurting purchasers who now enjoy the benefits of Alcan's low prices. That analysis by the Justice Department is highly questionable. First, as a practical matter, Alcan is unlikely to use a low price strategy any longer than necessary to gain the market share it wants. Once it gains the market share it seeks, the low price strategy will end and purchasers will not have any price benefit. Second, Alcan shares the brazing sheet market with its arch-rival Alcoa, the major seller in the market. Alcan could not raise prices above Alcoa's price, and vice versa. There is price discipline in the market with these two sellers vying with one another. Alcan's low prices are a short-term strategy. It is not worth the risks posed by the consent decree to require divestiture just to get this short term advantage. Indeed, allowing Alcan to retain the Ravenswood facility may very well create a pro-competitive effect in that Alcoa will have to find ways to regain its "world leader" title. Third, the buyers of brazing sheet are large, sophisticated purchasers who are capable of negotiating prices.

In spite of the Justice Department's concerns, Alcan would be the best owner of the Ravenswood plant. Among the reasons for this conclusion are these:

1. The divestiture is not necessary because competition in the brazing sheet market without the divestiture would continue to be intense.
2. Alcan, being aggressive in its competition with Alcoa, would maximize the potential of the Ravenswood plant better than any other owner. Contrary to the Justice Department's view that Alcan would not compete aggressively as owner of the Ravenswood plant, industry commentators believe that Alcan "could speed up the 'fixing' of Pechiney's Ravenswood facility now under way."[4]
3. Finding a buyer capable of maximizing the potential of the Ravenswood plant would be very difficult, if not impossible, especially in light of the previous lack of profitability of that plant and its legacy costs.

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[4] Online Metal Center News, August 2003.
http://metalcenternews.com/2003/august/mcn0803Merger.htm (viewed 10/6/03)

4. Alcan has the experience and facilities to make and sell all of the products of the Ravenswood plant, not just the brazing sheet upon which the Final Judgment focuses.

Conclusion

West Virginia proposes that the Final Judgment be modified to permit Alcan to retain ownership of the Pechiney Brazing Sheet Business and the other operations of Pechiney Rolled Products at Ravenswood. In the alternative, West Virginia proposes that no buyer be accepted for the Ravenswood plant that has fewer capabilities that those of Alcan, and that if the buyer fails to keep the plant in operation, the plant should revert to Alcan.

The current economic climate demands that the State of West Virginia expend every effort to ensure that no jobs are lost as the result of the Alcan/Pechiney transaction. The proposed Final Order, however, severely threatens our economy and places at severe risk the jobs of hundreds of Ravenswood plant employees and the future welfare of hundreds of its retirees. The State of West Virginia cannot stand idly by and allow its economy and citizens to be jeopardized. The public interest requires that Alcan retain ownership of the plant, or, in the alternative, that the highest priority in this divestiture be given to finding a buyer that is at least as capable as Alcan to operate the plant. If such a buyer cannot be found, Alcan should be permitted to own and operate the plant.

Very truly yours,

Bob Wise

Governor Bob Wise

Exhibit 4: Comment from and Response to Ripley, WVA Mayor Harvey

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

The Honorable Ollie M. Harvey
Mayor
City of Ripley
113 South Church Street
Ripley, West Virginia 25271

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mayor Harvey:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment in this case. That comment is similar to your comment on the initial settlement, which the United States fully addressed and published in the Federal Register (69 Fed. Reg. 18930, 18947-50 (Apr. 9, 2004)). Before turning to your current comment, however, it may be helpful to summarize the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To ensure that the proposed divestiture is expeditiously completed

[1]The initial proposed Final Judgment would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement, on the other hand, would allow Alcan to restore competition in the brazing sheet market by selling (or spinning off) its own brazing sheet operations. Alcan has indicated that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking motivated, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, then that operation must "be owned and operated by a company committed to long-term productions and employment," and that it not be sold to a firm that "lacks the experience and facilities necessary to maintain operations in the future."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* Amended Final Judgment, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Amended Final Judgment, §§ II(E)(1)-(3). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and

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[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce output, leading to a *reduction* in premerger employment levels.

others in developing, producing, and selling brazing sheet in North America.[3] It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) ("good faith attempt to locate an alternative buyer" must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. AFJ, §V(G). *See generally, Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

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[3] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* Amended Final Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

City of Ripley
113 SOUTH CHURCH STREET
RIPLEY, WV 25271
Phone: (304) 372-3482
Fax: (304) 372-6693

Mayor
Ollie M. Harvey
Recorder
William E. Casto

August 5, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Pechiney Rolled Products

Dear Ms. Petrizzi:

I write again, following my letter to you of February 9, 2004, concerning the proposed amended consent decree in the settlement of Alcan's acquisition of Pechiney. I understand that the amended decree might result in Alcan's retaining ownership of the Pechiney Rolled Products plant. That would be a very desirable result. However, it is also possible, under the amended decree, that Alcan would divest the plant. The danger that such a divestiture might occur leads me to write again.

I am mayor of Ripley, West Virginia, a town near the plant, where many retirees live. The town has a $3 million operating budget with a tax base that includes many citizens in the retiree group. The concern of the retirees is that a new owner of the plant will fail to operate the plant successfully, so that retirement benefits will be in jeopardy.

For the protection of the current employees, the retirement group, and the county, the plant must be owned and operated by a company like Pechiney or Alcan that has the capacity to absorb costs of operation when the plant is unprofitable. The retirees observe similar situations where new owners take over plants and shut them down or renounce benefit obligations because the new owners can't afford to do otherwise.

Common Council
Curtis Anderson David Brubaker Don Henthorne
Russ Vannoy Victor Yoak

It is imperative for the life of this community that the Pechiney Plant be owned and operated by a company committed to long-term productions and employment. The plant must not be sold to a company that might have financing and good intentions in the short term but lacks the experience and facilities necessary to maintain operations into the future.

Very truly yours,

Ollie M. Harvey
MAYOR

OMH:isb

Cc: Governor Bob Wise
Senator Robert Byrd
Senator Jay Rockefeller

Exhibit 5: Comment from and Response to Ravenswood, WVA Mayor Roseberry

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

The Honorable Clair Roseberry
Mayor
City of Ravenswood
212 Walnut Street
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mayor Roseberry:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment in this case. That comment is similar to your comment on the initial settlement to which the United States previously responded (69 Fed. Reg. 18930, 18938-42 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to summarize the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To ensure that the proposed divestiture is expeditiously completed

[1]The initial proposed Final Judgment would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement, on the other hand, would allow Alcan to restore competition in the brazing sheet market by selling (or spinning off) its own brazing sheet operations. Alcan has indicated that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking motivated, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, then the new owner must "have the capability[,] . . . commitment [, and resources] necessary to operate the plant [well] into the future."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* Amended Final Judgment, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Amended Final Judgment, §§ II(E)(1)-(3). Because the proposed amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.[3] It would clearly be

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[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

[3]An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* Amended Final Judgment,

an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) ("good faith attempt to locate an alternative buyer" must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. Amended Final Judgment, § V(G). *See generally, Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

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§ IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

2003 - 2005

City of Ravenswood

212 Walnut Street
Ravenswood, West Virginia 26164
Telephone (304) 273-2621
Fax (304) 273-2603
http://ravenswoodwv.org
maycrroseberry@kvinet.com

August 5, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Pechiney Rolled Products Plant, Ravenswood, West Virginia

Dear Ms. Petrizzi:

I am the mayor of the City of Ravenswood, West Virginia. On February 4, 2004 I sent you a Resolution adopted on February 3, 2004 by the Common Council of the City of Ravenswood expressing our concern over the sale of the Pechiney Rolled Products plant at Ravenswood under the terms of a consent decree pending before the United States District Court in Washington. I write again because, though the proposed consent decree has been amended, the potential for a sale of the plant still exists.

As the Resolution stated, the well-being of the city is linked to the successful operation of the plant because many of our citizens work there and also because about one-third of the families in the city are retirees, many being former workers at the Pechiney plant. The average age in the city's population is 42. If the plant were to close, all of the people of this area would be affected.

It is vital that any purchaser of the Pechiney plant have the capability and commitment necessary to operate the plant into the future. We are concerned that, if Alcan does not retain the plant, a buyer will be found to satisfy the requirement of divestiture, but the buyer will lack the resources to keep the plant in operation in the long term.

The importance of this plant to our community cannot be over-estimated. The public interest requires that the plant be owned and operated by Alcan or by some buyer at least as capable as Alcan, with resources and support capabilities as extensive as Alcan's.

Respectfully yours,

Clair Roseberry

Clair Roseberry
Mayor

Cc:
Common Council

Exhibit 6: Comment from and Response to Jackson Co. Dev. Authority President Weyer

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

Ms. Marci D. Weyer
President
Jackson County Development Authority
104 Miller Drive
Ripley, West Virginia 25271

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Ms. Weyer:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is similar to your comment on the initial settlement to which the United States has responded (69 Fed. Reg. 18930, 18938-44 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to briefly review the major terms of the amended settlement.

The Amended Final Judgment ("AFJ"), if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] AFJ, § IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, § II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount

[1]The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

You expressed a general concern that if Alcan elects (or a trustee is appointed) to divest the Pechiney brazing sheet business, then any new owner of the Ravenswood facility may "lack the capability to operate the plant successfully." You have asked that Alcan be permitted to retain and operate the Ravenswood plant if "no reliable buyer is found."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.[2]

At this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner

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[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.[3] It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) ("good faith attempt to locate an alternative buyer" must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. AFJ, §V(G). *See generally, Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

[3] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* AFJ, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

JC Development Authority DA
Jackson County

Mark W. Whitley, Executive Director
104 Miller Drive • Ripley, WV 25271
(304) 372-1151 • Fax: (304) 372-1153
E-Mail director@jcda.org
www.jcda.org

August 5, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington , DC 20530

Re: Alcan Acquisition of Pechiney

Dear Ms. Petrizzi:

I am president of the Development Authority of Jackson County, West Virginia, where Pechiney has a major plant, Pechiney Rolled Products. I wrote to you in February 2004 to convey a resolution of the Development Authority, dated February 3, 2004, expressing strong concern about the then pending consent decree requiring Alcan to divest that plant.

Under an amended proposed consent decree, Alcan still has the option of divesting the Ravenswood plant. Therefore, the concerns expressed in the Authority's resolution remain relevant. The danger of divestiture is still posed by the amended decree presented to the Court. I repeat the resolution as follows:

> Whereas, Pechiney Rolled Products is a major employer and taxpaying business in Jackson County, West Virginia, and
>
> Whereas, under a consent decree permitting the acquisition of Pechiney by Alcan, the purchaser is required to divest that plant by selling it to an owner who would continue to produce brazing sheet at the plant, and
>
> Whereas, this Authority is concerned that a new owner would lack the capability to operate the plant successfully in light of the plant's lack of profitability and the necessity of integrating it into allied operations of the owner, and

Whereas, a shutdown at the plant would be devastating to the people of Jackson County, and

Whereas, continued operation of the plant by Alcan, a qualified owner, would avert the danger of a shutdown of the plant,

IT IS RESOLVED THAT the foregoing concerns of the Jackson County Development Authority should be made known to the Court considering the consent decree, so that the public interest may be served and the Court might, if no reliable buyer is found for the plant, reconsider the advisability of terminating the requirement of divestiture and permit Alcan to own and operate the plant.

I understand that comments made to you will be conveyed to the parties to the consent decree and to the Court.

Very truly yours,

Marci D. Weyer

Marci D. Weyer
President
Jackson County Development Authority

Exhibit 7: Comment from and Response to Jackson County, WVA Commission

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

James L. Waybright, President
Virginia J. Starcher, Commissioner
Donald G. Stephens, Commissioner
Jackson County Commission
Jackson County Courthouse
Ripley, West Virginia 25271

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear President Waybright and Commissioners Starcher and Stephens:

This letter responds to your August 11, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. The proposed Amended Final Judgment, if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] AFJ, § IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, § II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that

[1]The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

Your concern is that if Alcan chooses to divest the Pechiney brazing sheet business, that operation "might be sold to a buyer who will not operate the [Ravenswood] plant successfully and will shut it down in a short period of time," which could cause widespread unemployment in the Ravenswood community. As you see it, for this reason, the Amended Final Judgment should be modified so that "Alcan would not have the option of divesting this plant."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, the United States sees no basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and

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[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

others in developing, producing, and selling brazing sheet in North America.[3] It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser does not exist when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.).

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

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[3] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* Amended Final Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

The Jackson County Commission

Jackson County Courthouse
Ripley, West Virginia 25271
Phone (304) 372-2011
TDD# (304) 372-2000

Commissioner
Virginia J. Starcher

Commissioner
James L. Waybright

Commissioner
Donald Stephens

August 11, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Ravenswood, West Virginia - Pechiney Plant

Dear Ms. Petrizzi:

We, the County Commissioners of Jackson County, West Virginia, wrote to you on February 2, 2004 to express our great concern about the planned divestiture of the Pechiney Rolled Products plant in our County. We were commenting then on a proposed final judgment that had been submitted to the District Court in Washington.

We have learned that an amended final judgment has been filed with the Court and is now under review. That amended final judgment allows for the divestiture of the Pechiney plant, in the event that Alcan decides to sell that plant rather than selling its own brazing sheet plant. Because the amended final judgment could lead to the sale of the Pechiney plant, all of the concerns expressed in our earlier letter are still very relevant.

As we said in our earlier letter, our concern is that in the divestiture the plant might be sold to a buyer who will not operate the plant successfully and will shut it down in a short period of time. That outcome would be a disaster for our County.

Jackson County has a population of 28,000. There are approximately 12,000 in the labor force. The Pechiney plant employs 1000. Those employees, their families and dependents, together with the plant's retirees, make up a substantial portion of the County's population. The Pechiney Rolled Products plant is the single largest source of tax revenue in the County. Eighty percent of tax revenues go to the school district.

If the plant were to close, the community could not absorb the laid off workers and they would be added to the already excessive group of unemployed. The retirees who depend on employer sponsored benefit plans would lose their medical benefits and pensions. The County and school district would lose a central pillar of their tax base. The economic burden on the county would be more than it could sustain.

These facts demonstrate the serious basis of the our concern. We fear that a new owner would fail to operate the plant successfully and would end up liquidating the plant's assets over time or shutting down. Jobs, retirement benefits, and government services are at stake. The plant has had a difficult history and is not profitable. A new buyer who lacks resources and experience in the operation of a rolling mill, with the particular technical requirements of this plant, will not succeed.

Though the amended final judgment says that a buyer must be found who could operate the plant successfully, we are doubtful that this can be achieved unless the buyer is a major aluminum producer. The only companies who could take over the plant successfully are likely to be in the brazing sheet market already, and they would therefore be disqualified from purchasing the plant.

The problem for Jackson County would be solved if Alcan to continue to own the plant. We ask that the final judgment be amended so that Alcan would not have the option of selling the Pechiney plant.

Very truly yours,

THE JACKSON COUNTY COMMISSION

James L. Waybright, President

Donald G. Stephens, Commissioner

Virginia J. Starcher, Commissioner

Exhibit 8: Comment from and Response to Mr. L.D. Whitman

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

Mr. L. D. Whitman
Route 1
Box 79A
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2003)*

Dear Mr. Whitman:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is similar to your comment on the initial settlement to which the United States responded and published in the Federal Register (69 Fed. Reg. 18930, 18970-73 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to briefly review the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell

[1]The initial proposed Final Judgment would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement, on the other hand, would allow Alcan to restore competition in the brazing sheet market by selling (or spinning off) its own brazing sheet operations. Alcan has indicated that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking motivated, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, the new owner must have the resources to continue that firm's competition in marketplace.

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Because the proposed amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products sold by the Ravenswood facility (*e.g.*, aerospace grade aluminum plate), there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.[3] It would clearly be

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[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

[3]An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* AFJ, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to

an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) ("good faith attempt to locate an alternative buyer" must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. AFJ, § V(G). *See generally, Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

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lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Route 1
Box 79A
Ravenswood, WV 26164

August 5, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: US v. Alcan et al., Case No. 1.03CV02012
In the United States District Court for the District of Columbia

Dear Ms. Petrizzi:

I wrote to you in February concerning the potential effects of the consent decree before the Court in connection with the purchase of Pechiney by Alcan. I was concerned particularly about the divestiture of Pechiney Rolled Products required by the consent decree. There is now a revised consent decree before the Court, but that decree also could result in the divestiture of the Pechiney plant. The concerns I expressed in February are still valid now.

I was at one time plant manager at the Pechiney Rolled Products plant, and I am now chairman of the retiree group of former employees of the plant.

My chief concern and that of the other retirees is that a divestiture of the plant might result in its being sold to new owners who will not operate the plant successfully and will cause its shutdown. A shutdown of that plant would be devastating to the entire community, especially to the thousands of employees and retirees who would be left without work or the means to live decent lives.

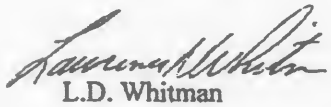
I know that the amended decree *could* make it possible for Alcan to continue to own the plant. This would be a great relief to the community here. We doubt that any owner other than Alcan could operate the plant successfully. However, the decree also opens the possibility that Alcan might divest the plant. As I stated in my previous letter, history leads me to worry about the ability of a new owner to perform as well as Alcan. It would not be enough for a buyer simply to have the capital to acquire the plant and take on the legacy costs associated with it. The new owner must have a high level of technical capability. It must be able to do the testing necessary to satisfy the safety requirements and to test new alloys for the plant's products, aluminum plate and brazing sheet.

Because aluminum plate is used for military purposes and by the aerospace industry, intense safety testing is needed on the products. Also, developing new alloys and products for these markets require a tremendous amount of research and development. To be successful long term, it's critical that they are equivalent too or have a technological advantage over it's competitor which is Alcoa.

If the plant should close because a new owner lacks the necessary experience or technological backup, the retirees whom I represent would be in life threatening circumstances. Many retirees are dependent of benefits, especially payment of medical bills. If the medical benefits they now receive were to be shut off because of plant closing or the owner's bankruptcy or the inability of the owner to meet pension obligations, these people would have nothing to show for lives of hard work and they would be left in desperate circumstances.

If no buyer can be found as capable as Alcan to operate the Ravenswood plant, I suggest that Alcan be allowed to retain the plant, along with its own brazing sheet business.

Very truly yours,



L.D. Whitman

Exhibit 9: Comment from and Response to Mr. R. Thompson, Century Aluminum

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

Mr. Ron Thompson
Vice President of Operations
Century Aluminum of West Virginia, Inc.
Ravenswood Operations
Post Office Box 98
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC. Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mr. Thompson:

This letter responds to your August 9, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is virtually identical to your comment on the initial settlement. The United States's response to your earlier comment, which fully addressed the concern you expressed, was previously published in the Federal Register (69 Fed. Reg. 18930, 18966-69 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to summarize the major terms of the amended settlement.

The Amended Final Judgment, if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] AFJ, § IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, §

[1]The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

Century Aluminum is a customer of the Pechiney brazing sheet business that could be divested pursuant to the terms of the Amended Final Judgment. Your major concern is that any new owner of the Ravenswood facility must be a financially viable, ongoing enterprise, fully capable of paying for any aluminum that it purchases from your firm.

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the development, production, and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.[2]

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[2]You argue that Alcan should be allowed to retain the Pechiney brazing sheet business because it would maintain current employment levels at Ravenswood. A firm that acquires market power, however, will be more likely to raise price and reduce output, and as a consequence, would be more, not less, likely to reduce employment levels.

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, the United States sees no basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.[3] It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C.-1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.).

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

[3] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* Amended Final Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Century ALUMINUM

Ravenswood Operations

August 9, 2004

Ms. Maribeth Petrizzi
Chief, Litigation II Section Antitrust Division
United States Department of Justice
1401 H Street, NW ,Suite 3000
Washington, DC 20530

Re: Pechiney Rolled Products Plant, Ravenswood, West Virginia

Dear Ms. Petrizzi:

I am the manager of the Century Aluminum primary aluminum plant at Ravenswood, West Virginia. The plant is adjacent to the Pechiney Rolled Products plant that was to be divested by Alcan as a divestiture obligation as part of its acquisition of Pechiney.

This obligation was lifted in May 2004 when Alcan and the Department of Justice executed and filed with the United States District Court in Washington, DC an Amended Final Judgment that recognizes Alcan's spinoff of its original rolling assets, including its mill for rolling brazing sheet, as an alternative remedy to divestiture of the Ravenswood mill. The comments below represent a restatement of Century's position with respect to ownership of the rolling mill.

The two plants operated as an integrated entity from the late 1950s, when Kaiser Aluminum constructed them, until 1999 when Century sold the rolling mill to Pechiney. The rolling mill is the major customer for our plant. It contractually purchases between 275 million and 325 million pounds of primary aluminum a year out of our total yearly production of about 375 million pounds. The metal is delivered in molten or liquid form as it comes out of Century's electrolytic cells. This eliminates the need for much of the metal to be cast by Century and then re-melted by the mill for casting into shapes suitable for rolling. This arrangement and the close proximity of the plants produce savings that are shared by the parties. The savings are important to the economic viability of our plant and to the jobs of our 700 employees and the pension and health benefits enjoyed by our 300 retirees.

Century Aluminum of West Virginia, Inc.
Post Office Box 98
Ravenswood, WV 26164

(304) 273-6000 Phone

A Century Aluminum Company

Century Aluminum's principal concern with ownership of the mill is that prospective new owners must meet our company's credit standards. Century typically holds as much as $30.0 million in accounts receivable each month under the existing contract which is a significant liability for a company of our size. Alcan's size, favorable reputation and credit worthiness satisfy this concern. If Alcan were to sell the plant to a third party, we would require that the new owner possess a credit rating approximating that of Pechiney/Alcan.

I hope we have provided you with a fuller understanding of the inter-related manufacturing processes between our reduction plant and the rolling mill. We hope that the mill will continue to operate under the management of an owner with all of the financial, technical and marketing resources required to assure its economic success.

We are available to provide any additional information you may require.

Sincerely,

Ron Thompson

Ron Thompson
Vice President of Operations
Century Aluminum of West Virginia, Inc.

Exhibit 10: Comment from and Response to Mr. D. Waldo, Appalachican Power Co.

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

Mr. Dana Waldo
President and COO
Appalachian Power Co.
American Electric Power
P.O. Box 1986
Charleston, West Virginia 25327-1986

Re: *Response to Comment on the Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mr. Waldo:

This letter responds to your August 5, 2004, comment on the pending Amended Final Judgment (or "AFJ"), which "reaffirm[s]" concerns expressed by another company executive, Mark Dempsey, in an earlier comment on the initial settlement proposed in this case. Both that comment and the United States's response were previously published in the Federal Register. 69 Fed. Reg. 18930, 18961-65 (Apr. 9, 2004). Before addressing your current comment, however, it may be helpful to briefly review the major terms of the amended settlement.

The Amended Final Judgment, if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] AFJ, § IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, § II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West

[1]The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

Mr. Dempsey made two arguments as to why Alcan should not be required to divest Pechiney's brazing sheet business, which you have adopted. First, he contended that the United States may have asked for too much relief. The amended settlement may require Alcan to divest Pechiney's brazing sheet business, including the entire Ravenswood rolling mill, although the major competitive problem created by the acquisition is in domestic sales of brazing sheet. Second, he asserted that any new owner of Pechiney's brazing sheet business may not have "the capacity, technology, and experience" to successfully operate the Ravenswood plant as a viable, vigorous new competitor.

The competitive problems created by Alcan's acquisition of Pechiney could not be cured simply by requiring a "partial divestiture" of only those portions of the Ravenswood plant that are exclusively devoted to developing, producing, and selling brazing sheet. As you may know, at Ravenswood, brazing sheet is produced on the same production lines that make many other important rolled aluminum alloy products (*e.g.*, common alloy coil, aerospace sheet). The United States is unaware of, and no one has produced, any evidence that suggests that dismantling Pechiney's Ravenswood rolling mill and selling off a few parts that are exclusively used to make brazing sheet will likely produce a viable new firm capable of replacing the vigorous competition that would be lost by Alcan's acquisition of Pechiney. Indeed, the amended settlement fully comports current antitrust divestiture practice: "[D]ivestiture of an ongoing business is more likely to result in a viable operation than divestiture of a more narrowly defined package of assets and provides support for the common sense conclusion that [antitrust enforcement agencies] should prefer the divestiture of an ongoing business." Federal Trade Commission, A Study of the Commission's Divestiture Process 10-12, esp. 12 (1999).[2]

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[2]This FTC study is available online at *http://www.ftc.gov/os/1999/08/divestiture.pdf.*

The United States also strongly believes that in order to be an effective competitor, the new owner of Pechiney's brazing sheet business must be capable of operating those assets as part of an ongoing, viable new enterprise. Indeed, the lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J), V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3).

At this stage, however, since Alcan has not proposed a purchaser for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.[3] It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) ("good faith attempt to locate an alternative buyer" must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. AFJ, §V(G). *See generally, Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

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[3] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* AFJ, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

American Electric Power
PO Box 1986
Charleston, WV 25327-1986

AEP
AMERICAN ELECTRIC POWER

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

August 5, 2004

Re: Pechiney Rolled Products, Ravenswood, West Virginia

Dear Ms. Petrizzi:

American Electric Power respectfully submits this letter as further comment on the Final Judgment now before the Federal District Court in Washington, DC concerning the purchase of Pechiney.

We reaffirm our concerns expressed in the Enclosed February 13, 2004 letter by Mark Dempsey.

Also, our recommendation to allow Alcan to continue operating this facility still stands. This suggestion is in no way prompted by any contact with Alcan.

We ask the Court be informed of our concerns expressed in our letter of February 13, 2004 and our suggested solution.

Sincerely,

DE Waldo

Dana Waldo
President and COO
Appalachian Power Company
A Unit of American Electric Power

Enclosure

AMERICAN ELECTRIC POWER

American Electric Power
707 Virginia Street, E., Suite 1100
P O Box 1986
Charleston, WV 25327-1986
www.aep.com

Mark E. Dempsey
West Virginia President

304-348-4120
medempsey@aep.com

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington , DC 20530

Re: Pechiney Rolled Products, Ravenswood, West Virginia

Dear Ms. Petrizzi:

This letter is submitted as a comment on the Final Judgment now before the Federal District Court in Washington concerning the purchase of Pechiney by Alcan. Under that Final Judgment, Alcan must divest the Pechiney Rolled Products plant at Ravenswood, West Virginia. The divestiture is of great concern to American Electric Power (AEP).

The Pechiney Rolled Products plant and the Century Aluminum plant adjacent to it use very large amounts of electricity in their manufacturing processes. In addition to providing electric power to the plants, AEP also supplies power to the communities around the plants, including the plants' employees and their families and the businesses that provide additional products and services to them.

AEP's concern about the pending Final Judgment and the divestiture of the Pechiney Rolled Products plant is that such action might lead to a shut down of the plant. The Final Judgment focuses on the brazing sheet business conducted at the plant, and expresses an intent to keep brazing sheet as a product of the plant, but is silent about the major product of the plant, aluminum sheet. The Final Judgment says nothing about keeping that important business going. If the divestiture should lead to the purchase by an owner who lacks the capacity, technology, and experience to produce all of the plant's products, there is substantial danger that the plant would not survive. Failure of the fabricating plant could itself have an adverse impact on competition in the brazing sheet market and would jeopardize the neighboring aluminum plant and the communities that rely on and support the plants and their employees.

Survival of these plants is essential for the economic health of this region . AEP submits this comment to draw attention to the fact that more issues than competition in the brazing sheet market are at stake. Our customers in the area would suffer substantial hardship, and AEP itself would lose industrial, commercial, and residential business.

It appears to AEP that the best solution would be to allow Alcan to continue to operate the Pechiney Rolled Products plant. Alcan has the needed capacity and experience to operate the plant successfully.

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We suggest this solution on the basis of our knowledge of the plants and our concern about their future. The suggestion is in no way prompted by any contact with Alcan.

We ask that the Court be informed of these concerns and our suggested solution.

Very truly yours,

Mark Dempsey
West Virginia President

Cc: John Smolak – Economic Development Manager, AEP

Doc #226216.v1 Date: 2/13/2004 2:55 PM

CERTIFICATE OF SERVICE

I, Anthony E. Harris, hereby certify that on September 20, 2004, I caused copies of the foregoing United States's Revised Certificate of Compliance with the Antitrust Procedures and Penalties Act to be served by mail by sending them first-class, postage prepaid, to duly authorized legal representatives of the parties, as follows:

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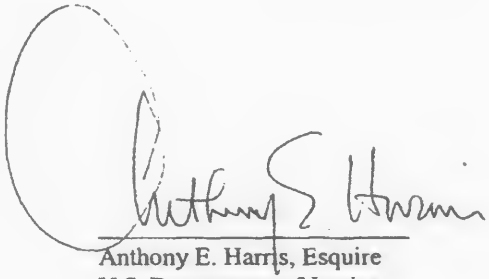

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[FR Doc. 04–21968 Filed 9–29–04; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 18, 2004, and published in the **Federal Register** on June 3, 2004, (69 FR 31409–31410), Accustandard Inc., 125 Market Street, New Haven, Connecticut 06513, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N, N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma hydroxybutyric acid (2010)	I
Methaqualione (2565)	I
Mecloqualone (2572)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391)	I
4-Bromo-2, 5-dimethoxyamphetamine (7392)	I
4-Methyl-2, 5-dimethoxyamphetamine (7395)	I
2, 5-Dimethoxyamphetamine (7396)	I
2, 5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3, 4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl) pyrrolidine (PCPY) (7458)	I
Thiophene Analog of Phencyclidine (7470)	I
1-(1-(2-Thienly) Cyclohexyl) Pyrrolidine (7473)	I
N-Ethyl-3-Piperidyl Benzilate (7482)	I
N-Methyl-3-Piperidyl Benzilate (7484)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Etorphine (except Hydrochloride salt) (9056)	I
Codeine Methylbromide (9070)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morphine Methybromide (9305)	I
Morphine Methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Thebacon (9315)	I
Acetorphine (9319)	I
Drotebanol (9335)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I

Drug	Schedule
Alphacetylmethadol except LAAM (9603)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Benzethidine (9606)	I
Betacetymethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Clonitazene (9612)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I
Dioxaphetylbutyrate (9621)	I
Dipipanone (9622)	I
Ethylmehtylthiambutene (9623)	I
Etonitazene (9624)	I
Furethidine (9626)	I
Hydroxypethidine (9627)	I
Ketobemidone (9628)	I
Morpheridine (9632)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Norpipanone (9636)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenoperidine (9641)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Phenomorphan (9647)	I
Propiram (9649)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661)	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663)	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methlfentanyl (9815)	I
Benzylfentanyl (9818)	I
Beta-Hydroxyfentanyl (9830)	I
Beta-Hydroxy-3-methylfentanyl (9831)	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thenylfentanyl (9834)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2250)	II
Nabilone (7379)	II
1-Phenylcylohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II

Drug	Schedule
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Opium, raw (9600)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Piminodine (9730)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Bezitramide (9800)	II
Fentanyl (9801)	II
Moramide-intermediate (9802)	II

The company plans to manufacture small quantities of bulk material for use in reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Accustandard Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Accustandand Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 16, 2004

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21955 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gilbert C. Aragon, Jr., D.O.; Revocation of Registration

On January 5, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement administration (DEA), issued an Order to Show Cause to Gilbert C. Aragon, Jr., D.O. (Dr. Aragon) notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration, BA4652714, and deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. 824(a)(2) and (3), 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged in relevant part, the following:

1. Effective May 17, 2002, the Texas State Board of Medical Examiners (Board) suspended Dr. Aragon's state medical license. The suspension was based upon an Agreed Order documenting Dr. Aragon's arrest by Dallas Police on November 20, 2000, for driving while intoxicated and possession of dangerous and controlled substances. After a plea agreement with local authorities, Dr. Aragon pled guilty to the charge of driving while intoxicated. Court documents also revealed that Dr. Aragon also admitted guilt to the offense of illegal drug possession, but the matter was not adjudicated. On June 8, 2001, Dr. Aragon was sentenced to 150 days in jail, which was probated for two years, and ordered to pay a $2,000 fine. The Board's suspension was further premised on Dr. Aragon's admission to police of having written fictitious prescriptions in the names of family members in order to assist his wife (who was addicted to drugs) illegally obtain hydrocodone. As a result of the actions taken by the Board, Dr. Aragon is currently without authority to handle controlled substances in Texas, the State in which he is registered with DEA.

2. On November 30, 2000, May 12, 2001, and November 27, 2001, Dr. Aragon answered "no" to questions on his Medical Practice Questionnaire and Annual Registration Renewal forms inquiring if he had been arrested, charged or convicted of a crime or placed on probation.

3. After being indicted by a Dallas County Grand Jury on January 22, 2003, Dr. Aragon appeared before the 203rd Judicial District Court of Dallas County, Texas, and pled guilty to the third degree felony of "[u]nlawfully obtaining from a legally registered pharmacist, a controlled substance, to-wit: dihydrocodeinone, by the use of false or forged prescription on October 15,

2001." The court imposed a ten year penitentiary sentence, five years community supervision as well as a $4,000 fine and a fifteen day jail sentence as a condition of community supervision. In response to these matters, on September 25, 2003, the Board Staff filed a Complaint requesting a hearing on its merits and requesting that Dr. Aragon's medical license be suspended or revoked.

4. Dr. Aragon's state medical license has been delinquent for non-payment since December 30, 2002, and his Texas Department of Public Safety Controlled Substances Registration expired on January 31, 2003, and has not been renewed.

The Order to Show Cause was initially sent by certified mail to Dr. Aragon at his registered location in Irving, Texas; however, the order was returned to DEA by the United States Postal Service with a stamped notation: "attempted, not known." On February 6, 2004, DEA mailed copies of the Order to Show Cause to Dr. Aragon at a residential location in Las Vegas, New Mexico, with an additional copy sent to a purported work address in Santa Rosa, New Mexico. The order sent to the purported work address was returned unclaimed, but the second order sent to the residential location was accepted on behalf of Dr. Aragon on February 9, 2004. DEA has not received a request for hearing or any other reply from Dr. Aragon or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record, as well as to a second address, and (2) no request for hearing having been received, concludes that Dr. Aragon is deemed to have waived his hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Aragon is currently registered with DEA as a practitioner. According to information in the investigative file, on or about May 15, 2002, Dr. Aragon entered into an Agreed Order with the Texas State Board of Medical Examiners (Board). Dr. Aragon and the Board agreed, *inter alia,* that Dr. Aragon's state medical license be suspended until he completed various terms and conditions for reinstatement, including the completion of a 96-hour inpatient evaluation, conducted by or under the direction of a psychiatrist to evaluate Dr. Aragon for substance abuse or an organic mental condition. The Agreed Order resulted from findings by the Board that on November 20, 2000, Dr. Aragon was arrested by the Dallas (Texas) Police and charged with driving while intoxicated (DWI).

In addition, the Board found that Dr. Aragon was charged with illegal possession of dangerous and controlled substances. The Agreed Order also referenced Dr. Aragon's subsequent plea agreement with the Dallas District Attorney's Office, where he plead guilty and was convicted of the DWI offense. The Agreed Order further referenced Dr. Aragon's admission of guilt to "the unadjudicated [sic] offenses of illegal drug possession, and his subsequent sentencing on June 8, 2001 to "150 days in jail probated for two years and a $2,000.00 fine." The Board made additional findings regarding Dr. Aragon's writing of fictitious prescriptions in the names of family members and leaving blank prescriptions for the use of his physician assistants when he was not in the office.

Information in the investigative file also shows Dr. Aragon's state medical license has been delinquent for non-payment since December 30, 2002, and his Texas Department of Public Safety Controlled Substances Registration expired on January 31, 2003, and has not been renewed.

There is no evidence before the Deputy Administrator that Dr. Aragon has satisfied the conditions of the Board for reinstatement of his medical license, or that the Board suspension order has been stayed or lifted. Moreover, there is no evidence in the investigative file that Dr. Aragon's state controlled substance privileges have been renewed, or otherwise reinstated.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration if she finds that the registrant has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pilkowski, D.D.S.,* 57 FR 28538 (1992). Nevertheless, despite findings of the Board regarding Dr. Aragon's inappropriate conduct with respect to use of alcohol and his unlawful possession of dangerous and controlled substances, and notwithstanding the other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of Dr. Aragon's state authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Rory Patrick Doyle, M.D.,* 69 FR 11655 (2004); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that Dr. Aragon's Texas medical license has been suspended, his state controlled substance registration has expired, and as a result, he is currently not licensed under Texas law to handle these products. Therefore, he is not entitled to a DEA registration in that state. As a result of a finding that Dr. Aragon lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Samuel Silas Jackson, D.D.S.,* 67 FR 65145 (2002); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.* 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BA4652714, issued to Gilbert C. Aragon, Jr., D.O., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 1, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21961 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rodolfo D. Bernal, M.D.; Revocation of Registration

On December 8, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rodolfo D. Bernal, M.D. (Dr. Bernal), proposing to revoke

his DEA Certificate of Registration, AB5067916, as a practitioner pursuant to 21 U.S.C. 824(a)(3) based on lack of state authorization to handle controlled substances in Illinois. The Order to Show Cause also alleged that Dr. Bernal's continued registration would be inconsistent with the public interest under 21 U.S.C. 824(a)(4), and sought to deny any pending applications for renewal or modification of registration under 21 U.S.C. 823(f). The Order to Show Cause alleged in relevant part, the following:

1. Effective April 17, 2003, the Illinois Department of Professional Regulation (IDPR) signed an order and placed Dr. Bernal's license as a physician and surgeon, as well as his controlled substance license, in a summary suspension Status. On October 21, 2003, the summary suspension became a suspension.

2. The suspension was based upon the following set of circumstanced:

(i) Dr. Bernal ordered large quantities of controlled substances and failed to keep a proper log and inventory of the controlled substances;

(ii) Dr. Bernal purchased controlled substances for his personal use; and,

(iii) Dr. Bernal ingested the controlled substances during office hours while practicing medicine at his office.

The above actions were also grounds for suspension of Dr. Bernal's Certificate of Registration pursuant to 225 Illinois Compiled Statutes (2000) 60/22(a)(7), (17) and (33).

3. During the years of 2000 through March of 2003, Dr. Bernal ordered Lortab, a schedule III controlled substance, Xanax, a schedule IV controlled substance, as well as Ambien, also a schedule IV controlled substance. Dr. Bernal failed to keep a proper log and inventory of these controlled substances in violation of 21 U.S.C. 827(a)(3) and 21 CFR 304.04. He also admitted to purchasing the above controlled substances at his residence, a non-registered location. The maintenance of controlled substances for his personal use and self-administered these controlled substances for other than medically accepted therapeutic purposes.

4. On April 10, 2003, DEA diversion investigators interviewed Dr. Bernal at his registered location in Chicago, Illinois. Dr. bernal was found to have been unusually slow in responding to questions asked of him and he appeared impaired. Dr. Bernal admitted to taking two Lortab tablets that same morning, during office hours while practicing medicine at his office. He also admitted to keeping controlled substances at his residence, a non-registered location. The maintenance of controlled substances in this fashion is a violation of 21 CFR 1301.12.

5. During the above interview, Dr. Bernal agreed to the immediate destruction of all controlled substances at his registered location, which was later carried out by the DEA investigators. The investigators provided Dr. Bernal with documentation of the destruction. Dr. Bernal also agreed to immediately make arrangements to enter a drug treatment program, however he failed to do so.

6. As a result of the action taken by IDPR, Dr. Bernal is currently without authority to handle controlled substances in Illinois, the state in which he is registered with DEA.

According to the investigative file, the Order to Show Cause was sent by certified mail to Dr. Bernal's registered location on December 12, 2003, but the notice was later returned to DEA unclaimed. No other address was located for Dr. Bernal, however, there was an office telephone number located for him. On February 24, 2004, DEA personnel placed a call to Dr. Bernal's office number and obtained a facsimile number for him. On that same date, the Order to Show Cause was faxed to his office. Included in the investigative file is a facsimile confirmation document which shows that the Order to Show Cause was received at the number provided by Dr. Bernal's office. Despite attempts to reach him, DEA has not received a request for hearing or any other reply from Dr. Bernal or anyone purporting to represent him in his matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since delivery of the Order to Show Cause to Dr. Bernal's address of record and his receipt of the same, and (2) no request for hearing having been received, concludes that Dr. Bernal is deemed to have waived his hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

Dr. Bernal is registered with DEA under certificate of Registration number AB5067916. That registration remains valid until July 31, 2004. According to the investigative file, on October 21, 2003, the Medical Disciplinary Board of IDPR issued an Order which suspended indefinitely Dr. Bernal's state certificate to practice as a physician and surgeon, as well as his certificate to issue controlled substances. The IDPR Order was based on findings that during the years 2000 through March of 2003, Dr. Bernal ordered 12,100 dosage units of Lortab, a Schedule III controlled substance, as well as 2,700 dosage units of Xanax and 2,400 dosage units of Ambien, both Schedule IV controlled substances. IDPR found that Dr. Bernal failed to keep a proper log and inventory of these controlled substances. IDPR also found that Dr. Bernal ingested controlled substances during office hours while practicing medicine in his office; self administered controlled substances for other than medically accepted therapeutic purposes; and, that his habitual and excessive use or abuse of controlled substances resulted in his inability to practice medicine with reasonable judgment, skill or safety.

The investigative file contains no evidence that the suspensions of Dr. Bernal's Illinois medical and controlled substance licenses have been lifted. Therefore, the Deputy Administrator finds that Dr. Bernal is currently not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the controlled substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Rory Patrick Doyle, M.D., 69 FR 11655 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Bernal's controlled substance authority in the state of Illinois has been suspended. As a result, he is currently not licensed under Illinois law to handle controlled substances and therefore, he is not entitled to a DEA registration in that state. As a result of a finding that Dr. Bernal lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See* Fereida Walker-Graham, M.D., 68 FR 24761 (2003); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AB5067916, issued to Rodolfo D. Bernal, M.D., be, and it

hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 1, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21959 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 5, 2004, and published in the **Federal Register** on May 26, 2004, (69 FR 29979), Boehringer Ingelheim Chemicals Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene (9273)	II
Levo-alphacetylmethadol (9648)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Boehringer Ingelheim Chemicals Inc. to manufacture the basic classes of controlled substances listed is consistent with the public interest at this time. DEA has investigated Boehringer Ingelheim Chemicals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 16, 2004,

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21957 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 5, 2004 and published in the **Federal Register** on May 26, 2004, (69 FR 29978–29979), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Driver, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import Phenylacetone for the bulk manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21958 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 21, 2004, and published in the **Federal Register** on June 3, 2004, (69 FR 31412), Cambrex North Brunswick, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Methadone (9250) and Methadone Intermediate (9254), basic classes of controlled substances listed in Schedule II.

The company plans to manufacture the controlled substances for research and development purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex North Brunswick, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex North Brunswick, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 8, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21949 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on July 7, 2004, Cambridge Isotope Laboratory, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of

the basic classes of controlled substances listed:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than November 29, 2004.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21947 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–27]

Paramabaloth Edwin, M.D.; Revocation of Registration

On April 24, 2003, the Deputy Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause/Immediate Suspension of Registration to Paramabaloth Edwin, M.D. (Dr. Edwin), notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AE7528295, as a practitioner, and deny any pending applications for renewal of registration pursuant to 21 U.S.C. 824(a)(4), for reason that Dr. Edwin's continued registration would be inconsistent with the public interest. The Order to Show Cause/Immediate Suspension of Registration further advised Dr. Edwin that his DEA Certification of Registration had been suspended, pursuant to 21 U.S.C. 824(d), as an imminent danger to public health and safety.

The Order to Show Cause/Immediate Suspension of Registration alleged, in part, that in August 2001, DEA had received information from a cooperating source that Dr. Edwin was selling and prescribing controlled substances for non-therapeutic uses. This information was corroborated by interviews of former patients, pharmacists and acquaintances of Dr. Edwin, as well as through a cooperating individual who purchased controlled substances from Dr. Edwin. It further alleged Dr. Edwin had purchased excessive quantities of controlled substances, stored controlled substances at an unregistered location and that his prescribing practices had hastened the addiction and/or death of patients.

Finally, it was alleged that on April 17, 2003, the Illinois Department of Professional Regulations (IDPR) summarily suspended Dr. Edwin's state medical and controlled substance licenses, thus rendering him without state authority to handle controlled substances.

By letter dated May 21, 2003, Dr. Edwin, through counsel, requested a hearing and on May 29, 2003, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) ordered the parties to file prehearing statements. On June 13, 2003, in lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition, asserting Dr. Edwin was without authorization to handle controlled substances in the State of Illinois and as a result, further proceedings in the matter were not required. Attached to the Government's motion was a copy of the IDPR's Order dated April 17, 2003, directing Dr. Edwin to "immediately surrender all indicia of licensure to the Department."

On June 16, 2003, Judge Bittner issued a Memorandum to the Parties affording Dr. Edwin an opportunity to respond to the Government's motion. In his response, Dr. Edwin argued it would violate due process to summarily dispose of the case premised on the IDPR's Order, which, according to Dr. Edwin, was "based on mere allegations, which have not yet been tested." Dr. Edwin further argued there had been no hearings before the IDPR in which he had been afforded a chance to present evidence or rebut the allegations against him. However, Dr. Edwin did not deny that his state professional licenses had been surrendered.

On July 18, 2003, Judge Bittner issued the Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition, finding Dr. Edwin lacked authorization to handle controlled substances in Illinois, the jurisdiction in which he is registered with DEA.

In granting the Government's motion, Judge Bittner further recommended that Dr. Edwin's DEA registration be revoked and any pending applications for modification or renewal be denied. No exceptions to the Opinion and Recommended Decision were filed.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Dr. Edwin currently possesses DEA Certificate of Registration AE7528295, and is registered to handle controlled substances in the State of Illinois. The Deputy Administrator further finds that in response to allegations of professional misconduct, on April 17, 2003, the IDPR issued an order directing Dr. Edwin to surrender all professional licenses. There is no evidence before the Deputy Administrator that IDPR's Order has been lifted, stayed or modified. Therefore, the Deputy Administrator finds that Dr. Edwin is currently not licensed to practice medicine in Illinois and as a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988). Revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement. *See* Alton E. Ingram, Jr., M.D., 69 FR 22562

(2004); Anne Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Dr. Edwin is not currently licensed to handle controlled substances in Illinois, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because Dr. Edwin is not entitled to a DEA registration in Illinois due to lack of state authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address whether Dr. Edwin's registration should be revoked based upon the remaining public interest grounds asserted in the Order to Show Cause/Immediate Suspension of Registration. *See* Fereida Walker-Graham, M.D., 68 FR 24761 (2003); Nathaniel-Aikens-Affu1, M.D., 69 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AE7528295, issued to Paramabaloth Edwin, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 1, 2004.

Dated: September 13, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21967 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is a notice that on June 10, 2004 Aldrich Chemical Company Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Lysergic acid dethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamophetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexalamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexalamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273).	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than (60 days from publication).

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21944 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sheldon Kantor, D.P.M.; Revocation of Registration

On March 28, 2003, the then-Acting Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause/Immediate Suspension of Registration to Sheldon Kantor, D.P.M. (Dr. Kantor) of Hollywood, Florida. Dr. Kantor was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AK4080545, as a practitioner, and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f) and 824(a) for reason that his continued registration would be inconsistent with the public interest. Dr. Kantor was further notified that his DEA registration was immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension alleged in relevant part, that during the week of February 24, 2003, and again on March 3, 2003, DEA received information from a registered distributor of controlled substances that Dr. Kantor had ordered and received large quantities of Schedule III and IV controlled substances. In response, DEA investigators presented Dr. Kantor with a Notice of Inspection, however, he refused to consent to the inspection. While speaking with investigators, Dr. Kantor admitted he had not maintained a log of controlled substances dispensed. When an investigator inquired as to the location of previously received controlled substances, Dr. Kantor stated that they were in the trunk of his car. He then refused to disclose the whereabouts of that vehicle. The Order to Show Cause alleged that Dr. Kantor also refused to consent to a subsequent inspection of his registered location.

The Order to Show Cause alleged that Dr. Kantor had been convicted in federal court and sentenced to 21 months imprisonment, commencing March 23, 2003, for his involvement in a scheme

to defraud the Medicare program of over one million dollars. The Order to Show Cause also outlined how one of Dr. Kantor's patient files revealed his distribution of large quantities of Schedule III and IV controlled substances to a single patient over a seven month period, including 19,200 dosage units of hydrocodone and four prescriptions for OxyContin, a Schedule II controlled substance, to that same patient. When DEA investigators executed a search warrant of the patient's residence on March 12, 2003, the search revealed the patient had several bottles of 100-count hydrocodone tablets. However, the vast majority of hydrocodone tablets, as well as other controlled substances, could not be accounted for.

According to the investigative file, the Order to Show Cause/Immediate Suspension of Registration was personally delivered to Dr. Kantor on March 31, 2003, at a federal detention center in Miami, Florida. More than thirty days have passed since the Order to Show Cause/Immediate Suspension of Registration was served on Dr. Kantor and DEA has not received a request for hearing or any other reply from Dr. Kantor or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause/Immediate Suspension of Registration to Dr. Kantor, and (2) no request for hearing having been received, concludes that Dr. Kantor is deemed to have waived his hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds Dr. Kantor is currently registered with DEA as a practitioner under DEA Registration, AK4080545, in Schedules II through V. That registration expires on December 31, 2004. At the time DEA initiated action to revoke his DEA registration, Dr. Kantor was licensed under Florida law as a podiatrist. However, following the issuance and delivery of the Order to Show Cause/Immediate Suspension of Registration, the Deputy Administrator obtained a copy of a Final Order adopted by the State of Florida, Board of Podiatric Medicine (Board) on November 20, 2003. A review of the Final Order reveals that on the above date, the Board permanently revoked Dr. Kantor's license of podiatry.

The investigative file contains no evidence that the Board's Final Order revoking Dr. Kantor's podiatry license has been lifted, stayed or that his license has been reinstated. Therefore, the Deputy Administrator finds that Dr. Kantor is not currently authorized to practice medicine in the State of Florida and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear Dr. Kantor's podiatry license has been revoked and therefore, he is not currently licensed to handle controlled substances in Florida, the state where he maintains a DEA controlled substance registration. Therefore, Dr. Kantor is not entitled to a DEA registration in that state. Because Dr. Kantor is not entitled to a DEA registration in Florida due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address whether his registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause/Immediate Suspension of Registration. See Fereida Walker-Graham, M.D., 68 FR 24761 (2003); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AK 4080545, issued to Sheldon Kantor, D.P.M. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 1, 2004.

Dated: September 13, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21965 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 18, 2004, and published in the **Federal Register** on June 3, 2004, (69 FR 31412–31413), Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The company plans to manufacture bulk product and finished dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Abbott Laboratories to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Abbott Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21952 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on July 22, 2004, Lifepoint, Inc., 10400 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug

Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Ecgonine (9180)	II
Morphine (9300)	II

The company plans to produce small quantities of controlled substances for use in drug test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than November 29, 2004.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21946 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2004, and published in the **Federal Register** on April 29, 2004, (69 FR 23538), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The company plans to manufacture bulk products for the manufacture of finished dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lonza Riverside to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 8, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21950 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 19, 2004, Mallinckrodt Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Remifentanil (9739), a basic class of controlled substance in Schedule II.

The firm plans to manufacture the listed controlled substance for dosage form manufacture and for distribution in bulk form.

Any other such applicant and any person who is presently registered with DEA to manufacture such as substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than November 29, 2004.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21943 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Correction

By Notice dated March 5, 2004, and published in the **Federal Register** on March 15, 2004, (69 FR 12179), Mallinckrodt Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Morphine (9300), a basic class of Schedule II controlled substance. The drug code was inadvertently dropped during the preparation of the Notice of Registration dated July 28, 2004 and published in the **Federal Register** on August 18, 2004 (69 FR 51331).

The company plans to manufacture the basic class of controlled substance for internal use and for sale to other companies.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Mallinckrodt Inc. to manufacture Morphine is consistent with the public interest at this time. DEA has investigated Mallinckrodt Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of Morphine (9300).

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21941 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Anne C. Mason, M.D.; Revocation of Registration

On March 2, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anne C. Mason, M.D. (Dr. Mason) who was notified of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BM0654005, pursuant to 21 U.S.C. 824(a)(3). Specifically, the Order to Show Cause alleged that Dr. Mason was without state license to handle controlled substances in the State of Alabama. The Order to Show Cause also notified Dr. Mason that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Mason at her registered location in Hanceville, Alabama, with a copy sent to a second location in Vestavia Hills, Alabama. The order sent to Dr. Mason's address of record was subsequently returned to DEA by the United States Postal Service with a stamped notation: "Undeliverable As Addressed, Forwarding Order Expired." The order sent to the second location was also returned with a stamped notation: "Attempted, Not Known." According to the investigative file, DEA personnel have made several attempts to locate Dr. Mason without success. DEA has not received a request for hearing or any other reply from Dr. Mason or anyone purporting to represent her in the matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Show Cause to the registrant's address of record. as well as to a second address, and (2) no request for hearing having been received concludes that Dr. Mason is deemed to have waived her hearing right. See *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Mason is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V. Contained within the investigative file is an Order dated September 8, 2003, and issued by the Medical Licensure Commission of Alabama (the Commission). The Commission was convened to render a ruling in the matter of an Application to Reinstate License filed by Dr. Mason and subsequent Notice of Intent to Contest Reinstatement and an Administrative Complaint filed by the Alabama State Board of Medical Examiners.

The Commission found that on January 30, 2003, Dr. Mason failed to renew her Alabama medical license for the year 2003, and as a result, that license was revoked by operation of law. The Commission also found that Dr. Mason suffered from opiate abuse and major depression for which she refused or failed to participate in a program for rehabilitation. As a consequence, the Commission concluded that Dr. Mason was unable to practice medicine with "reasonable skill and safety to patients." As a result of its findings, the Commission denied Dr. Mason's application for reinstatement of her Alabama medical license.

There is no evidence before the Deputy Administrator to rebut findings that Dr. Mason's Alabama medical license has been revoked and has not been reinstated. Therefore, the Deputy Administrator finds that Dr. Mason is currently not authorized to handle controlled substances in Alabama.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Richard J. Clement, M.D.*, 68 FR 12103 (2003); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Mason's state medical license has been revoked and there is no information before the Deputy Administrator which points to any reversal of the revocation action. As a result, Dr. Mason is not licensed to handle controlled substances in Alabama, where she is registered with DEA, and therefore, she is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BM0654005, issued to Anne C. Mason M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and it hereby is, needed. This order is effective November 1, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21963 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on July 19, 2004, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
Codeine-N-Oxide (9053)	I
Morphine-N-Oxide (9307)	I
Amphetamine (1100)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the Schedule I products for internal testing; the Schedule II product will be manufactured for distribution to a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than November 27, 2004.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21945 Filed 9–29–04; 8:45 am]

BILLING CODE 4401–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David C. Phillips, M.D.; Revocation of Registration

On December 17, 2003, the Deputy Asssistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show cause to David C. Phillips, M.D. (Dr. Phillips) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BP3145403, under 21 U.S.C. 824(a)(3) and (a)(4), and deny any pending applications for renewal or modification of that registration. Specifically, the Order to Show Cause alleged in relevant part, the following:

1. Dr. Phillips' Ohio medical license has been inactive since 1998 according to the Ohio State License Board. On September 17, 2001, he voluntarily surrendered his medical license to the Ohio State Medical Board (Ohio Board). On July 12, 2001, Dr. Phillips stated to his psychotherapist his realization of a "sexual addiction problem." Dr. Phillips does not currently have a state license or registration to practice medicine in Ohio, the state in which he is registered with DEA.

2. On January 24, 2002, Dr. Phillips' license to practice medicine in the State of Michigan was summarily suspended. This action was taken by the Michigan Board of Medicine Disciplinary Subcommittee (Michigan Board) because of Dr. Phillips' inappropriate behavior with patients. On October 20, 1999, he treated a patient in the emergency department at Bay Medical Center, Bay City, Michigan and made sexual advances towards the patient, but the patient refused his advances. Dr. Phillips then ordered for the patient 100mg of Demerol, a Schedule II controlled substance, and proceeded to have inappropriate sexual contact with the patient. He then followed the patient home and continued to engage in additional inappropriate sexual contact with her. The summary suspension of the Michigan Board was dissolved on August 21, 2002, and Dr. Phillips' medical license was suspended for three years. That suspension remains in effect until 2005.

3. On October 8, 2003, DEA diversion investigators performed current checks of both the Michigan and Ohio licensing boards and confirmed that Dr. Phillips does not have a valid medical license in either state. Therefore, he is no longer authorized to handle controlled substances in either state.

On December 17, 2003, the Order to Show Cause was sent by certified mail to Dr. Phillips' registered location in Rossford, Ohio, with a second copy sent to a location in Adrian, Michigan. According to certified mail receipt records, copies of the Order to Show Cause were received on behalf of Dr. Phillips at each location. DEA has not received a request for hearing or any other reply from Dr. Phillips or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record, as well as to a second address, and (2) no request for hearing having been received, concludes that Dr. Phillips is deemed to have waived his hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Phillips is currently registered with DEA as a practitioner. According to information in the investigative file, in January of 2001, Dr. Phillips sought to renew his DEA Certificate of Registration for his registered location in Rossford, Ohio. As part of its subsequent pre-registrant investigation of his application for renewal, DEA learned from the Ohio Medical Board that Dr. Phillips' medical license in that state was inactive.

A DEA diversion investigator subsequently inquired with Dr. Phillips about the status of his Ohio medical license. Dr. Phillips informed the investigator that he lived in Ohio, but worked as an emergency room physician at hospitals in Michigan. Following this conversation, Dr. Phillips requested that his DEA registration be modified to reflect an address at a practice location in Adrian, Michigan. For unspecified reasons, Dr. Phillips' DEA registration was renewed for the Ohio location, but was not modified to reflect his professional practice location in Michigan.

Included in the investigative file is an Administrative Complaint filed against Dr. Phillips' Michigan medical license on January 22, 2002. The complaint alleged, that on September 17, 2001, Dr. Phillips agreed to surrender his certificate to practice medicine and surgery in Ohio as a result of his having inappropriate sexual contact with a patient. Following the issuance of the Administrative Complaint, the Michigan Board then issued an order dated January 24, 2002, summarily suspending Dr. Phillips' state medical license. The matters which led to the summary suspension of Dr. Phillips' Michigan medical license were also related to his inappropriate sexual contact with several patients.

By Consent Order dated August 21, 2002, the Michigan Board dissolved the summary suspension of January 24, 2002. The parties further agreed however, that based upon violations outlined in the previous Administrative Complaint, Dr. Phillips' state medical license would be suspended for a period of three years.

On October 8, 2003, the DEA Detroit (Michigan) Field Division inquired with both the Ohio and Michigan licensing boards about Dr. Phillips' licensure status in those jurisdictions. DEA was informed that Dr. Phillips is not currently licensed to practice medicine in either state. There is no evidence before the Deputy Administrator that Dr. Phillips' Ohio state medical license has been reinstated or that the three-year suspension of his Michigan medical license has been lifted.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration if she finds that the registrant has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). Thomas B. Pelkowski, D.D.S., 57 FR 28538 (1992). Nevertheless, despite findings of the Ohio and Michigan Boards regarding Dr. Phillips' inappropriate conduct with patients under his care, and notwithstanding other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration is the present status of Dr. Phillips' state authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Rory Patrick Doyle, M.D., 69 FR 11655 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Phillips has surrendered his Ohio medical license and his Michigan medical license has been suspended. It is reasonable to infer that he is currently not authorized to

handle controlled substances in Ohio or Michigan and therefore, not entitled to a DEA registration in either jurisdiction. As a result of a finding that Dr. Phillips lacks any state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. See Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BP3145403, issued to David C. Phillips, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 1, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21960 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 21, 2004, and published in the **Federal Register** on June 3, 2004, (69 FR 31414), Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine derivates and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 8, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 04–21951 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Import of Controlled Substances; Notice of Registration

By Notice dated May 21, 2004 and published in the **Federal Register** on June 3, 2004, (69 FR 31413–31414), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substance:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The company plans to import small quantities of the listed substances for the National Institute of Drug Abuse and other clients.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Research Triangle Institute to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: September 15, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 04–21953 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Saeed Saleh, M.D.; Revocation of Registration

On December 8, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Saeed Seleh,[1] M.D. (Dr. Saleh) notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration, AS5912387, under 21 U.S.C. 824(a)(3) and (a)(4), and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). Specifically, the Order to show Cause alleged in relevant part, the following:

(1) Effective June 2, 2001, the State of Michigan, Department of Consumer and Industry Services, Board of Medicine - Disciplinary Subcommittee, suspended Dr. Saleh's licensure privileges. On September 19, 2001, the Subcommittee dissolved the summary suspension and suspended Dr. Saleh's medical license for six months and one day. Because reinstatement of his medical license following the suspension was not automatic, Dr. Saleh was required to apply for reinstatement, which he failed to do. As of September 4, 2003, Dr. Saleh's medical license was considered "lapsed", as it expired on January 31, 2003.

[1] The Order to Show Cause alternates the spelling of the registrant's last name between *Salah* and *Saleh*. Since it appears from attached correspondences in the investigative file that the common spelling of the registrant's name is Saleh, the Deputy Administrator will refer to the registrant's name in a similar fashion.

(2) The action with respect to Dr. Saleh's medical license was based upon a neuropsychiatric evaluation which indicated that he suffered from significant cognitive deficits. The evaluation indicated further that Dr. Saleh demonstrated disinhibition, deficits in attention and concentration, anterograde amnesia, and deficits in executive functioning. The state evaluator considered these conditions and concluded that Dr. Saleh was not able to practice medicine, and as a result, the State of Michigan found Dr. Saleh in violation of a provision of the state Public Health Code. Dr. Saleh was also found to be impaired and not able to safely and skillfully practice the health profession. In addition, the State charged Dr. Saleh with violating section 16221(b)(iii) of the Public Health Code, in that he was found to have suffered from a mental or physical inability to practice his profession in a safe and competent manner.

(3) Dr. Saleh also had a medical license to practice medicine in California, which was suspended on October 31, 2001. The allegations were in reference to the summary suspension that was issued by the Michigan Board of Medicine in June of 2001. Effective, September 23, 2002, the California Medical Board issued an order revoking Dr. Saleh's medical license in California, *i.e.* his Physician's and Surgeon's Certificate.

(4) As a result of the actions taken by the State of Michigan, Department of Consumer and Industry Services, Board of Medicine Disciplinary Subcommittee, Dr. Saleh is currently without authority to handle controlled substances in the State of Michigan, the state in which he is registered with DEA.

Copies of the Order to Show Cause were sent by certified mail to Dr. Saleh at his registered location in Detroit, Michigan, with a second copy sent to a location in Orchard Lake, Michigan. The order sent to the Orchard Lake location was subsequently forwarded to a location in San Diego, California by the United States Postal Service where it was accepted on behalf of Dr. Saleh on December 26, 2003. DEA has not received a request for hearing or any other reply from Dr. Saleh or anyone purporting to represent him in this matter

Therefore, the Deputy Administrator of DEA, finding that (1) Thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record, as well as to a second address; and (2) no request for hearing having been received, concludes that Dr. Saleh is deemed to have waived his hearing right. See *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Saleh is currently registered with DEA as a practitioner. According to information in the investigative file, on or about June 26, 2001, the Michigan Department of Consumer and Industry Services, Board of Medicine (Board) issued an Order of Summary Suspension of the state medical license of Dr. Saleh. Attached to the Order of Summary Suspension was a two-count Administrative Complaint which alleged, in relevant part, that Dr. Saleh suffered from "* * * a mental or physical inability reasonably related to and adversely affecting [his] ability to practice medicine in a safe and competent manner * * *"

In support of the allegations in its Administrative Complaint, the Board found that after a neuropsychological examination, Dr. Saleh suffered from memory and cognitive impairments. Specifically, Dr. Saleh was diagnosed with amnestic syndrome, small vessel cerebral ischemic disease and demonstrated deficits involving memory function, fine motor dexterity, verbal fluency, and abstract reasoning.

Effective September 19, 2001, Dr. Saleh entered into a Consent Order with the Board where the parties agreed, *inter alia*, to the dissolution of the June 26, 2001 Order of Summary Suspension and the suspension of Dr. Saleh's medical license for a minimum period of six months and one day. The parties further agreed that reinstatement of a license which had been suspended for more than six months is not automatic; and in the event Dr. Saleh applied for the reinstatement of his medical license, he was required to satisfy certain conditions as part of his readmission to the practice of medicine.

Information in the investigative file further reveals that in or around September of 2003, DEA received information that Dr. Saleh's Michigan medical license was considered "lapsed" by the state, as it had expired on January 31, 2003. There is no evidence before the Deputy Administrator that Dr. Saleh has satisfied the conditions of the Board for reinstatement of his medical license, or that he has renewed that license.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration if she finds that the registrant has had his state license revoked and is no longer authorized to dispense controlled substances, or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pelkowski, D.D.S.*, 57 FR 28538 (1992). Nevertheless, despite findings of the Board regarding Dr. Saleh's fitness to practice medicine in the State of Michigan and notwithstanding the other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of Dr. Saleh's state authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. *See Rory Patrick Doyle, M.D.*, 69 FR 11655 (2004); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Saleh's Michigan medical license was suspended, and it subsequently expired. Under the circumstances, it is reasonable to infer that Dr. Saleh is currently not licensed under Michigan law to handle controlled substances. Therefore, he is not entitled to a DEA registration in that state. As a result of a finding that Dr. Saleh lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Samuel Silas Jackson, D.D.S.*, 67 FR 65145 (2002); *Nathaniel-Aikens-Afful, M.D.*, 62 FR 16871 (1997); *Sam F. Moore, D.V.M.*, 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS5912387, issued to Saeed Saleh, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 1, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21962 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2)(b) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on July 21, 2004, Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021–4500, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to import small quantities of the products for research purposes.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21942 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Value Wholesale Denial of Registration

On September 8, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Value Wholesale (Value) proposing to deny its November 6, 2001, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting Value's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h) and 824(a). The order also notified Value that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Value at its proposed registered location at 15188 Eight Mile Road, Oak Park, Michigan 48237. It was received on September 16, 2003, and DEA has not received a request for a hearing or any other reply from Value or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Value has waived its hearing right. See Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Deputy Administrator's review of the investigative file reveals that an application dated November 6, 2001, was submitted on behalf of Value and signed by its President and only officer, Mr. John Loussia (Mr. Loussia). Value sought registration as a distributor of multiple list I chemicals, including pseudoephedrine (8112) and phenylpropanolamine (1225). There is no evidence in the investigative file that Value has sought to modify its pending application with regard to those two chemicals.

In January 1999, Value originally applied for DEA registration as a distributor of list I chemicals and during a pre-registration investigation, it was determined the company had been buying and selling list I chemical products for a number of years prior to filing this application for registration. However, on February 5, 1999, that application was approved and Value issued DEA Certificate of Registration 004000VHY.

On October 31, 2001, during the course of a regularly scheduled cyclic investigation, it was discovered Value's registration had expired, effective May 31, 2000, without any application for renewal having been filed. Nevertheless, investigators found that the firm had continued to order and sell list I chemical products after its registration had expired. Investigators also discovered Value had not been maintaining adequate or complete records of customer addresses as required by 21 CFR 1310.06. A DEA letter of admonition was issued the company and in reply, Mr. Loussia advised he would be submitting the instant application for registration and not be carrying list I chemical products until its approval.

In connection with the pending application, an on-site pre-registration investigation was conducted in March 2002. Mr. Loussia advised investigators that Value was a full-line wholesaler/distributor of groceries to local food

stores in the Detroit metropolitan area and its intention was to sell name brand cough and cold products containing list I chemicals. However, Value's application included over 21 chemical codes, many of which are solely used for commercial or industrial purposes. After being briefed by investigators, Mr. Loussia requested that numerous chemical codes be deleted from Value's application.

The company proposed to primarily sell over-the counter products on a cash and carry basis to walk-in customers, including businesses ranging from gas stations, small grocery stores, dollar stores, party stores and meat markets. They would pay in cash or by check and pick up products directly from Value's facility. Mr. Loussia provided a list of proposed customers, estimating that chemical products would be sold to about 50 to 60 customers in the Detroit area and represented less than 1% of Value's total business. When investigators attempted to verify several of these proposed customers, it was determined they no longer existed.

The Deputy Administrator finds that during the year 2000, DEA suspended the registrations of three Detroit area listed chemical distributors who were engaged in diversion of listed chemical products by purporting to distribute them to phony distributors and non-existent retail customers. Additionally, DEA suspended the registration of a Florida distributor who was purporting to sell listed chemical products to Detroit area retailers, after DEA was unable to determine that retailers were actually receiving the product.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.*, Energy Outlet, 64 FR 14269 (1999). *See also*, Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factors one, two, four and five relevant to the pending application for registration.

With respect to factor one, maintenance of effective controls against diversion, while physical security of list I chemical products is a focus of 21 CFR 1309.71, among the factors considered under the general security requirements of 21 CFR 1309.71, is "[t]he adequacy of the registrant's or applicant's system for monitoring the receipt, distribution and disposition of list I chemicals in its operations." 21 CFR 1309.71(b)(8). Prior agency rulings have applied a more expansive view of factor one then mere physical security. *See, e.g.*, OTC Distribution Company, 68 FR 70538 (2003) (failure to maintain adequate administrative records and controls to permit a precise audit of list I chemical products and company's inability or unwillingness to fully comply with record keeping and report obligations under an MOA considered adverse under factor one). *See also*, Alfred Khalily, Inc., 64 FR 31289 (1999) and NVE Pharmaceuticals, Inc., 64 FR 59215 (1999) (failure to identify a party to a transaction or engaging in transactions with non-registered entities fell under factor one); State Petroleum, Inc., 67 FR 9994 (2002); Hadid International, Inc., 67 FR 10230 (2002) and Aqui Enterprises, 67 FR 12576 (2002) (recordkeeping inadequate to track sales and customers within factor one). The Deputy Administrator finds that factor one is adversely implicated to the extent that Value has previously failed to maintain records, as required by 21 CFR 1310.06.

With regard to factor two, compliance with applicable Federal, State and local law, the Deputy Administrator finds that prior to its initial application for DEA registration and then subsequent to that registration's expiration, Value illegally acquired listed chemical products while not registered to do so. It then distributed those products in violation of the criminal provisions of 21 U.S.C. 841, 842 and 843. Value also failed to comply with applicable laws and regulations requiring adequate and complete records of listed chemical transactions.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on Mr. Loussia's lack of knowledge or inability to comply with the laws and regulations governing handling of list I chemical products. Before applying for initial registration in 1999, for several years Value had been acquiring list I chemical products from certain distributors and reselling those products. Mr. Loussia claimed he was unaware of the registration requirement until Value was turned down as a customer by a major distributor, based on Value's lack of a DEA registration. Only then did Value submit the 1999 application for registration which was ultimately granted. The company then allowed that registration to expire but continued to acquire and distribute list I chemical products. It was either unaware of the need to renew its registration or purposely failed to do so. In addition, the Deputy Administrator finds factor four relevant to Mr. Loussia's apparent unfamiliarity with listed chemical products, as evidenced by his inclusion in Value's application of multiple products having only industrial and commercial uses.

With respect to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor relevant to Value's proposal to distribute listed chemical products to gas stations, small retail markets and convenience stores. While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities. DEA has nevertheless found that gas stations and convenience stores constitute sources for the diversion of listed chemical products *See, e.g.*, ANM Wholesale, 69 FR 11652 (2004); Xtreme Enterprises, Inc., 67 FR 76195 (2002); Sinbad Distributing, 67 FR 10232 (2002); K.V.M. Enterprises, 67 FR 70968 (2002).

Finally, as noted above, there is no evidence in the investigative file that Value ever sought to modify its pending application with respect to the listed chemical product phenylpropanolamine. In light of this development, the Deputy Administrator also finds factor five relevant to Value's request to distribute phenylpropanolamine, and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for

registration. *See* Direct Wholesale, 69 FR 11654 (2004); ANM Wholesale, supra, 69 FR 11652; Shani Distributors, 68 FR 62324 (2003).

Based on the foregoing, the Deputy Administrator concludes that granting the pending application of Value would be inconsistent with the public interest. In sum, by its past conduct, Value has displayed a continuing history of illegal activity and an inability to discharge the responsibilities of a registrant.

Accordingly, the Deputy Administrator of the drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by Value Wholesale be, and it hereby is, denied. This order is effective November 1, 2004.

Dated: September 13, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21948 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 5, 2004, and published in the **Federal Register** on May 26, 2004, (69 FR 29979), Varian, Inc. Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603)	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Varian, Inc. Lake Forest to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc. Lake Forest to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 16, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–21956 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Unemployment Insurance Program Letter Interpreting Federal Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agenices. UIPL 30–04 is published in the **Federal Register** to inform the public.

This UIPL concers the SUTA Dumping Prevention Act of 2004 (Pub. L. 108–295); SUTA refers to state unemployment tax acts. All states will need to amend their laws regarding the transfer of unemployment experience as a result of the new Federal law. This UIPL includes a detailed explanation of the law in question and answer format, draft legislative language, a conformity checklist for states, and the text of P.L. 108–295.

Dated: September 22, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

Employment and Training Administration, Advisory System, U.S. Department of Labor, Washington, DC 20210

Classification: SUTA Dumping.
Correspondence Symbol: DL.
Date: August 13, 2004.
Advisory: Unemployment Insurance Program Letter No. 30–04.
To: State Workforce Agencies.
From: Cheryl Atkinson s/s, Administrator, Office of Workforce Security.
Subject: SUTA Dumping—Amendments to Federal Law affecting the Federal-State Unemployment Compensation Program.

1. *Purpose:* To advise states of the amendments to Federal law designed to prohibit "SUTA Dumping."

2. *References.* Public Law (Pub. L. 108–295, the "SUTA Dumping Prevention Act of 2004," signed by the President on August 9, 2004; the Social Security Act (SSA); the Internal Revenue Code (IRC), including the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letters (UIPLs) 29–83 (56 FR 54891 (October 23, 1991)), 29–83, Change 3 (61 FR 39156 (July 26, 1996)), 30–83, 15–84, and 34–02.

3. *Background.*

a. *In General.* Some employers and financial advisors have found ways to manipulate state experience rating systems so that these employers pay lower state unemployment compensation (UC) taxes than their unemployment experience would otherwise allow. This practice is called SUTA dumping. ("SUTA" refer to state unemployment tax acts, but has also been said to stand for, among other things, "State Unemployment Tax Avoidance.") Most frequently, it involves merger, acquisition or restructuring schemes, especially those involving shifting of workforce/payroll. The legality of these SUTA dumping schemes varies depending on state laws. Public Law 108–295 amended the SSA to add a new Section 303(k) establishing a nationwide minimum standard for curbing SUTA dumping. All states will need to amend their UC laws to conform with new legislation.

Recissions: None.

Expiration Date: Continuing.

b. *Experience Rating.* All states operate experience rating systems in order for employers in the state to receive the additional credit against the Federal unemployment tax. (The tax credit scheme is explained in UIPL 30–83 and experience rating in UIPL 29–83.) Under experience rating, the state unemployment tax rate of an employer is, in most states, based on the amount of UC paid to former employees. The more UC paid to its former employees, the higher the tax rate of the employer, up to a maximum established by state law. Experience ratings helps ensure an equitable distribution of costs of the UC program among employers, encourages employers to stabilize their workforce, and provides an incentive for employers

to fully participate in the UC program. SUTA dumping thwarts these purposes.

c. *SUTA Dumping and the Amendments Made by P.L. 108–295.* The amendments to the SSA made by P.L. 108–295 are intended to prohibit the following two methods of SUTA dumping:

• An employer escapes poor experience (and high experience rates) by setting up a shell company and then transferring some or all of its workforce (and the accompanying payroll) to the shell company after the shell has earned a low experience rate. The transferred payroll is then taxed at the shell's lower rate.

• An entity commencing a business purchases an existing small business with a low UC tax rate. Instead of being assigned the higher new employer rate, the entity receives the small business's lower rate. Typically, the new business ceases the business activity of the purchased business and commences a different type of business activity.

Among other things, the SSA, as amended, requires state laws to prohibit these forms of SUTA dumping as a condition of states receiving administrative grants for the UC program. It also requires states to impose penalties for knowingly violating (or attempting to violate) these provisions of state law.

A more detailed discussion of these amendments, including effective dates, is contained in Attachment I. Draft language for use in crafting state legislation is contained in Attachment II. Attachment III contains a checklist for assisting states in determining the conformity of their laws with these amendments. Attachment IV contains the text of P.L. 108–295.

P.L. 108–295 also requires the Secretary of Labor to conduct a study "of the implementation of" the amendments "to assess the status and appropriateness of State actions to meet" their requirements. P.L. 108–295 also requires the Secretary to submit to the Congress, not later than July 15, 2007, a report that (1) assesses the statute and appropriateness of state actions to meet its new requirements, and (2) recommends any further Congressional action that the Secretary considers necessary to improve the effectiveness of the amendments. (See Section 2(b) of P.L. 108–295).

d. *Access to the National Directory of New Hires.* P.L. 108–295 also amended the SSA to permit the use of certain information in the National Directory of New Hires to be used by state UC agencies in the administration of Federal and state UC laws. The Department of Labor (Department) will provide more information on this amendment and its implementation in the future. It is not anticipated that this amendment will require states to amend their UC laws.

4. *Action.* State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of Federal law contained in this advisory.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachments.*

Attachment I—Detailed Explanation of Section 303(k), SSA—Questions and Answers.

Attachment II—Draft Legislative Language.

Attachment III—Conformity Checklist for State SUTA Dumping Laws.

Attachment IV—Text of P.L. 108–295[1]

Detailed Explanation of Section 303(k), SSA Questions and Answers

In General

1. Question: How do the SUTA dumping amendments affect the federal-state UC program?

Answer: States must assure their UC laws provide for the following:

• Mandatory Transfers. Unemployment experience must be transferred whenever there is substantially common ownership, management or control of two employers, and one of these employers transfers its trade or business (including its workforce), or a portion thereof, to the other employer. This requirement applies to both total and partial transfers of business

• Prohibited Transfers. Unemployment experience may not be transferred, and a new employer rate (or the state's standard rate) will instead be assigned, when a person who is not an employer acquires the trade or business of an existing employer. This prohibition applies only if the UC agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

• Penalties for SUTA Dumping. "Meaningful" civil and criminal penalties must be imposed on persons "knowingly" violating or attempting to violate the two requirements discussed above. These penalties must also be applicable to any person (including the person's employer) who knowingly gives advice leading to such a violation.

• Procedures. Procedures for identifying SUTA dumping must be established. The exact procedures do not need to be specified in state law, but state law must specifically provide for the establishment of such procedures.

These are the minimum requirements which all state laws must meet. States may provide for more stringent provisions, provided they are otherwise consistent with Federal UC law. For example, instead of requiring a partial transfer of experience only when there is common ownership, management or control, a state may require transfers of experience whenever a partial transfer of trade or business occurs.

2. *Question.* Do the SUTA dumping amendments require my state to completely overhaul its provisions relating to transfers of experience?

Answer. No. The amendments do not change the way states handle transfers except as discussed in the preceding Q&A. As a result, a state may leave its current provisions intact while amending its law to provide that any state law provisions implementing Section 303(k), SSA, override these other provisions. The draft legislative language attached to this UIPL takes this approach.

Mandatory Transfers—Section 303(k)(1)(A), SSA

3. *Question.* Under what conditions must experience be transferred?

Answer. Unemployment experience must be transferred whenever there is substantially common ownership, management or control of two employers, and one of these employers transfers its trade or business, or a portion thereof, to the other employer. Thus, this requirement applies to both total and partial transfers.

4. *Question.* Provide an example of when experience must be transferred under the amendments.

Answer. Corporation A is assigned the state's maximum UC contribution rate of 5.4%. It establishes a shell corporation that is treated as a separate employer for UC purposes. The shell eventually qualifies for the state's minimum UC contribution rate of .5%. (How the new entity obtains this rate may vary depending on how it was established and on the state's UC law. It may, for example, simply wait out a new employer period. If state law permits, it may use voluntary contributions to "buy down" to the minimum rate.) Corporation A then transfers all or some of its workforce to the shell. The result, absent the amendments, would be that, even though Corporation A controls the shell and its operations, it escapes a rate of 5.4% on the transferred workforce and instead pays at a rate of .5%.

Under the amendments, if the workforce is transferred to the shell, then the unemployment experience attributable to the transferred workforce must also be transferred to the shell. The shell's experience would be recomputed based on its experience as well as the experience transferred from Corporation A. Assuming a total transfer of workforce and experience to the shell, the shell might even continue to receive the maximum rate of 5.4%.

It does not matter whether the employer transfers all or some of its trade or business to the shell. Experience commensurate with the trade or business transferred must be transferred to the shell.

5. *Question.* Why is the employer's workforce part of the employer's "trade or business" and thus subject to the SUTA dumping amendments?

Answer. The employer's workforce is necessarily a part of its business and is the

[1] Attachment IV is available on the ETA Website at *http://ows.eta.gov/dmstree/uipl/uipl2k4/uipl_3004.htm.*

means by which an employer effectuates its trade or business. Without a workforce, there would be neither trade nor business. Thus, when some or all of the workforce is transferred, the employer no longer has the means of performing its trade or business with respect to the transferred workforce.

As noted elsewhere in this UIPL, the best-known means of SUTA dumping is the manipulation of an employer's workforce/payroll. Senate Majority Leader Frist specifically addressed this manipulation on the floor of the Senate when he stated that the amendment "prohibits shifting employees into shell companies * * *" (150 Cong. Rec. S8804 (daily ed. July 22, 2004)). The mandatory transfer provisions of the SUTA dumping amendments would have little, if any, effect if the workforce/payroll were not considered to be part of the employer's trade or business.

6. *Question.* How does a state determine if there is "substantially" common ownership, management, or control of two employers?

Answer. The state must examine the facts of each case using reasonable factors. Among other things, the state would consider the extent of commonality or similarity of: Ownership; any familial relationships; principals or corporate officers; organizational structure; day-to-day operations; assets and liabilities; and stated business purposes. The Department is not at this time establishing a bright line test of who constitutes "substantially" common ownership, management, or control.

Nothing prohibits a state from exceeding the minimum Federal requirement by lowering this threshold test to "any" common ownership, management or control. This will meet the Federal law requirement as it will include all cases where "substantially common ownership, management or control" exists.

7. *Question.* When is the transfer of trade or business effective?

Answer. When an acquisition of trade or business is concluded is usually determined by examining the legal documents related to any purchase or acquisition of the trade or business. However, in SUTA dumping cases among businesses with common ownership, management, or control, such an acquisition will generally not take place. Instead, there may simply be a different entity issuing the paychecks. That a different entity is issuing paychecks is both an indication of the transfer of the workforce and the effective date of the transfer of the workforce.

8. *Question.* Following the mandatory transfer of experience, when must states reassign the employers' rates?

Answer. Although the amendments require that the experience be combined, it does not specify when revised rates must be reassigned. As a result, states may either (1) assign revised rates for the predecessor and successor employers immediately upon completion of the transfer of trade or business, or (2) assign revised rates for the predecessor and successor the next time the state calculates rates for all employers.

For purposes of implementing this new mandatory transfer, the Department strongly recommends that states reassign rates immediately upon completion of the transfer. If rates are not reassigned until a later date, it is possible that a successful "SUTA dump" will be achieved during the period between the completion of the transfer and the assignment of a new rate. For example, if an employer with a rate of 5.4% transfers 1,000 employees into a shell with a rate of .1% on the first day of the rate year, the employer will have accomplished a "SUTA" dump for that rate year.

9. *Question:* An employee of one legal entity is moved to another legal entity. Although each entity is treated as a separate employer for UC purposes, there is substantially common control over the two entities. Does this mean that unemployment experience must be transferred?

Answer: No. When a single person is moved from one entity to another, it is merely a transfer of an individual rather than a transfer of trade or business.

10. *Question:* A state's UC law provides that any corporate shell or spin-offs where there is "a continuity of control of the business enterprise" will not be treated as a new employer for UC purposes, but instead as the same employer. Does this constitute an acceptable alternative to the mandatory transfer requirement?

Answer: While this provision prohibits many (if not most) SUTA dumps, it will not necessarily address all situations where there are cases of "substantially common *ownership, management,* or control." (Emphasis added.) There may, for example, be cases where substantially common ownership exists, but that ownership does not exert a controlling interest. (For example, it is possible that a majority owner of two corporations could have non-voting stock.) This situation would require a transfer of experience under Section 303(k), SSA, even if "substantially common control" did not exist.

States with such "continuity" provisions will meet the requirements of Section 303(k)(1)(A), SSA, concerning mandatory transfers if they amend their provisions to be as specific as the Federal requirement. This is, the "continuity" provision may be amended to provide that there is no new employer where there is "substantially common ownership, management, or control."

Instead of providing for amendments addressing the mandatory transfer of experience, states may wish to amend their laws to provide for a "continuity" provision. A "continuity" provision may be easier to administer because, if all entities with substantially common ownership, management and control are always treated as being a single employer under the state UC law, the issue of transfers or experience would not arise. An example of such a law is California's, which was quoted in UIPL 34–02. (Note that California's law is limited to continuity of control, and thus, does not currently meet the Federal requirement.) The penalties described below would need to apply to violations and attempted violations of any "continuity" provision.

11. *Question:* How are professional employer organizations (PEOs) affected by the new mandatory transfer requirement?

Answer: The same rules apply to PEOs as any other employer. If a PEO sets up a shell corporation and transfers some or all of its trade or business to the shell, then the unemployment experience associated with the transferred trade or business must be transferred to the shell. Similarly, if the conditions prohibiting transfers of experience are met, as discussed in Questions and Answers 16–18, they would apply to PEOs.

Except for these mandatory/prohibited transfers, the amendments do not otherwise affect the relationship between the PEO and its clients. States currently vary in their treatment of PEOs and their clients for experience rating purposes. Some states treat the client as the employer for experience rating purposes and others treat the PEO as the employer for these purposes. The amendments do not require states to change this treatment.

12. *Question:* A PEO sets up several different shells. Each year it shifts all its clients to a different shell. For example, in the first year the client contracts with Shell A; in the second, it contracts with Shell B; and in the third it contracts with Shell C. When this occurs, must experience be transferred from Shell A to Shell B and then to Shell C?

Answer: Yes. By dictating that the client must sign with a particular shell (or otherwise manipulating which shell the client signs with), the PEO is effectively transferring its trade/business—that is, the trade/business of performing services as a PEO for a client—from Shell A to Shell B and then to Shell C. The control exercised by the PEO over which shell is the contracting entity meets the test of "substantial control." Since a transfer of trade/business has occurred and substantial commonality of control exists, experience must be transferred.

13. *Question:* May my state limit the mandatory transfer provision to large transfers of experience, such as those where 300 or more employees are transferred?

Answer: No. The SUTA dumping amendments apply to all transfers, large and small, where there is substantially common ownership, management or control.

14. *Question:* Current state law requires partial transfers of experience only when an "identifiable and segregable" component of an employer has been transferred to another employer. Is this an acceptable limitation on partial transfers?

Answer: No. States must transfer experience whenever "a part" of an existing business is transferred.

The bill that eventually became P.L. 108–295 was H.R. 3463. As introduced, H.R. 3463 required transfers of experience only when there was a transfer of an "identifiable and segregable" component of the employer. That language was deleted after the Department alerted Congressional staff of concerns that it would create a loophole allowing SUTA dumping. Thus, states must transfer experience whenever "a part" of an existing business is transferred.

For example, larger businesses are often divided into separate legal entities. Under the "identifiable and segregable" test as commonly applied under many current state UC laws, a transfer of experience would be mandated only if all of the trade and business

of one legal entity is acquired by another legal entity. Conversely, if only a part of the entity is acquired by another entity, then no "identifiable and segregable" component could be identified and no transfer of experience would be required. As a result, the limitation relating to an "identifiable and segregable" component could easily be circumvented through transferring the majority of employees from one entity into a shell that had earned the state's minimum tax rate.

15. *Question:* How is experience transferred when no identifiable and segregable component of a business can be identified? For example, Business A sets up a shell. Business A then transfers 90% of its workforce to the shell.

Answer: States may prorate the payroll of the employees transferred against benefit charges/reserve balance/benefit wages, whichever is appropriate. In determining the payroll transferred, the state may use either taxable or total payroll, but it must be the payroll immediately prior to the transfer of workforce.

Thus, assuming a state uses total payroll, if 90% of Business A's total payroll was transferred to the shell, 90% of the experience attributable to Business A (that is, benefit charges, reserve balance, or benefit wages, or payroll, whichever is appropriate) must be transferred to the shell. This method is acceptable only when no identifiable and segregable component can be identified.

It should be noted that, in this case, a "continuity" provision, as discussed in Question and Answer #10, would hold that the shell is not a separate employer. As a result, the issue of a transfer of experience would not arise.

Prohibited Transfers—Section 303(k)(1)(B), SSA

16. *Question:* Under what conditions are states prohibited from transferring experience under the SUTA dumping amendments?

Answer: Unemployment experience may not be transferred, and a new employer rate or the state's standard rate will instead be assigned, when a person who is not an employer acquires the trade or business of an existing employer. However, this prohibition applies only if the UC agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. (The identification of a state's standard rate is explained in UIPL 15–84.)

17. *Question:* Provide an example of when experience may not be transferred under the amendments.

Answer: The amendment prohibiting transfers is intended to address situations where a person, who is not an employer, purchases a small business solely or primarily for the purpose of obtaining its low rate of contributions when it commences its new business. Generally, the small business is converted to a different type of business.

For example, Person A is not an employer. Person A purchases a flower shop, which has earned the minimum UC rate of .5 percent to begin a manufacturing business. Person A either stops the flower business, or it becomes incidental as non-flower-shop payroll overwhelms it. Had Person A not purchased the flower shop, it would have been assigned a new employer rate of 4.5 percent based on its non-flower shop industry. The facts here should lead the state UC agency to conclude that the purchase was primarily for the purpose of obtaining a lower rate of contributions. Thus, under the amendments, state laws may not permit the experience of the flower shop to be transferred to Person A. Instead, Person A will be assigned the applicable new employer rate (or the state's standard rate) until such time as Person A qualifies for a rate based on experience.

18. *Question:* How will a state determine if the acquisition of an employer was made "solely or primarily for the purpose of obtaining a lower rate of contributions?"

Answer: The state should "use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how doing such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition." (The quoted language is from the Draft Legislative Language in Attachment II.) The cost of acquiring a business may be used as an objective factor because this cost, as compared with any potential savings in contributions costs, will indicate the extent to which UC tax savings may accrue.

State law may not arbitrarily limit the criteria to be used. For example, some state laws currently consider only whether the business enterprise of the acquired business is continued. This limitation would allow an impermissible SUTA dump to occur as it does not address situations where the purchaser continues the acquired business while flooding the business (and the experience account) with a substantial number of employees performing duties unrelated to the acquired business. For this reason, the draft legislative language is written to refer to "objective factors *which include*" those listed. (Emphasis added.)

Required Penalties—Section 303(k)(1)(D), SSA

19. *Question:* What penalties must be imposed under state law?

Answer: State law must provide that "meaningful civil and criminal penalties" are imposed with respect to—

- Persons who "knowingly violate or attempt to violate" those provisions of the state's UC law that implement Section 303(k), SSA.
- Persons who "knowingly advise another person to violate those provisions of" state UC laws that implement Section 303(k), SSA.

"Knowingly" is defined as "having actual knowledge of *or* acting with deliberate ignorance of *or* reckless disregard for the prohibition involved." (Emphasis added. Section 303(k)(2)(E), SSA.)

20. *Question:* Must penalties be imposed in every case of SUTA dumping that is identified?

Answer: No. The penalties only apply to persons who "knowingly violate or attempt to violate" the SUTA dumping provisions of state law.

However, when a determination issued by the appropriate authority or a consent order establishes that a person "knowingly" violated (or attempted to violate) a state's SUTA dumping provisions, then civil penalties must be imposed. States will take into account the amounts at issue and the likelihood of successful projection in determining which cases will result in criminal prosecutions.

In cases where a SUTA dumping investigation results in a settlement between the state and the employer in which the employer admits no wrongdoing, their has been no clear establishment of SUTA dumping. In such cases, Federal law does not require the imposition of a penalty.

21. *Question:* What is a "meaningful" penalty?

Answer: To be "meaningful," the penalty musts have the effect of curtailing SUTA dumping. Minimal penalties will not accomplish this end.

Concerning cases where only civil penalties are imposed, a monetary penalty must be of sufficient size that an employer will not be tempted to SUTA dump. A flat fine against SUTA dumping may not be a meaningful deterrent. For example, if a corporation that attempted to dump $2 million in SUTA taxes is fined $5,000, this will likely not be a meaningful deterrent against future attempts to SUTA dump. For that reason, the draft legislative language attached to this UIPL takes the approach that an employer who violated (or attempted to violate) the SUTA dumping prohibitions be assessed the maximum tax rate, or, if assigning the maximum rate does not result in a rate increase of at least 2% of taxable wages, then a penalty rate of 2% of taxable wages will instead be assessed for the rate year in which the violation occurred (or was attempted) and the following three years. States are free to vary this penalty (including assessing both rate increases and fines) but any penalty must have significant financial impact to have a deterrent effect.

22. *Question:* May state law limit the civil penalties to rate increases?

Answer: No. UC rate increases are not applicable to self-employed individuals who knowingly advise employers to SUTA dump. As a result, state law also needs to provide for fines against individuals. The draft legislative language attached to this UIPL takes the approach that rate increases will be applied to employers and fines to non-employers.

23. *Question:* Do the SUTA dumping amendments specify the uses of any financial penalties collected by the UC agency?

Answer. No. The draft legislative language attached to this UIPL operates on the assumption that, as is the case with any other UC contributions payable under a state's UC law, any amounts paid due to any rate increase will be deposited in the state's unemployment fund in which case they may be withdrawn *only* for the payment of benefits. Also, under the draft legislative language, any fines will be deposited in the state's penalty and interest account. States may limit the use of these fines to SUTA dumping and other integrity activities.

Payrolling

24. *Question:* Do the SUTA dumping amendments address situations where one employer reports its payroll under another employer's account?

Answer: No. Although this practice, commonly called "payrolling," has been known for some time, it is not addressed by the amendments. "Payrolling" may also include cases where two unrelated businesses negotiate for a fee to have all or part of the employer with the higher UC rate report its payroll as belonging to the other employer. A PEO was recently found to be "payrolling" by shifting *its* payroll to the account of a client with a lower rate. In each case, the employers are fraudulently reporting who is the employer of an individual.

Unlike the manipulations the SUTA dumping amendments are designed to prevent, "payrolling" should already be explicitly prohibited under all states' UC laws since it involves an employer submitting fraudulent documents concerning who is an individual's employer for UC purposes.

Recognizing that "payrolling" has the same effect as SUTA dumping, the Draft Legislative Language is written so that its penalties will apply to "payrollers." It provides that the penalties apply not just to the mandatory and prohibited transfers required by new Section 303(k), SSA but also to violations or attempted violations of "any other provision of this Chapter related to determining the assignment of a contribution rate."

Establishing Procedures—Section 303(k)(1)(E), SSA

25. *Question:* What must my state law say regarding establishing procedures to detect SUTA dumping?

Answer: The state law must say that the state will establish procedures to "identify the transfer or acquisition of a business for purposes of" detecting SUTA dumping. (Section 303(k)(1)(E), SSA.) The state law is not required to specify the procedures. The Department does not believe that it is desirable to legislate what these procedures *must* be as the most effective procedures may vary over time. As a result, the Draft Language does not specify procedures. However, the state must implement procedures to detect SUTA dumping.

Other

26. *Question:* What does "person" mean for purposes of the amendments?

Answer: "Person" has "the meaning given such term by section 7701(a)(1) of the Internal Revenue of 1986." (Section 303(k)(2)(F), SSA.) Section 7701(a)(1), IRC, defines "person" as meaning "an individual, a trust, estate, partnership, association, company or corporation." Thus, the term "person" is very broad; it includes entities that may be employers under state law and it includes individuals who are not employers.

27. *Question:* What does "employer" mean for purposes of the amendments?

Answer: "Employer" means "an employer as defined under state law." (Section 303(k)(2)(B), SSA) Typically, "employer" will mean an entity that pays sufficient wages based on employment to be subject to the state's UC law. If state UC law does not use the term "employer," then, for purposes of determining what entity is an employer, the state should use whatever term it uses to describe this entity. For example, many states use the term "employing unit" to describe this entity.

28. *Question:* What does "business" mean for purposes of the amendments?

Answer: "Business" means "a trade or business (or a part thereof)." (Section 303(k)(2)(c), SSA.)

Effective Date

29. *Question:* By what date must the states amend their UC laws?

Answer: The amendments do not specify a date. Instead, they apply to "rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment" of Public Law 108–295, which was August 9, 2004. (See Section 2(c) of Public Law 108–295.) Thus, transfer of experience required or prohibited under the amendments must be effective for such rate years. Notice prohibits states from providing for earlier effective dates. Indeed, states are encouraged to make their amendments effective as soon as possible.

All states currently have rate years beginning either January 1 or July 1. Also, almost all states' first legislative sessions following the date of enactment will begin in the first three months of 2005. As a result, after taking into account the 26-week grace period, the amendments in most states must be effective for rate years beginning on or after January 1, 2006, or on or after July 1, 2006, whichever is applicable in the state.

For purposes of determining when the 26-week period ends, the state should start counting on the first day of the first regularly scheduled session of the state legislature and count up to 182 (26 weeks × 7 days = 182 days). Any rate year beginning after the 182nd day must apply the SUTA dumping amendments.

The following table indicates the required effective dates:

EFFECTIVE DATES

First day of state's first regularly scheduled session	State's rate year begins	Effective for rate years beginning
January 1–July 3, 2005	January 1	January 1, 2006.
	July 1	July 1, 2006.
July 4–December 31, 2005	January 1	January 1, 2007.
	July 1	July 1, 2006.
January 1–July 3, 2006	January 1	January 1, 2007.
	July 1	July 1, 2007.

30. *Question:* The state's legislature has adjourned. However, it is scheduled to meet in a one-day session that is limited to over-riding vetoes. This one-day session is consistently scheduled to occur a specific number of days after the state legislature has adjourned. Although the legislature adjourned prior to the date of enactment of Public Law 108–295, the one-day session occurs after the date of enactment. Does this veto session count as the "first day of the first regularly scheduled session" following enactment?

Answer: No. The effective date provisions recognize that states need time to amend their laws. A legislative session where the introduction and enactment of new legislation is prohibited will, therefore, not be considered as starting the clock for purposes of determining when rates must be assigned consistent with new Section 303(k), SSA. If, one the other hand, legislation may be introduced and enacted in such a one-day session, the clock will start.

Attachment II

Draft Legislative Language

The following language is provided for state use in developing language that meets the requirements of Section 303(k), SSA, as added by Public Law 108–295, on SUTA dumping.

States will need to modify the language to accord with state usage. For example, "Commissioner" should be changed to the name of the agency administering the state's UC program if that is the state convention. Similarly, legal usages, such as "Chapter" to refer to the state's UC law, should be changed to accord with state convention.

The following language assumes the state wishes to add a separate section addressing SUTA dumping. States may chose instead to integrate the following provisions into existing state law. If this is the case, states should use this language in conjunction with the Checklist in Attachment III to assure all necessary amendments are made. Similarly, states modifying the language should test such modifications against the Checklist.

Section _____. Special Rules Regarding Transfers of Experience and Assignment of Rates. Notwithstanding any other provision

of law, the following shall apply regarding assignment of rates and transfers of experience:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business.[1]

(b) Whenever a person[2] who is not an employer[3] under this Chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the Commissioner finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the [applicable][4] new employer rate under section [insert section of state law]. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(1) If a person knowingly violates or attempts to violate subsections (a) and (b) or any other provision of this Chapter related to determining the assignment of a contribution rate,[5] or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, than such employer shall be assigned the highest rate assignable under this Chapter for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be imposed for such year.

(B) If the person is not an employer, such person shall be subject to a civil money penalty of not more than $5,000. Any such fine shall be deposited in the penalty and interest account established under [insert appropriate section of state law.]"[6]

(2) For purposes of this section, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.[7]

(4) In addition to the penalty imposed by paragraph (1), any violation of this section may be prosecuted as a [insert appropriate language; for example "a class A felony" or "a Class B misdemeanor"] under Section [insert appropriate section] of the Criminal Code.[8]

(d) The Commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(e) For purposes of this section—

(1) "Person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986, and

(2) "Trade of business" shall include the employer's workforce.[9]

(f) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.[10]

Attachment III

Conformity Checklist for State SUTA Dumping Laws

Questions	Yes or no
1. **Mandatory Transfers.** If Employer A transfers its trade or business (including its workforce) to Employer B, does the state law mandate the transfer of experience from Employer A to Employer B when there is "substantially common" ownership, management or control:	
Does this mandate apply to both total and partial transfers?	
2. **Prohibited Transfer.** Does state law prohibit the transfer of experience (that is, does it require a new employer rate be assigned) when a person becomes an employer by acquiring an existing employer if the purpose of the acquisition was to obtain a lower rate?	
Does this prohibition apply to a "person" who, prior to the acquisition of the employer, had (a) no individuals in its employ and (b) some employment, but not enough to be an "employer" for purposes of state law?	
3. **Penalties.** Does state law impose "meaningful civil penalties" for "knowingly" violating and attempting to violate the above?	
Why is the penalty "meaningful?"	
Does state law impose meaningful criminal penalties for the same?	
Are these penalties applicable to both the person who commits the violation and any person (including the employer of the advice-giver) who knowingly gives advice leading to such a violation?	
Does state law address the situation where the person giving the advice may not be an employer? (*E.g.*, self-employed financial advisors?)	
Does the definition of "knowingly" at a minimum mean "having actual knowledge of or acting with deliberate ignorance of or reckless disregard of the law"?	
4. **Procedures.** Does the law require the establishment of procedures to identify SUTA dumping?	
5. **Additional Procedures/Mandates.** Optional. Does state law require/prohibit the transfer of experience in accordance with any regulations of the Secretary of Labor may prescribe? (If not, future amendments to state laws may be necessary.)	

[1] See Question and Answer 8, which contains the Department's recommendation that rates be recomputed immediately.

[2] The term "person" is used consistent with the usage in Section (k)(1)(B), SSA. It encompasses a broad range of entities who are not "employers." It includes both entities who are not "employers" because they have no payroll or insufficient payroll. Note the definition of "person" given in subsection (e)(1) of the draft language.

[3] States should determine if "employer" is the appropriate term here and in other appearances in this draft language. For example, a state may use the term "employing unit", "subject employer," or "employer liable for contributions" to describe an entity that is subject to taxation under the state's UC law.

[4] The word "applicable" is intended to address situations where not all "new" employers receive the same rate. For example, many states assign new employer rates by industry code.

[5] See Question and Answer 24 regarding payrolling.

[6] This provision permits penalty to be applied to self-employed financial advisers and individual employees of business. See Question and Answer 23 regarding the deposit of the fines in the penalty and interest account.

[7] This provisions—paragraph (3)—is optional. An actual listing of violations may help to deter these violations.

[8] States should assure that the criminal penalties cited are applicable to both individuals and corporations.

[9] See Question and Answer 5 regarding whether workforce is part of the employer's "trade or business." This definition assures that questions will not arise about whether an employer's workforce is included in "trade or business."

[10] Subsection (f) is optional. States are encouraged to include such language to avoid potential conflicts with any Federal regulations finalized after enactment of state law. The language is written in terms of minimum Federal requirements to assure states are free to adopt more stringent protections to avoid SUTA dumping.

[FR Doc. 04–21917 Filed 9–29–04; 8:45 am]
BILLING CODE 4510–30–M

OFFICE OF PERSONNEL MANAGEMENT

[RI 20–64, RI 20–64A, and RI 20–64B]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI20–64, You May Provide a Survivor Annuity for Your Former Spouse, is used by the Civil Service Retirement System to provide information about the amount of annuity payable after a survivor reduction and to offer eligible annuitants an opportunity to make a former spouse survivor annuity election. RI 20–64A, Former Spouse Survivor Annuity Election, is the election form the annuitant uses to make such an election. RI 20–64B, Information on Electing a Survivor Annuity for Your Former Spouse, is a pamphlet that provides important information to retirees under the Civil Service Retirement System who want to provide a survivor annuity for a former spouse.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or others forms of information technology.

Approximately 30 RI 20–64A forms are completed annually. The form takes approximately 45 minutes to complete. The annual estimated burden is 23 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–21923 Filed 9–29–04; 8:45 am]
BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:
Rule 15g–9, SEC File No. 270–325, OMB Control No. 3235–0385.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Sections 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 15(c)(2) of the Securities Exchange Act of 1934 (the "Exchange Act") authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter ("OTC") securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6 (the "Rule"), which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9. The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in low-priced stocks that are not registered on a national securities exchange or authorized for trading on NASDAQ, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell low-priced securities to unsophisticated customers.

The staff estimates that approximately 240 broker-dealers incur an average burden of 78 hours per year to comply with this rule. Thus, the total burden hours to comply with the Rule is estimated at 18,720 hours (240 × 78).

The broker-dealer must keep the written suitability determination and customer agreement required by the Rule for at least three years. Completing the suitability determination and obtaining the customer agreement in writing is mandatory for broker-dealers who effect transactions in penny stocks and do not qualify for an exemption, but does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to (i) the Desk Officer for the SEC, by sending an email to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 20, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2412 Filed 9–29–04; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17a–1, SEC File No. 270–244, OMB Control No. 3235–0208.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 17a–1 under the Securities Exchange Act of 1934 (the "Act")

requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents that they make or receive respecting their self-regulatory activities, and that such documents be available for examination by the Commission.

The Commission staff estimates that the average number of hours necessary for compliance with the requirements of Rule 17a–1 is 50 hours per year. There are 22 entities required to comply with the rule: 9 national securities exchanges, 1 national securities association, 11 registered clearing agencies, and the Municipal Securities Rulemaking Board. In addition, 3 national securities exchanges notice-registered pursuant to Section 6(g) of the Act are required to preserve records of determinations made under Rule 3a55–1, which the Commission staff estimates will take 1 hour per exchange, for a total of 3 hours. Accordingly, the Commission staff estimates that the total number of hours necessary to comply with the requirements of Rule 17a–1 is 1,103 hours. The average cost per hour is $50. Therefore, the total cost of compliance for the respondents is $55,150.

Rule 17a–1 does not assure confidentiality for the records maintained pursuant to the rule. The records required by Rule 17a–1 are available only for examination by the Commission staff, state securities authorities and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, by sending an email to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 22, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2413 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 6h–1, SEC File No. 270–497, OMB Control No. 3235–0555.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The Securities Exchange Act of 1934 ("Act") requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require: (1) Trading in such products not be readily susceptible to price manipulation; and (2) the market trading a security futures product has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h–1 under the Act[2] implements these statutory requirements and requires national securities exchanges and national securities associations that trade security futures products to: (1) Require cash-settled security futures products to settle based on an opening price rather than a closing price; and (2) require the exchange or association to halt trading in a security futures product for as long as trading in the underlying security, or trading in 30% of the underlying securities, is halted on the listing market.

It is estimated that approximately 17 respondents will incur an average burden of 10 hours per year to comply with this rule, for a total burden of 170 hours. At an average cost per hour of approximately $197, the resultant total cost of compliance for the respondents is $33,490 per year (17 entities × 10 hours/entity × $197/hour = $33,490).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission by sending an email to *david_rostker@omb.eop.gov*, and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: September 22, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2414 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–1(g), SEC File No. 270–30, OMB Control No. 3235–0290.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17f–1(g) Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

Paragraph (g) of Rule 17f–1 requires that all reporting institutions (*i.e.*, every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank insured by the FDIC) maintain and preserve a number of

[1] 44 U.S.C. 3501 *et seq.*

[2] 17 CFR 240.6h–1.

documents related to their participation in the Lost and Stolen Securities Program ("Program") under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies or all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are 25,714 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 14,142.7 hours (25,714 × .55 hours = 14,142.7). Assuming an average hourly cost for clerical work of $20.00, the average total yearly record retention cost for each respondent would be $11.00. Based on these estimates, the total annual cost for the estimated 25,714 reporting institutions would be approximately $282,854.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: September 23, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2415 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26620; 812–13124]

Deutsche Investment Management Americas, Inc., et al.; Notice of Application and Temporary Order

September 24, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Deutsche Bank Securities, Inc. ("DBSI") on September 24, 2004 by the U.S. District Court for the Southern District of New York (the "Federal Injunction"), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: DBSI, Deutsche Investment Management Americas, Inc., Deutsche Asset Management, Inc., Deutsche Asset Management International GMBH, Deutsche Asset Management Investment Services, Ltd., Investment Company Capital Corp., DB Investment Managers, Inc., Deutsche Investments Australia Limited, RREEF America, L.L.C., Deutsche Asset Management (Japan) Limited, Deutsche Asset Management (Asia) Limited, Deutsche Investment Trust Management Company Limited (collectively, the "Advisers"), and Scudder Distributors, Inc. ("Scudder") (together with the Advisers, the "Applicants").[1]

FILING DATES: The application was filed on September 3, 2004. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice. Applicants also have agreed to file additional amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 19, 2004, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Daniel O. Hirsch, Esq., Deutsche Asset Management/Scudder Investments, 1 South Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION, CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0699, or Annette M. Capretta, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Each of the Applicants is an indirect, wholly owned subsidiary of Deutsche Bank AG, a global financial services company that provides investment management, mutual fund, retail, private and commercial banking, investment banking, and insurance services. Collectively, the Advisers serve as investment advisers or subadvisers to approximately 200 registered investment companies or series thereof ("Funds"). Scudder acts as the principal underwriter for all of the Funds.

2. On September 24, 2004, the U.S. District Court for the Southern District of New York entered the Federal Injunction against DBSI in a matter

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which DBSI is or hereafter becomes an affiliated person (included in the term Applicants).

brought by the Commission.[2] The Commission alleged in the complaint ("Complaint") that DBSI violated section 17(b) of the Securities Act of 1933 ("Securities Act") and certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in acts and practices that created or maintained inappropriate influence by DBSI's investment banking business (the "Investment Banking Department") over the research analysts in DBSI's research department (the "Research Division"). The Commission also alleged in the Complaint that DBSI violated section 17(b) of the Securities Exchange Act of 1934 ("Exchange Act") by failing to timely produce e-mail that the Commission had sought to examine during its investigation of DBSI's research and investment banking practices. The Federal Injunction enjoined DBSI directly or through its officers, directors, agents and employees, from violating section 17(b) of the Securities Act, the Exchange Rules cited in the Complaint, and section 17(b) of the Exchange Act. Without admitting or denying the allegations in the Complaint, DBSI consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by DBSI to adopt and implement policies and procedures relating to certain research activities. Applicants state that DBSI expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies, which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of the Applicants under Section 9(a) of the Act resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that DBSI is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former employee of any of the Applicants who is or was involved in providing advisory, subadvisory or underwriting services to the Funds advised or underwritten by Applicants.[3] While the Advisers' portfolio managers had access to research reports issued by the Research Division, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds. Although some of the Funds held securities in their portfolios at the time that DBSI issued research reports concerning the issuers of such securities, as far as the Advisers are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Advisers had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Final Judgment. In addition, each of the Applicants that serve as an investment adviser or subadviser to Funds has adopted policies regarding information barriers (the "Policies") designed to protect the Funds from certain conflicts of interest that may arise between portfolio managers and other employees of DBSI. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of DBSI.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.[4] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and

[2] *Securities and Exchange Commission* v. *Deutsche Bank Securities, Inc.*, 04 CV 06909 (WHP) (S.D.N.Y., filed Aug. 26, 2004).

[3] The Complaint also refers to general practices regarding the relationship between the Investment Banking Department and Research Division of DBSI. It is possible that one or more current or former personnel of the Applicants who is or was involved in providing advisory, subadvisory or underwriting services to the Funds was at some time involved in investment banking or research activities.

[4] Applicants state that they will advise the Boards of any State Injunctions that are issued.

distributing the Funds. Bankers Trust Company and its affiliates previously received an exemption under section 9(c) as the result of conduct that triggered section 9(a), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, September 24, 2006.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21880 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26619]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 24, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609.

For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

AXP Progressive Series, Inc.

[File No. 811–1714]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 2004, applicant transferred its assets to a corresponding series of AXP Partners Series, Inc., based on net asset value. Expenses of $38,308 incurred in connection with the reorganization were paid by American Express Financial Corporation, applicant's investment adviser.

Filing Date: The application was filed on September 2, 2004.

Applicant's Address: 901 Marquette Ave. S, Suite 2810, Minneapolis, MN 55402–3268.

Merrill Lynch International Equity Fund

[File No. 811–6521]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 23, 2004, applicant transferred its assets to Merrill Lynch International Value Fund, a series of Mercury Funds II, based on net asset value. Expenses of $214,168 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on September 10, 2004.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Merrill Lynch Dragon Fund, Inc.

[File No. 811–6581]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 21, 2004, applicant transferred its assets to Merrill Lynch Developing Capital Markets Fund, Inc., based on net asset value. Expenses of $208,317 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Dates: The application was filed on August 2, 2004, and amended on September 10, 2004.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Eaton Vance Municipal Income Trust II (Formerly Eaton Vance Municipal Income Fund)

[File No. 811–21234]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on August 10, 2004, and amended on September 8, 2004.

Applicant's Address: The Eaton Vance Building, 255 State St., Boston, MA 02109.

Investors First Fund, Inc.

[File No. 811–4981]

Progressive Return Fund, Inc.

[File No. 811–5891]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 25, 2004, each applicant transferred its assets to Cornerstone Strategic Value Fund, Inc., based on net asset value. Expenses of $297,037 and $158,896, respectively, incurred in connection with the reorganizations were paid by each applicant and the acquiring fund.

Filing Dates: The applications were filed on July 27, 2004, and amended on September 10, 2004.

Applicants' Address: 383 Madison Ave., New York, NY 10179.

Mutual Fund Variable Annuity Trust

[File No. 811–8630]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 5, 2003, each portfolio of the Applicant transferred its assets to the corresponding portfolio of SunAmerica Series Trust, based on net asset value. Aggregate expenses of approximately $356,608 incurred in connection with the reorganization and merger will be

paid by AIG SunAmerica Life Assurance Company, First SunAmerica Life Insurance Company, and JPMorgan Chase & Company.

Filing Dates: The application was filed on December 29, 2003, and amended on September 16, 2004.

Applicant's Address: 522 Fifth Avenue, New York, New York 10036.

Merrill Lynch Variable Annuity Account

[File No. 811–3079]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. All contract owners that owned variable annuity contracts issued through the Applicant have either elected to surrender their contracts at their own initiative or are no longer living. All amounts owed under such contracts were previously distributed. The Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on August 2, 2004.

Applicant's Address: Merrill Lynch Insurance Group, 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey, 08534.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21881 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50436; File No. SR–BSE–2004–39]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Transaction Fees Schedule

September 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2004, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On September 22, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its Transaction Fees schedule with respect to its new Instant Liquidity Access ("ILA") service.[4] The text of the proposed rule change is available at the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change[5]

1. Purpose

The BSE proposes to amend its Transaction Fees schedule to establish a transaction charge for its new ILA product. The Exchange would apply these fees effective September 1, 2004, as this is when the product was fully implemented.

Under the proposed fees, firms that access liquidity on the BSE through ILA will be charged $.002 per share when an order removes liquidity (order immediately executes against displayed liquidity on the BSE) and will be credited $.001 per share when an order provides liquidity (order is trading away from the market, is placed on the BSE limit order book and is ultimately executed).[6] A firm can receive total credits up to the amount of total fees charged to the firm for ILA activity on a monthly basis. Therefore, no firm will be credited in an amount greater than the amount of fees it was charged for a given month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by the BSE. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the pruposes of the Act.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Boese, Vice President and Chief Regulatory Officer, BSE to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 15, 2004 ("Amendment No. 1"), in which the BSE made a minor revision of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 34–48596 (October 7, 2003), 68 FR 59435 (October 15, 2003) (SR–BSE–2003–08).

[5] The BSE requested that the staff of the Division make minor modifications to language in the purpose and statutory basis sections. Telephone discussion between Kathy Marshall, Vice President of Finance, BSE, and Mia Zur, Attorney, and Natasha Cowen, Attorney, Division, Commission (September 14, 2004).

[6] Order trading away from the market and submitted through ILA without being designated as ILA orders are placed on the BSE limit order book and receive the credit. Telephone discussion between Kathy Marshall, Vice President of Finance, BSE, and Ira Brandriss, Assistant Director, and Natasha Cowen, Attorney, Division, Commission (September 23, 2004).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(3)(a)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on September 22, 2004, the date the BSE filed Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–39 and should be submitted on or before October 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21884 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50431; File No. SR–BSE–2004–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Modifying the Allocation of Certain Orders Under the Rules of the Boston Options Exchange Facility

September 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by BSE as a "non-controversial" rule change pursuant to 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective on filing with the Commission. On September 10, 2004, BSE filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to adopt a rule change to modify the allocation of certain customer orders under the rules of the Boston Options Exchange Facility ("BOX"). Pursuant to the current rule, when a customer order is submitted to BOX's Price Improvement Period (the "PIP"), the PIP participant who submitted the customer order to the PIP retains priority for 40% of the unexecuted portion of the customer order available at that price level. The Exchange proposes to modify this priority to 40% of the original size of the customer order. The Exchange believes that this modification is consistent with the allocation of comparable orders executed on CBOEdirect, the screen-based trading system of the Chicago Board Options Exchange, Inc. ("CBOE").[6]

The text of the proposed rule change is set forth below. Proposed new language is *italicized*; deletions are bracketed.

* * * * *

Rules of the Boston Stock Exchange

Rules of the Boston Options Exchange Facility

Trading of options contracts on BOX

Chapter VI Doing Business on BOX.

Sec. 18 The Price Improvement Period ("PIP")

* * * * *

(f) The PIP Participant who submitted the Customer Order to the PIP process for price improvement retains certain priority and trade allocation privileges upon conclusion of the PIP, as follows:

i. In instances in which the Primary Improvement Order as modified (if at all) is matched by or matches any competing Improvement Order(s) and/or non-Public Customers unrelated order(s) at any price level, the PIP Participant retains priority *at that price level* for only forty percent (40%) of [any unexecuted portion] *the original size* of the Customer Order [available at that price level], notwithstanding the time priority of the Primary Improvement Order, competing Improvement Order(s) or non-Public Customer unrelated order(s). The PIP Participant who submitted the Customer Order to the PIP process will receive additional allocation only after all other orders have been filled at that price level.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Letter from Annah F. Kim, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 8, 2004 ("Amendment No. 1"). Amendment No. 1 made clarifying revisions to the text of the proposed rule change.

[6] *See* CBOE Rule 43.12A (Crossing Trades).

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When the Exchange drafted the rules that would govern the allocation of customer orders on BOX with respect to the PIP, it took care to comply with the requirements of Section 11(a) of the Act[7] and provide priority to public customer and non-member orders as well as adhere to a policy of not allowing a trade allocation guarantee of more than 40% of a facilitated order to the facilitator of that customer order. At that time, the Exchange believed it was necessary to allocate any guaranteed portion of the Primary Improvement Order[8] based on what remained of the customer order at a given price level after all public customer and non-member orders had been executed, and drafted the BOX rules accordingly. It has since come to the attention of the Exchange that the rules of at least one other options exchange provide for the allocation of a guaranteed portion of comparable facilitated orders based on the original size of such facilitated orders, and not on the amount that remains at a price level after orders with priority have been executed.[9] Members of the Exchange who participate on BOX requested that, in this regard, the BOX rules be modified to match those of other options exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78k(a).

[8] *See* Chapter V, Section 18(e) of the BOX Rules (definition of Primary Improvement Order).

[9] *See* CBOE Rule 43.12A (Crossing Trades).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of this proposed rule change,[14] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–36 and should be submitted on or before October 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2416 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on September 10, 2004, the date BSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50433; File No. SR–ISE–2004–18]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend the Market Maker Information Barrier Requirements Under ISE Rule 810

September 23, 2004.

On May 26, 2004, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant

to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 810 by replacing the term "Chinese Wall" with the term, "Information Barrier;" and eliminating the requirement that a market maker maintain an Information Barrier in the limited circumstances where the sole extent to which such market maker or affiliated broker-dealer handles listed options orders as agent on behalf of Public Customers[3] or broker-dealers consists of handling such orders pursuant to an exchange sponsored Directed Order Program. The proposal would also exempt a market maker from the Information Barrier requirements of ISE Rule 810 to the extent that the market maker or affiliated broker-dealer engages solely in proprietary trading and does not, under any circumstances, maintain customer accounts or solicit orders or funds from or on behalf of Public Customers or broker-dealers. The ISE also proposed a non-substantive clarification and certain non-substantive technical changes to ISE Rule 810(a). The ISE amended the proposal on August 6, 2004[4] and August 13, 2004.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 20, 2004.[6] The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the ISE's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Commission believes that the ISE's proposal to provide two additional exceptions from the Information Barrier requirements of ISE Rule 810 is consistent with the Act.

One exception would eliminate the requirement that a market maker maintain an Information Barrier in the limited circumstances where a market maker or affiliated broker-dealer engages solely in proprietary trading.[9] The Commission believes it is reasonable to remove this requirement, since the market maker, or its affiliated broker-dealer, is not engaged in activities that would inappropriately benefit other business activities within the firm. However, the Commission notes that if in the future these market makers, or their affiliated broker-dealers, engage in other business activities, such as investment banking or market making in the stocks underlying the options in which it makes markets, or maintain customer accounts, or solicit or accept Public Customer orders, the Commission expects that the ISE will require compliance with the Information Barrier requirements of ISE Rule 810.

The second exception from ISE Rule 810 would not require an Information Barrier between an ISE Member's ISE market making operations and options market making operations on other exchanges where that Member handles orders as agent only for the accounts of affiliated entities or solely in an eligible Directed Order Program. Eligible Directed Order Programs must contain rules designed to ensure that market makers do not gain an advantage in handling Directed Orders because the information they possess may be used inappropriately for the benefit of the market maker receiving the Directed Order. For example, a market maker that chooses to accept Directed Orders must accept all orders directed to it, may not accept orders directly, other than through an exchange system, and the market maker may not handle such orders on a disclosed or discretionary basis. Therefore, the Commission believes that it is reasonable to not require an Information Barrier in such cases, since the rules of such Directed Order Programs should provide safeguards that should limit the misuse of information with regard to the terms of orders that affiliates of ISE members are handling as agent.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ISE–2004–18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21885 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE Rule 100(a)(32) defines "Public Customer" as "a person that is not a broker-dealer in securities." ISE Rule 100(a)(33) defines "Public Customer Order" as "an order for the account of a Public Customer."

[4] On August 6, 2004, the ISE filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

[5] On August 13, 2004, the ISE filed a Form 19b-4, which replaced the original filing and Amendment No. 1 in their entirety ("Amendment No. 2").

[6] *See* Securities Exchange Act Release No. 50197 (August 13, 2004), 69 FR 51735.

[7] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] The Commission notes that this section of the proposal is similar to Pacific Exchange, Inc. Rule 7.26. *See* Securities Exchange Act Release No. 49264 (February 17, 2004), 69 FR 8510 (February 24, 2004)(SR–PCX–2003–49).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50434; File No. SR–NASD–2004–134]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Multiple Market Participant Identifiers

September 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The proposed rule change has been filed by Nasdaq as a "non-controversial" rule change pursuant to Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to continue two pilot programs that provide market participants who execute transactions in Nasdaq and exchange-listed securities through its systems the ability to display trading interests using up to 10 individual Market Participant Identifiers ("MPIDs"). The text of the proposed rule change is below. Proposed new

language is in *italics*; proposed deletions are in brackets.[4]

* * * * *

4613. Character of Quotations

(a) Quotation Requirements and Obligations

(1) No Change.

(2) The first MPID issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's "Primary MPID." For a six-month pilot period beginning [March 1,] *September 1,* 2004, market makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." Market makers and ECNs may be issued up to nine Supplemental MPIDs. A market maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(3) No Change.

(b)–(e) No Change

* * * * *

5266. Market Participant Identifiers

(a) No Change.

(b) For *a six-month* pilot period commencing [June 24, 2004 and terminating September 31, 2004,] *September 1, 2004,*[5] ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." ITS/CAES market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES market maker may request the use of Supplemental MPIDs for displaying two-sided Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5220; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An ITS/CAES market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to extend through March 1, 2005, its current pilot programs that enable market makers and electronic communication networks ("ECNs") in Nasdaq stocks and ITS/CAS Market Makers in exchange-listed stocks to use Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Market Center. On March 1, 2004, Nasdaq submitted to the Commission File No. SR–NASD–2004–037[6] which established the ability of ECNs and market makers in Nasdaq securities to use up to 10 individual MPIDs to display attributable quotes and orders in the Nasdaq Quotation Montage. On July 29, 2004, Nasdaq submitted to the Commission File No. SR–NASD–2004–097,[7] which created the same capability for ECNs and market makers using Nasdaq systems to quote and trade exchange-listed securities. Pursuant to these programs, which will be extended under the proposed rule change, MPIDs for Nasdaq and exchange-listed securities are allocated and, when Nasdaq is reaching technological limits for displayed, attributable MPIDs, re-allocated using the same procedures.[8] Additional MPIDs are known as "Supplemental MPIDs" with a market maker's or ECN's first MPID being known as the "Primary MPID."

The purpose of providing Supplemental MPIDs is to provide quoting market participants a better ability to organize and manage diverse order flows from their customers and to route orders and quotes to Nasdaq's listed trading facilities from different units/desks. Nasdaq believes that to the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems, all market participants can be expected to benefit.[9]

The restrictions on the use of any Supplemental MPID are the same as those applicable to a Primary MPID. Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and Commission rules governing the trading of these securities. There are only two exceptions to this general principle. First, the continuous quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 4613(a) and Rule 5220(e), as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to Supplemental MPIDs. Second, only one MPID, its Primary MPID,[10] may be used to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619. In all other respects, market makers and ECNs will continue to have the same rights and obligations in using a Supplemental MPID to enter quotes and orders and to display

[4] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *http://www.nasdr.com*, as amended by File No. SR–NASD–2004–097. *See* Securities Exchange Act Release No. 50140 (August 3, 2004), 69 FR 48535 (August 10, 2004).

[5] The Commission corrected the proposed rule text to italicize the comma after "September 1, 2004." Voicemail message from Jeffrey Davis, Associate Vice President and Associate General Counsel, Nasdaq, to Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on September 17, 2004.

[6] See Securities Exchange Act Release No. 49471 (March 25, 2004), 69 FR 17006 (March 31, 2004).

[7] *See* Securities Exchange Act Release No. 50140 (August 3, 2004), 69 FR 48535 (August 10, 2004).

[8] Under those procedures, rankings used to allocate display privileges are based only on the volume associated with a member's Supplemental MPID. Primary MPIDs will be excluded from the calculation. The member with lowest volume using a Supplemental MPID will continue to be the first to lose the display privilege, but only with respect to the Supplemental MPID that caused them to have the lowest ranking; the member will not lose its authority to use the Supplemental MPID in that security to submit quotes and orders to SIZE or the display privileges associated with that Supplemental MPID with respect to other securities in which it is permitted to use the identifier. When re-allocating the display privileges, requests for Primary MPIDs will continue to receive precedence over requests for Supplemental MPIDs.

[9] Nasdaq assesses no fees for the issuance or use of a Supplemental MPIDs other than the Commission-approved transaction fees set forth in NASD Rule 7010.

[10] Clarification made pursuant to telephone conversation between Jeffrey Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, and Ted Venuti, Law Clerk, Division of Market Regulation, Commission, on September 13, 2004.

quotations, as they have using their Primary MPIDs.[11]

The granting of Supplemental MPIDs is secondary to the integrity of the Nasdaq system trading those issues. As such, ECNs and market makers may not use a Supplemental MPID(s) to accomplish indirectly what they would be prohibited from doing directly through a single MPID. For example, members will not be permitted to use a Supplemental MPID to avoid their Manning or best execution obligations or their obligations under the Commission's Order Handling Rules, the firm quote rule, the OATS rules, and the Commission's order routing and execution quality disclosure rules. To the extent that the allocation of Supplemental MPIDs creates regulatory confusion or ambiguity, every inference will be drawn against the use of Supplemental MPIDs in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market. Accordingly, if it is determined that a Supplemental MPID is being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID for all purposes for all securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] in general and with Section 15A(b)(6) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the use of multiple MPIDs in listed securities can be expected to provide greater flexibility in the processing of diverse order flows, thereby improving overall system liquidity for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[11] Telephone conversation between Jeffrey Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ira Brandriss, Assistant Director, and Ted Venuti, Law Clerk, Division of Market Regulation, Commission, on September 21, 2004.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by Nasdaq as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the NASD gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

Pursuant to Rule 19b–4(f)(6)(iii),[18] a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission has determined that good cause exists to waive the 30-day period to permit the pilot program to continue on an uninterrupted basis.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[14] 15 U.S.C. 78s(b)(1).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(1).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2004–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–NASD–2004–134. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–NASD–2004–134 and should be submitted on or before October 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21882 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50447; File No. SR–NASD–2004–126]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Waiver of California Arbitrator Disclosure Standards

September 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which NASD has prepared. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend the pilot rule in IM–10100(f) of the NASD Code of Arbitration Procedure ("Code"), relating to the California waiver program, until March 31, 2005. NASD is not proposing any textual changes to the By-Laws or Rules of NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective July 1, 2002, the California Judicial Council adopted a set of rules, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" ("California Standards"),[4] which contain extensive disclosure requirements for arbitrators. According to NASD, the rules were designed to address conflicts of interest in private arbitration forums that are not part of a federal regulatory system overseen on a uniform, national basis by the SEC. NASD states that the California Standards impose disclosure requirements on arbitrators that conflict with the disclosure rules of NASD and the New York Stock Exchange ("NYSE"). Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.[5]

NASD and NYSE filed a lawsuit in federal district court seeking a declaratory judgment that the California Standards are inapplicable to arbitration forums sponsored by self-regulatory organizations ("SROs").[6] That litigation is currently pending on appeal. Since then, other lawsuits relating to the application of the California Standards to SRO-sponsored arbitration have been filed, some of which are still pending.

To allow arbitrations to proceed in California while the litigation is pending, NASD implemented a pilot rule to require all industry parties (member firms and associated persons) to waive application of the California Standards to the case, if all the parties in the case who are customers, associated persons with claims against industry parties, member firms with claims against other member firms, or member firms with claims against associated persons that relate exclusively to promissory notes, have done so.[7] In such cases, the arbitration proceeds under the NASD Code of Arbitration Procedure, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.[8]

The pilot rule, which was originally approved for six months on September 26, 2002,[9] has been extended and is now due to expire on September 30, 2004.[10] Because NASD believes the pending litigation regarding the California Standards is unlikely to be resolved by September 30, 2004, NASD requests that the effectiveness of the pilot rule be extended through March 31, 2005, in order to prevent NASD from having to suspend administration of cases covered by the pilot rule.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

[4] California Rules of Court, Division VI of the Appendix.

[5] These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

[6] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *http://www.nasdadr.com/pdf-text/072202_ca_complaint.pdf*. The Commission notes that a more thorough discussion of the litigation history of this issue can be found in SR–NYSE–2004–50.

[7] Originally, the pilot rule applied only to claims by customers, or by associated persons asserting a statutory employment discrimination claim against a member, and required a written waiver by the industry respondents. In July 2003, NASD expanded the scope of the pilot rule to include all claims by associated persons against another associated person or a member. At the same time, the rule was amended to provide that when a customer, or an associated person with a claim against a member or another associated person, agrees to waive the application of the California Standards, all respondents that are members or associated persons will be deemed to have waived the application of the standards as well. The July 2003 amendment also clarified that the pilot rule applies to terminated members and associated persons. *See* Securities Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (SR–NASD–2003–106). In October 2003, NASD again expanded the scope of the pilot rule to include claims filed by members against other members and to claims filed by members against associated persons that relate exclusively to promissory notes. *See* Securities Exchange Act Release No. 48711 (October 29, 2003), 68 FR 62490 (November 4, 2003) (SR–NASD–2003–153).

[8] NASD states that the NYSE has a similar rule, NYSE Rule 600(g).

[9] *See* Securities Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (SR–NASD–2002–126).

[10] *See* Securities Exchange Act Release No. 49452 (March 19, 2004), 69 FR 17010 (March 31, 2004) (SR–NASD–2004–040).

of Section 15A(b)(6) of the Act,[11] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that expediting the appointment of arbitrators under the proposed waiver, at the request of customers, associated persons with claims against industry parties, member firms with claims against other member firms, or member firms with claims against associated persons that relate exclusively to promissory notes, will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the conflict between the disputed California Standards and the NASD rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[14] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.[15]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] Accelerating the operative date will merely extend a pilot program that is designed to provide investors, and associated persons with claims against industry respondents, with a mechanism to resolve their disputes. During the period of this extension, the Commission and NASD will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative on September 30, 2004.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–126. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–126 and should be submitted on or before October 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2417 Filed 9–29–04; 8:45 am]

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[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] Telephone Conversation between John Nachmann, Counsel, NASD Dispute Resolution, Inc. and Elizabeth MacDonald, Attorney Adviser, Division of Market Regulation, September 23, 2004

[16] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50446; File No. SR–NASD–2004–121]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Include Failures to Timely Submit Amendments to Form U5 in its Minor Rule Violation Plan

September 24, 2004.

I. Introduction

On August 11, 2004, the National Association of Securities Dealers, Inc. ("NASD"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission ("Commission" or "SEC") a proposed rule change to amend NASD Interpretative Material 9216 ("IM–9216") (Violations Appropriate for Disposition Under the Plan Pursuant to SEC Rule 19d–1(c)(2)). NASD amended the proposal on August 17, 2004,[3] and August 19, 2004.[4] The proposed rule change, including Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on August 25, 2004.[5] The Commission received one comment on the proposal.[6] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

NASD proposes to amend IM–9216 to expand the list of violations eligible for disposition under NASD's Minor Rule Violation Plan ("MRVP") to include failure to timely submit amendments to Form U5, as required by Article V, Section 3(a) of the NASD By-Laws. The proposed rule change also changes references of "U–4" to "U4," to be consistent with the most recent amendments to that form.

NASD represents that the inclusion of the failure to timely submit amendments to Form U5 would be consistent with the current MRVP, which includes failure to timely submit amendments to Form U4, as required by Article V, Section 2(c) of the NASD By-Laws, and failure to timely submit amendments to Form BD, as required by Article IV, Section 1(c) of the NASD By-Laws. In addition, NASD believes that the addition of this violation to the MRVP would provide NASD staff with the ability to impose a meaningful sanction for violations that warrant more than a Letter of Caution but do not necessarily rise to a level meriting a full disciplinary proceeding.

III. Comment Received

The Commission received one comment on the proposal. The commenter, while supportive of NASD's efforts to regulate behavior that is contrary to the best interest of the investing public, questioned whether additional rules and more severe sanctions deter individuals with dishonest motives. The commenter also argued that increasing the severity of sanctions for minor or technical violations places additional undue burdens on many practitioners, and warned against increases in the level of fines.

NASD responded[7] that the proposed rule change would not create any additional requirements on the securities industry. Further, NASD responded that the addition of this violation to the MRVP would not place additional undue burdens on the industry; rather, the addition would provide NASD staff with the ability to impose a meaningful sanction (currently limited to a maximum of $2,500) on a member for failing to timely file an amendment to a Form U5 that warrants more than a Letter of Caution but less than a more expensive and time-consuming formal disciplinary proceeding.

IV. Discussion

After careful review of the proposed rule change, the comment letter, and NASD's response to comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Further, the Commission believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act[10] in that it provides for the appropriate discipline for violation of Commission rules and NASD rules. Moreover, the Commission believes the proposed rule change is consistent with Section 15A(b)(8) of the Act[11] in that it provides a fair procedure for the disciplining of NASD members and associated persons. Finally, the Commission finds that the proposed rule change is consistent with Rule 19d–1(c)(2) under the Act,[12] which governs minor rule violation plans. The Commission believes it is reasonable for NASD to be able to sanction late filings of Form U5 amendments pursuant to its MRVP. The Commission does not believe that the comment submitted raises any issue that would preclude approval of this proposal.

In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with NASD rules, and all other NASD rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide NASD with greater flexibility in addressing certain violations of NASD rules, the MRVP provides a reasonable means to address violations that do not rise to the level of requiring formal NASD disciplinary proceedings. The Commission expects that NASD will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of NASD rules under the MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–2004–121) and Amendment Nos. 1 and 2 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2418 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 16, 2004 ("Amendment No. 1"). In Amendment No. 1, NASD alphabetically rearranged the contents of Exhibit 3 to the proposed rule change. Exhibit 3 included comment letters NASD received from its members with respect to the proposed rule change.

[4] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 19, 2004 ("Amendment No. 2"). In Amendment No. 2, NASD made technical corrections to accurately reflect the existing text of IM–9216.

[5] *See* Securities Exchange Act Release No. 50221 (August 19, 2004), 69 FR 52317.

[6] *See* letter from Colon Brown, Jr., President, Brown & Brown Securities, Inc., dated September 9, 2004.

[7] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 22, 2004.

[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(7).

[11] 15 U.S.C. 78o–3(b)(8).

[12] 17 CFR 240.19d–1(c)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50441; File No. SR–PCX–2003–71]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc., Relating to Trading Securities Valued at Less Than $1.00 in Subpenny Increments

September 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2003 the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On September 15, 2004, the Exchange submitted Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. As discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended, for a pilot period.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the interpretation to PCXE Rule 7.6(a) to provide for order entry and trading of securities that are priced less than $1.00 to be entered, executed and reported in subpenny increments.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The text of the proposed rule change is set forth in Exhibit A hereto.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on the Archipelago Exchange ("ArcaEx") facility, the PCX is proposing, on a pilot basis through September 30, 2005, to permit trading of securities that are priced at less than $1.00 to be traded in increments of $0.001. Currently, interpretation .05 to PCXE Rule 7.6(a) stipulates that the minimum price variation for quoting and entry of orders traded on ArcaEx is $0.01. The Exchange proposes modifying this interpretation to allow for order entry in increments of $0.001 for Nasdaq National Market ("NNM"), Nasdaq Small Cap, and exchange-listed securities that are priced less than $1.00. In addition, the Exchange acknowledges the Commission's concern that allowing trading in $0.001 increments in securities priced less than $1.00 could permit ArcaEx ETP Holders to trade ahead of customers whose limit orders are at the national best bid or offer ("NBBO") in those securities by improving upon the quoted price in $0.001 increments.[4] Accordingly, the Exchange is also proposing to modify PCXE Rule 6.16, which governs trading ahead of customers' limit orders. The Exchange proposes to add a Commentary to PCXE Rule 6.16 to indicate that, during the term of this pilot, for securities priced less than $1.00, the minimum amount of price improvement necessary to execute an incoming marketable order on a proprietary basis by an ETP Holder when holding an unexecuted customer limit order otherwise due an execution pursuant to PCXE Rule 6.16 in that same security is $0.01.

In conjunction with this proposed filing, the Exchange has requested exemptive relief that would permit, on a one-year pilot basis through September 30, 2005, ArcaEx's ETP Holders to provide for order entry and trading of securities traded on ArcaEx (NNM securities, Small Cap Securities, and exchange-listed securities) that are priced less than $1.00 to be entered, executed and reported in increments of $0.001, while ArcaEx and vendors that disseminate ArcaEx quotation information report and disseminate quotes for those securities in penny increments.[5]

Further, to advance the Commission's review, and as a condition to the exemption relief sought, the Exchange has agreed to provide the Commission with monthly reports on its activity in subpenny increments. Such information will include reported volume of orders received and executed in subpenny increments (in terms of both trades and shares), the execution price points, and the nature of the subpenny orders received and executed (*i.e.*, agency, principal, or otherwise).[6]

The Exchange believes that allowing executions on ArcaEx in securities priced less than $1.00 would enable investors to sell the security in the event it becomes necessary, *e.g.*, where delisting proceedings have been announced or are imminent. The limited number of price points in low priced stocks necessitates the ability to trade in smaller increments.[7] Also, because the securities subject to this proposal are limited to those that meet ArcaEx's listing standards or are eligible for trading pursuant to the unlisted trading privileges, there are few (less than 1%) that will be impacted by this proposal. Moreover, the Exchange also has the ability to execute in subpennies under certain circumstances [8] and this proposal, although it relates to all order types, is a limited extension of that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai S. Shiver, Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 15, 2004.

[4] *See* PCXE Rule 1.1(n).

[5] *See* letter from Mai Shiver, Director, Regulatory Policy, PCX, to Annette L. Nazareth, Director, Division, Commission, dated September 15, 2004, regarding Subpenny Trading Increment for Securities Priced Less Than $1.00 ("Exemptive Request"). In this letter, the Exchange requested exemptive relief from Rules 11Ac–1, 11Ac1–2 and 11Ac1–4 to allow ArcaEx, its ETP Holders, and vendors that disseminate ArcaEx quotation information to round quotes for securities priced less than $1.00 to the nearest penny increment (up, for orders to sell, or down, for orders to buy) for display purposes, while such quotes may be entered and executed in increments of $0.001.

[6] The Nasdaq Stock Market, Chicago Stock Exchange, Inc., and National Stock Exchange, Inc., who have all received similar exemptive relief from the Commission, have also agreed to provide the Commission with similar monthly reports on their subpenny trading activity as a condition to receiving such relief.

[7] *See* Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11125 (March 9, 2004). The Exchange notes that the Regulation NMS proposal's limitation on subpenny trading would exclude securities priced below $1.00. The Exchange understands that the Commission's proposed Regulation NMS may have an impact on this pilot program. Accordingly, the Exchange has stated that it will undertake to work with the Commission to ensure that the pilot program would be consistent with the rules and regulations that may be adopted by the Commission in connection with its Regulation NMS proposal.

[8] *See* PCXE Rule 7.6(a), Commentary .07, ArcaEx is able to execute Midpoint Cross Orders and Directed Fills in increments smaller than the minimum price variation *i.e.*, in subpennies.

same principle restricted to securities priced less than $1.00.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2003–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2003–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2003–71 and should be submitted on or before October 21, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[12] of the Act, which requires that an exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Simultaneous with the filing of this proposal, the Commission received a request for exemptive relief submitted by the Exchange that would allow the ArcaEx, ArcaEx ETP holders, and vendors that disseminate ArcaEx quote information to display and disseminate their quotes for securities priced less than $1.00 in penny increments without a rounding identifier, while ArcaEx ETP Holders provide for order entry and trading in subpenny increments.[13] By letter dated September 21, 2004, the Division, pursuant to delegated authority under Rules 11Ac1–1(e),[14] 11Ac1–2(g),[15] and 11Ac1–4(d)[16] under the Act, granted a conditional temporary exemption to ArcaEx, ArcaEx ETP Holders, and vendors that disseminate ArcaEx quote information to permit them to display and disseminate their quotes for securities priced less than $1.00 in rounded, penny increments without a rounding identifier.[17] The exemption expires September 30, 2005. The Commission notes that the Nasdaq Stock Market, Chicago Stock Exchange, Inc., and National Stock Exchange, Inc. currently trade in subpennies pursuant to similar exemptive and no-action relief from the Commission. Unlike these other exchanges whose subpenny trading is not restricted to a particular price level, the Commission notes that the PCX, by this proposed rule change, is seeking to allow subpenny trading on ArcaEx only in securities priced less than $1.00, which the Exchange has represented is fewer than one percent of all securities traded on ArcaEx. The Commission also notes that, as part of the proposed rule change, the Exchange is amending its rule relating to trading ahead of customer orders to require ArcaEx ETP Holders to improve on their customers' subpenny quotes by a full penny in order to trade of such customer orders. The Commission believes that the proposed rule change should allow for additional liquidity at the less than $1.00 price level, while providing protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of ArcaEx ETP Holders' orders in appropriate circumstances.[18]

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)[19] of the Act, for approving the proposed rule change, as amended, on a pilot basis through September 30, 2005, prior to the thirtieth day after the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Exemptive Request, supra note 5.

[14] 17 CFR 240.11Ac1–1(e).

[15] 17 CFR 240.11Ac1–2(g).

[16] 17 CFR 240.11Ac1–4(d).

[17] *See* letter from David S. Shillman, Associate Director, Division, Commission, to Mai S. Shiver, Director, Regulatory Policy, PCX (September 24, 2004) ("Exemptive Relief Letter"). The relief granted to PCX is expressly conditioned upon providing the Commission with data specified in the Exemptive Relief Letter. The Commission intends to reconsider the position expressed in its letter before the expiration of the exemption on September 30, 2005.

[18] The Commission notes that the approval of this proposal in no way prejudges or determines what action the Commission may take with respect to any part of the Regulation NMS proposal.

[19] 15 U.S.C. 78s(b)(2).

date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–PCX–2003–71), as amended, is hereby approved on an accelerated basis until September 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Proposed new text is *italicized.*

Rule 7—Equities Trading

Trading Differentials

Trading Ahead of Customer Limit Orders

Rule 6.16(a)–(d)—No change.

Commentary:

.01 For all securities that are priced less than $1.00 that are traded pursuant to the pilot program under Commentary .05 of PCXE Rule 7.6(a) with a minimum price variation of $0.001, the minimum amount of price improvement necessary to execute an incoming marketable order on a proprietary basis by an ETP Holder when holding an unexecuted customer limit order otherwise due an execution pursuant to Rule 6.16(a) in that same security is $0.01.

Rule 7.6(a)—No change.

Commentary:

.01–.04—No change.

.05 The minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the Archipelago Exchange is $0.01, *with the exception of securities that are priced less than $1.00 in which case, on a pilot basis through September 30, 2005, the MPV for order entry will be $0.001.*

.06–.07—No change.

[FR Doc. 04–21883 Filed 9–29–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3624]

State of Alabama

As a result of the President's major disaster declaration on September 15, 2004, I find that Baldwin, Butler, Clarke, Coffee, Conecuh, Covington, Crenshaw, Escambia, Geneva, Mobile, Monroe and Washington Counties in the State of Alabama constitute a disaster area due to damages caused by Hurricane Ivan occurring on September 13, 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 15, 2004, and for economic injury until the close of business on June 15, 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: Choctaw, Dale, Houston, Lowndes, Marengo, Montgomery, Pike and Wilcox in the State of Alabama; Escambia, Holmes, Jackson, Okaloosa, Santa Rosa and Walton Counties in the State of Florida; and George, Greene, Jackson and Wayne Counties in the State of Mississippi.

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 362408. For economic injury the number is 9ZW300 for Alabama; 9ZW400 for Florida; and 9ZW500 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21898 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P. ("Licensee"), 4 Main Street, Suite 50, Los Altos, CA 94022, an SBIC Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2004)). Horizon Ventures Fund II, L.P. proposes to provide equity financing to Invivodata, Inc., 5815 Scotts Valley Drive, Suite 150, Scotts Valley, CA 95066. The financing is contemplated for growth, modernization, working capital and business expansion.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, L.P., Associates of the Licensee currently own greater than 10 percent of Invivodata, Inc., and therefore Invivodata, Inc. is considered an Associate of the Licensee as defined in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 23, 2004.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 04–21997 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Massachusetts, dated July 21, 2004, in Case No. oocv10652 RGS, the United States Small Business Administration hereby revokes the license of The Argonauts MESBIC Corporation, a Massachusetts corporation, to function as a small business investment company under the Small Business Investment Company License No. 01/01–5343 issued to The Argonauts MESBIC Corporation on June 17, 1988 and said license is hereby declared null and void as of September 21, 2004.

Dated: September 24, 2004.

[20] *Id.*

[21] 17 CFR 200.30–3(a)(12).

United States Small Business Administration.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 04–21998 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3627]

State of Florida; (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 17, 2004, the above numbered declaration is hereby amended to include Okaloosa County as disaster area due to damages caused by Hurricane Ivan occurring on September 13, 2004 and continuing.

All other counties contiguous to the above named primary county have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 15, 2004 and for economic injury the deadline is June 16, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 22, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21893 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3627]

State of Florida

As a result of the President's major disaster declaration on September 16, 2004, I find that Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties in the State of Florida constitute a disaster area due to damages caused by Hurricane Ivan occurring on September 13, 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 15, 2004, and for economic injury until the close of business on June 16, 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: Dixie, Jefferson, Lafayette, Madison, and Okaloosa in the State of Florida; Baldwin, Covington, Escambia, Geneva, and Houston Counties in the State of Alabama; and Decatur, Grady, Seminole, and Thomas Counties in the State of Georgia.

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 362708. For economic injury the number is 9ZX200 for Florida; 9ZX300 for Alabama; and 9ZX400 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21901 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3629]

State of Georgia

As a result of the President's major disaster declaration on September 18, 2004, I find that Carroll, Cherokee, Cobb, Dawson, DeKalb, Early, Franklin, Fulton, Gilmer, Madison, Rabun, Towns, Union, and White Counties in the State of Georgia constitute a disaster area due to damages caused by Hurricane Ivan occurring on September 14, 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 17, 2004 and for economic injury until the close of business on June 20, 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: Baker, Banks, Bartow, Calhoun, Clarke, Clay, Clayton, Coweta, Douglas, Elbert, Fannin, Fayette, Forsyth, Gordon, Gwinnett, Habersham, Hall, Haralson, Hart, Heard, Henry, Jackson, Lumpkin, Miller, Murray, Oglethorpe, Paulding, Pickens, Rockdale, Seminole and Stephens in the State of Georgia; Cleburne, Henry, Houston and Randolph counties in the State of Alabama; Oconee county in the State of South Carolina; Cherokee, Clay, Jackson and Macon 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 362908. For economic injury the number is 9ZX900 for Georgia; 9ZY100 for Alabama; 9ZY200 for South Carolina; and 9ZY300 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21903 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3626]

State of Louisiana

As a result of the President's major disaster declaration on September 15, 2004, I find that Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. Tammany, and Terrebonne Parishes in the State of Louisiana constitute a disaster area due to

damages caused by Hurricane Ivan occurring on September 13, 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 15, 2004, and for economic injury until the close of business on June 15, 2005, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Rd., Fort Worth, TX 76155–2243.

In addition, applications for economic injury loans from small businesses located in the following contiguous parishes and counties may be filed until the specified date at the above location: Assumption, St. James, St. John the Baptist, St. Mary, Tangipahoa, and Washington in the State of Louisiana; and Hancock, and Pearl River Counties in the State of Mississippi.

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 362608. For economic injury the number is 9ZW900 for Louisiana; and 9ZX100 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21900 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3625]

State of Mississippi; (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 21, 2004, the above numbered declaration is hereby amended to include Clarke and Lauderdale counties as disaster areas due to damages caused by Hurricane Ivan occurring on September 13, 2004 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Kemper, Neshoba, and Newton in the State of Mississippi; and Sumter County in the State of Alabama 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 15, 2004 and for economic injury the deadline is June 15, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 23, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21895 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3625]

State of Mississippi

As a result of the President's major disaster declaration on September 15, 2004, and a notice received from the Department of Homeland Security—Federal Emergency Management Agency—on September 18, 2004, I find that George, Greene, Hancock, Harrison, Jackson, Perry, Stone, and Wayne Counties in the State of Mississippi constitute a disaster area due to damages caused by Hurricane Ivan occurring on September 13, 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 15, 2004, and for economic injury until the close of business on June 15, 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: Clarke, Forrest, Jasper, Jones, and Pearl River in the State of Mississippi; Choctaw, Mobile, and Washington counties in the State of Alabama; and St. Tammany Parish in the State of Louisiana.

The interest rates are:

For Physical Damage

	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 362508. For economic injury the number is 9ZW600 for Mississippi; 9ZW700 for Alabama; and 9ZW800 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21899 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3623]

State of North Carolina;

(Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 19, 2004, the above numbered declaration is hereby amended to include Alexander, Bladen, Cabarrus, Catawba, Cleveland, Columbus, Cumberland, Gaston, Hoke, Iredell, Lincoln, Mecklenburg, Scotland, Robeson, and Union Counties as disaster areas due to damages caused by Tropical Storm Frances occurring on September 7, 2004, and continuing through September 12, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Anson, Brunswick, Davie, Harnett, Moore, Pender, Richmond, Rowan, Sampson, Stanly, and Yadkin Counties in the State of North Carolina; and Chesterfield, Dillon, Horry, Lancaster, Marlboro, and York Counties in the

State of South Carolina 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 9, 2004 and for economic injury the deadline is June 10, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 23, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21894 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3628]

State of North Carolina

As a result of the President's major disaster declaration on September 18, 2004, I find that Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, 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 Hurricane Ivan occurring on September 16, 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 17, 2004, and for economic injury until the close of business on June 20, 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, Clay, Cleveland, Cherokee, Graham, Lincoln, Swain and Wilkes in the State of 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:

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 362808. For economic injury the number is 9ZX500 for North Carolina; 9ZX600 for Georgia; 9ZX700 for South Carolina; and 9ZX800 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21902 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3631]

State of Ohio

As a result of the President's major disaster declaration on September 19, 2004, I find that Belmont, Carroll, Columbiana, Guernsey, Harrison, Jefferson, Monroe, Morgan, Muskingum, Noble, Perry, Stark, Trumbull, Tuscarawas, and Washington Counties in the State of Ohio constitute a disaster area due to damages caused by severe storms and flooding occurring on September 8, 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 18, 2004 and for economic injury until the close of business on June 20, 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: Ashtabula, Athens, Coshocton, Fairfield, Geauga, Hocking, Holmes, Licking, Mahoning, Portage, Summit, and Wayne in the State of Ohio; Beaver, Crawford, Lawrence, and Mercer Counties in the Commonwealth of Pennsylvania; Brooke, Hancock, Marshall, Ohio, Pleasants, Tyler, Wetzel, and Wood Counties in the State of West Virginia.

The interest rates are:

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 363106. For economic injury the number is 9ZY700 for Ohio; 9ZY800 for Pennsylvania; and 9ZY900 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 21, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21905 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3632]

Commonwealth of Pennsylvania; (Amendment #1)

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency "effective September 21 and 22, 2004, the above numbered declaration is hereby amended to include Bedford, Blair, Bradford, Bucks, Cameron, Carbon, Clarion, Clinton, Columbia, Fulton, Greene, Huntingdon, Jefferson, Juniata, Lehigh, Mifflin, Monroe, Northumberland, Pike, Snyder, Union, and Wayne counties as disaster areas due to damages caused by Tropical Depression Ivan occurring on September 17, 2004 and continuing. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Forest, McKean, Montgomery, Philadelphia, Potter, and Tioga in the Commonwealth of Pennsylvania; Burlington, Hunterdon, Mercer, and Sussex Counties in the State of New Jersey; Chemung, Delaware, Orange, and Sullivan Counties in the State of New York; Monongalia and Wetzel Counties in the

State of West Virginia; and Allegany and Washington Counties in the State of Maryland 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. The economic injury number assigned to Maryland is 9AA100.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 23, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21896 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3630]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration on September 19, 2004, I find that Beaver, Blair, and Crawford Counties in the Commonwealth of Pennsylvania constitute a disaster area due to damages caused by severe storms and flooding associated with Tropical Depression Frances occurring on September 8 and 9, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 18, 2004 and for economic injury until the close of business on June 20, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

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: Allegheny, Bedford, Butler, Cambria, Centre, Clearfield, Erie, Huntingdon, Lawrence, Mercer, Venango, Warren, and Washington in the Commonwealth of Pennsylvania; Ashtabula, Columbiana, Mahoning, and Trumbull Counties in the State of Ohio; and Hancock County in the State of West Virginia.

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 363008. For economic injury the number is 9ZY400 for Pennsylvania; 9ZY500 for Ohio; and 9ZY600 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 21, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21904 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3632]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration on September 19, 2004, I find that Allegheny, Armstrong, Beaver, Butler, Centre, Clearfield, Cumberland, Dauphin, Indiana, Lackawanna, Luzerne, Lycoming, Northampton, Perry, Schuylkill, Susquehanna, Washington, Westmoreland, and Wyoming Counties in the Commonwealth of Pennsylvania constitute a disaster area due to damages caused by Tropical Depression Ivan occurring on September 17, 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 18, 2004 and for economic injury until the close of business on June 20, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl.,Niagara Falls, NY 14303–1192.

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: Adams, Berks, Blair, Bradford, Bucks, Cambria, Cameron, Carbon, Clarion, Clinton, Columbia, Elk, Fayette, Franklin, Greene, Huntingdon, Jefferson, Juniata, Lancaster, Lawrence, Lebanon, Lehigh, Mercer, Mifflin, Monroe, Montour, Northumberland, Somerset, Sullivan, Union, Venango, Wayne, and York in the Commonwealth of Pennsylvania; Warren County in the State of New Jersey; Broome and Tioga Counties in the State of New York; Columbiana County in the State of Ohio; and Brooke, Hancock, Marshall, and Ohio Counties in the State of West Virginia.

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 363208. For economic injury the number is 9ZZ200 for Pennsylvania; 9ZZ100 for New Jersey; 9ZZ300 for New York; 9ZZ400 for Ohio; and 9ZZ500 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 21, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21906 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3634]

Commonwealth of Puerto Rico

As a result of the President's major disaster declaration for Public Assistance on September 17, 2004, and Amendment 1 adding Individual Assistance on September 21, 2004, I find that Aguada, Aguadilla, Aguas Buenas, Aibonito, Añasco, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamón, Camuy, Canóvanas, Carolina, Cataño, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerío, Corozal, Dorado, Florida, Guayama, Hatillo, Humacao, Isabela, Juana Díaz, Juncos, Lares, Las Piedras, Loíza, Manatí, Maunabo, Moca, Morovis, Naguabo, Naranjito, Orocovis,

Patillas, Quebradillas, Rincón, Río Grande, Salinas, San Lorenzo, San Sebastian, Santa Isabel, Toa Alta, Toa Baja, Utuado, Vega Alta, Vega Baja, Villalba, and Yabucoa Municipalities in the Commonwealth of Puerto Rico constitute a disaster area due to damages caused by Tropical Storm Jeanne and resulting landslides and mudslides occurring on September 14, 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 22, 2004, and for economic injury until the close of business on June 21, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous municipalities may be filed until the specified date at the above location: Adjuntas, Caguas, Fajardo, Guaynabo, Gurabo, Jayuya, Las Marias, Luquillo, Maricao, Mayaguez, Ponce, San Juan, Trujillo Alto, and Yauco.

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 363408 and for economic injury the number is 9ZZ900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 22, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21908 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3619]

Commonwealth of Virginia; (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 19, 2004, the above numbered declaration is hereby amended to include King William, New Kent, and Charles City Counties as disaster areas due to damages caused by Tropical Depression Gaston occurring on August 30, 2004, and continuing through September 8, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of James City, and King and Queen in the Commonwealth of Virginia 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 2, 2004 and for economic injury the deadline is June 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 22, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21897 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3633]

State of West Virginia

As a result of the President's major disaster declaration on September 20, 2004, I find that Brooke, Hancock, Marshall, Ohio, Pleasants, Tyler, Wetzel, and Wirt Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms, flooding and landslides occurring on September 16, 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 19, 2004, and for economic injury until the close of business on June 20, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

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: Calhoun, Doddridge, Harrison, Jackson, Marion, Monongalia, Ritchie, Roane and Wood in the State of West Virginia; Belmont, Columbiana, Jefferson, Monroe, and Washington Counties in the State of Ohio; and Beaver, Greene, and Washington Counties in the Commonwealth of Pennsylvania.

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 363306. For economic injury the number is 9ZZ600 for West Virginia; 9ZZ700 for Ohio; and 9ZZ800 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 21, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–21907 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California, dated January 14, 2004, the United States Small Business Administration hereby revokes the license of Continental Investors, Inc., a District of Columbia corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–5144 issued to Continental Investors, Inc. on June 18, 1980 and said license is hereby declared null and void as of March 14, 2004.

Dated: September 22, 2004.

United States Small Business Administration.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 04–21996 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collections should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW, Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Application for Help with Medicare Prescription Drug Plan Costs—0960–NEW.* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173; MMA) establishes a new Medicare Part D program for voluntary prescription drug coverage for premium, deductible and cost-sharing subsidies for certain low-income individuals. The MMA stipulates that subsidies must be available for individuals who are eligible for the program and who meet eligibility criteria for help with premium, deductible, and/or co-payment costs. Form SSA–1020, the Application for Help with Medicare Prescription Drug Plan Costs, collects information about an applicant's resources and is used by SSA to determine eligibility for this assistance. The respondents are individuals who are eligible for enrollment in the new program and are requesting assistance with the related costs.

Note: Since publishing the 60-day **Federal Register** Notice (69 FR 45879), SSA has decided to conduct a pilot test of form SSA–1020 in March 2005. This test is intended to assist SSA in: (1) determining how eligible individuals will respond to its Part D Subsidy application outreach (scheduled to begin in June 2005) and (2) testing its systems processing of the SSA–1020 application. SSA will use the information to make actual subsidy eligibility determinations. The Agency will conduct the test with approximately 2,000 beneficiaries potentially eligible for Part D cost-sharing subsidies by providing them with copies of form SSA–1020.

Type of Request: New information collection.

Number of Respondents: 5,000,000.

Frequency of Response: 1.

Average Burden Per Response: 35 minutes.

Estimated Annual Burden: 2,916,667 hours.

2. *Appeal of Determination for Help with Medicare Prescription Drug Plan Costs—0960–NEW.* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; MMA) establishes a new Medicare Part D program for voluntary prescription drug coverage for premium, deductible and cost-sharing subsidies for certain low-income individuals. The MMA stipulates that subsidies must be available for individuals who are eligible for the program and who meet eligibility criteria for help with premium, deductible, and/or co-payment costs. Form SSA–1021, the Appeal of Determination for Help with Medicare Prescription Drug Plan Costs, was developed to obtain information from individuals who appeal SSA's decisions regarding eligibility or continuing eligibility for a Medicare Part D subsidy. The respondents are applicants who are appealing SSA's eligibility or continuing eligibility decisions.

Type of Request: New information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 12,500 hours.

Dated: September 24, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–21910 Filed 9–29–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4848]

Culturally Significant Objects Imported for Exhibition Determinations: "The Arts and Crafts Movement in Europe and America: Design for the Modern World, 1880–1920"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Arts and Crafts Movement in Europe and America: Design for the Modern World, 1880–1920," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about December 19, 2004, to on or about March 27, 2005; Delaware Art Museum, Wilmington, DE, from on or about June 17, 2005, to on or about September 11, 2005; Cincinnati Art Museum, Cincinnati, OH, from on or about October 21, 2005, to on or about January 15, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne

Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 22, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–22001 Filed 9–29–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4846]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Open Competition Seeking Professional Exchanges Programs in Africa, East Asia, Eurasia, Europe, the Near East/North Africa, South Asia and the Western Hemisphere

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C–05–01.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates: none.

Application Deadline: November 19, 2004.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for grants that support exchanges and build relationships between U.S. non-profit organizations and civil society groups in Africa, East Asia, Eurasia, Europe, the Near East/North Africa, South Asia and the Western Hemisphere. U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support the goals of The Professional Exchanges Program: to promote mutual understanding and partnerships between key professional groups in the United States and counterpart groups in other countries through multi-phased exchange projects taking place over one-three years. To the fullest extent possible, programs should be two-way exchanges supporting roughly equal numbers of participants from the U.S. and foreign countries.

Proposed projects should be designed to foster dialogue and joint activities around one of four themes: (1) Religion, Community, Education and Political Process; (2) Governance, Accountability, and Transparency in Civil Society; (3) Conflict Prevention and Management; and (4) Respect for Cultural Identity and Creative Products. Through these people-to-people exchanges, the Bureau seeks to break down stereotypes that divide peoples, promote good governance, contribute to conflict prevention and management, and build respect for cultural expression and identity in a world that is experiencing rapid globalization. Projects should be structured to allow American professionals and their international counterparts in target countries to develop a common dialogue for dealing with shared challenges and concerns. Projects should include current or potential leaders who will effect positive change in their communities. Exchange participants might include community leaders, elected and professional government officials, religious leaders, educators, and proponents of democratic ideals and institutions, including for example, the media and judiciary, or others who influence the way in which different communities approach these issues. The Bureau is especially interested in engaging socially and economically diverse groups that may not have had extensive contact with counterpart institutions in the United States. Priority will be given to proposals that engage these audiences in countries with significant Muslim populations, or that engage educators or groups that influence youth in innovative ways.

Proposals that target countries/regions or themes not listed below will be deemed technically ineligible. Applicants should not submit proposals that address more than one region designated in the RFGP, except as specifically indicated. Applicants may submit no more than two (2) proposals per program theme and four (4) proposals total for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a State Department panel.

For the purposes of this competition, eligible regions are Africa, East Asia, Eurasia, Europe, the Near East/North Africa, South Asia, and the Western Hemisphere. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed.

Please note that this competition includes two target regions (Central and Eastern Europe and Eurasia) that were addressed in separate announcements in previous years. There will be no additional announcement for Central and Eastern Europe or Eurasia for FY–2005.

Requests for grant proposals on the creation, performance, or presentation of artistic work will be announced in a separate competition. Proposals involving the production or interpretation of artistic work WILL NOT be accepted under this competition, and if received, will be declared technically ineligible.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose

The Bureau seeks proposals that will address the following priority themes: (1) Religion, Community, Education and Political Process; (2) Governance, Accountability and Transparency in Civil Society; (3) Conflict Prevention and Management; and (4) Respect for Cultural Identity and Creative Products. The competition is based on the premise that people-to-people exchanges encourage and strengthen understanding of democratic values and nurture the social, political, and economic development of societies. Exchanges supported by institutional grants from the Bureau should operate at two levels: they should enhance partnerships between U.S. and foreign institutions, and they should establish a common dialogue to develop practical solutions for shared problems and concerns. The Bureau is particularly interested in projects that will create mutually beneficial and self-sustaining linkages between professional communities in the U.S. and their counterpart communities in other countries.

Applicants should identify the U.S. and foreign organizations and individuals with whom they are proposing to collaborate and describe previous cooperative activities, if any. Information about the mission,

activities, and accomplishments of partner organizations should be included in the submission. Proposals should contain letters of commitment or support from partner organizations for the proposed project. Applicants should clearly outline and describe the role and responsibilities of all partner organizations in terms of project logistics, management and oversight. Proposals that show strong prospects for enhancing existing long-term collaboration or establishing new collaborative efforts among participating organizations will be deemed more competitive.

Competitive proposals will include the following:

- A brief description of the problem as it relates to the target country or region. (Proposals that request resources for an initial needs assessment will be deemed less competitive.);
- A clear statement of program objectives and projected outcomes that respond to Bureau goals for each theme in this competition. Desired outcomes should be described in qualitative and quantitative terms. (See the Program Monitoring and Evaluation section, below, for more information on project objectives and outcomes.);
- A proposed timeline, listing the optimal schedule for each program activity;
- A description of participant selection processes;
- Letters of support from foreign and U.S. partners. (Proposals that illustrate an ability to arrange U.S. and overseas activities with letters of support from prospective partner institutions will be considered more credible.);
- An outline of the applicant organization's relevant expertise in the project theme and country(ies);
- An outline of relevant experience managing previous exchange programs;
- Resumes of experienced staff who have demonstrated a commitment to monitor projects and ensure implementation;
- A comprehensive plan to evaluate whether program outcomes achieved met the specific objectives described in the narrative. (See the Program Monitoring and Evaluation section, below, for further guidance on evaluation.); and
- A post-grant plan that demonstrates how the grantee plans to maintain contacts initiated through the program. Applicants should discuss ways that U.S. and foreign participants or host institutions could collaborate and communicate after the ECA-funded grant has concluded. (See Review Criterion #5 below for more information on post-grant activities.)

The proposal narrative should clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. embassy in the relevant country(ies) to develop plans for project implementation and to select project participants. Applicants should state their willingness to invite representatives of the embassy(ies) and/or consulate(s) to participate in program sessions or site visits. Applicants are also encouraged to consult with Public Affairs Officers at U.S. embassies in relevant countries as they develop proposals responding to this RFGP. Narratives should state that all material developed for the project will prominently acknowledge Department of State ECA Bureau funding for the program. Proposals should also acknowledge U.S. embassy involvement in final selection of all participants.

Themes

(1) Religion, Community, Education, and Political Process

ECA welcomes projects that will promote understanding of the role of religion and education in shaping community and political life in the United States and participating countries. Proposals should build on program objectives that clearly address the following goals:

(1) To promote greater communication among religious groups, educators, community leaders, and persons involved in political discourse;

(2) To increase understanding of how religious, community, educational, and political leaders interact in U.S. society;

(3) To develop professional and personal linkages between U.S. and foreign individuals, institutions, and communities that will lead to sustained interaction in the future.

Programs should explore how religion and education can encourage openness, tolerance, respect, constructive dialogue, public service, and other ways to respect diversity while encouraging different communities to work together. To the fullest extent possible, programs should be two-way exchanges supporting roughly equal numbers of participants from the U.S. and foreign countries. Projects might include (but are not limited to) the following groups of participants: scholars (including legal scholars) and clerics, educators, community leaders, journalists, women leaders, or persons who work with youth.

Africa (single-country and multiple-country projects accepted)

Eligible countries: Chad, Cote d'Ivoire, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal.

Contacts: Curtis Huff, tel: (202) 619–5972, e-mail: *HuffCE@State.gov*; Carol Herrera, tel: (202) 619–5405, e-mail: *HerreraCA1@state.gov*.

East Asia (single-country and multiple-country projects accepted)

Eligible countries: Indonesia, Malaysia, Philippines, Thailand.

Contact: Douglas McNeal, tel: (202) 260–5485, e-mail: *McNealDB@state.gov*.

Eurasia (single-country projects only)

Eligible countries: Kyrgyz Republic, Tajikistan.

Contact: Brent Beemer, tel: (202) 401–6887, e-mail: *BeemerBT@state.gov*.

Near East/North Africa (Projects involving multiple countries encouraged, but both single- and multiple-country projects accepted)

Eligible countries: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Oman, Saudi Arabia, Syria, Qatar, United Arab Emirates, Yemen.

Contacts: Thomas Johnston, tel: (202) 619–5325, e-mail: *JohnstonTJ@state.gov*; Katherine Van de Vate, tel: (202) 619–5320, e-mail: *VandevateK@state.gov*.

South Asia (Projects involving multiple countries encouraged, but both single- and multiple-country projects accepted)

Eligible countries: Afghanistan, Bangladesh, India, Pakistan, Sri Lanka.

Contacts: Thomas Johnston, tel: (202) 619–5325, e-mail: *JohnstonTJ@state.gov;* Katherine Van de Vate, tel: (202) 619–5320, e-mail: *VandevateK@state.gov*.

(2) Governance, Accountability, and Transparency in Civil Society

ECA welcomes proposals that will develop common approaches to strengthening transparency, citizen involvement, and effective fiscal management in government and demonstrate how this can benefit government leaders, non-governmental entities, and individual citizens and promote economic well being. Proposals in this theme should include program objectives that clearly respond to the following goals:

(1) To promote governance that is more transparent and responsive to citizens' concerns;

(2) To increase understanding of techniques to improve governance, anti-corruption, and accountability practices;

(3) To develop professional and personal linkages between U.S. and overseas individuals, institutions, and communities that will lead to sustained interaction in the future.

Projects should develop strategies that promote fair and transparent governance in the targeted countries. Projects must

be culturally sensitive, sustainable, and address specific needs of the country or a region in that country. Individual projects might: (1) Consider ways that a country or region can improve its legislative process by encouraging and supporting citizen involvement; (2) develop programs, regulations, and services that increase citizen trust and expand the democratic process at the local and provincial levels; and (3) provide opportunities to elected officials and their key staff to find ways to promote transparency in government. Additionally, projects might address the important role of legislative transparency and effective fiscal management in short- and long-term economic development.

Africa (single- or multiple-country projects accepted)

Eligible countries: Angola, Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Kenya, Liberia, Nigeria, Sierra Leone, Uganda.

Contacts: Curtis Huff, tel: (202) 619–5972, e-mail: *HuffCE@State.gov;* Carol Herrera, tel: (202) 619–5405, e-mail: *HerreraCA1@state.gov.*

East Asia (single-country projects only)

Eligible countries: China, Indonesia.

Contact: Douglas McNeal, tel: (202) 260–5485, e-mail: *McNealDB@state.gov.*

Europe and Eurasia (single-country projects only)

Eligible countries: Albania, Russia, Serbia and Montenegro.

Contact: Henry Scott, tel: (202) 619–5327, e-mail: *ScottHC@state.gov.*

For Serbia and Montenegro (SaM): Since the overthrow of the Slobodan Milosevic in October 2000, reform in Serbia and Montenegro has been uneven. Currently SaM faces the burdens of: (1) The legacy of more than a decade of wars and sanctions; (2) the still unfulfilled obligations to the International Criminal Tribunal for the Former Yugoslavia; (3) unresolved relationships with Montenegro and the UN Administered province of Kosovo; and (4) the development of a large ultra-nationalist, anti-reform party. Projects that would be most useful would address the following issues: (1) Devolution of power from the Republic government to local bodies, including police, justice, and education; (2) enhancing the rule of the law (training prosecutors and judges and increasing anti-corruption resources); and (3) designing civic education to address the legacies of the past and prepare citizens and leaders for the future in a Western-style democracy. Applicants should be very familiar with current initiatives designed to promote effective governance in SaM and should be willing to cooperate with other USG-funded institutions working in SaM to prevent duplication of efforts.

Near East/North Africa (Projects involving multiple countries encouraged, but both single- and multiple-country projects accepted)

Eligible countries: Algeria, Egypt, Iraq, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia.

Contact: Thomas Johnston, tel: (202) 619–5325, e-mail: *JohnstonTJ@state.gov;* Katherine Van de Vate, tel: (202) 619–5320, e-mail: *VandevateK@state.gov.*

South Asia (Projects involving multiple countries encouraged, but both single- and multiple-country projects accepted)

Eligible countries: Afghanistan, Bangladesh, India, Nepal Pakistan, Sri Lanka.

Contact: Thomas Johnston, tel: (202) 619–5325, e-mail: *JohnstonTJ@state.gov;* Katherine Van de Vate, tel: (202) 619–5320, e-mail: *VandevateK@state.gov.*

Western Hemisphere (single- or multiple-country projects accepted)

Eligible countries: Central America and the Andean Region.

Contact: Laverne Johnson, tel: (202) 619–5337, *JohnsonLV@state.gov.*

(3) Conflict Prevention and Management

Projects for this theme should bring together professionals and community members to prevent, manage, and resolve conflict. Program objectives should respond to the following goals for this theme:

(1) To develop effective approaches for preventing and mitigating conflict between and within communities;

(2) To increase understanding of the values underlying different conflict prevention and management techniques;

(3) To develop professional and personal linkages between U.S. and overseas individuals, institutions, and communities that will lead to sustained interaction in the future.

Proposals must demonstrate strong expertise in the target country and local community(ies) to address effectively the sensitive and competing interests of target populations. ECA strongly encourages proposals that include two-way exchanges of participants, as well as the development and use of sustainable training models and training materials. Applicants should demonstrate their knowledge of the community or groups experiencing conflict (ethnic, religious, labor, border issues, environmental vs. business disputes, etc.) or that have the potential for conflict, and proposal narratives should outline specifically how the project will introduce dialogue and approaches to effect positive outcomes. Participants may include NGO leaders, local government officials, journalists, representatives of the legal/law enforcement community, educators, and youth. Participants should have the potential to implement conflict prevention and management techniques addressed during the program.

Africa (single- or multiple-country projects accepted)

Eligible countries: Angola, Burundi, DRC, Cote d'Ivoire, Eritrea, Ethiopia, Guinea, Liberia, Nigeria, Sierra Leone, Sudan.

Contacts: Curtis Huff, tel: (202) 619–5972, e-mail: *HuffCE@State.gov;* Carol Herrera, tel: (202) 619–5405, e-mail: *HerreraCA1@state.gov.*

East Asia (single-country projects only)

Eligible countries: China, The Republic of Korea, Taiwan.

Contact: Douglas McNeal, tel: (202) 260–5485, e-mail: *McNealDB@state.gov.*

Europe (Cyprus or Kosovo only)

Eligible countries/regions: Cyprus (see further guidance, below), Kosovo (see further guidance, below).

For Cyprus: Applicants should consult with the Public Affairs Section of the U.S. embassy in Nicosia to engage members of the youth arms of Greek Cypriot and Turkish Cypriot political parties. Programs might focus on mediation skills, cultural tolerance, mobilization of grassroots campaigns, and leadership skills.

For Kosovo: Projects should address ethnic conflict and the creation of tolerance, particularly among youth, in Kosovo. ECA will give priority to projects that are multi-ethnic in nature, both in terms of participants and curriculum, and that include Kosovo Serbs and Kosovo Albanians. Participants may include educators or persons who work with young people on a regular basis. Strong proposals will demonstrate an awareness of linguistic differences and will include plans to incorporate different languages within the project. The Bureau encourages applicants to involve local governments or Kosovar institutions in some aspect of the project.

Near East/North Africa (Projects involving multiple countries encouraged, but both single- and multiple-country projects accepted)

Eligible countries: Egypt, Iraq, Israel, Jordan, Morocco, Palestinian Authority, Syria.

Contact: Thomas Johnston, tel: (202) 619–5325, e-mail: *JohnstonTJ@state.gov;* Katherine Van de Vate, tel: (202) 619–5320, e-mail: *VandevateK@state.gov.*

South Asia (Projects involving multiple countries encouraged, but both single- and multiple-country projects accepted)

Eligible countries: India, Nepal, Pakistan, Sri Lanka.

Contact: Thomas Johnston, tel: (202) 619–5325, e-mail: *JohnstonTJ@state.gov;* Katherine Van de Vate, tel: (202) 619–5320, e-mail: *VandevateK@state.gov.*

(4) Respect for Cultural Identity and Creative Products

Background: Many societies perceive international economic integration and U.S. economic power as threats to their core values and cultural identities. ECA seeks proposals that will demonstrate to foreign audiences how the U.S. works with communities around the world to sustain cultural diversity and cultural integrity. Programs should engage U.S. cultural professionals, institutions, and community members in dialogues with international cultural stakeholders in projects designed to sustain creative spirit; demonstrate respect for cultural heritage, diversity and identity; and value and protect creative output (intellectual property rights/copyright issues). Proposals should state objectives that clearly address the following goals:

(1) To promote community awareness and participation in grass-roots mechanisms to address issues of local cultural significance and maintain cultural awareness in a diverse society;

(2) To promote common values between the U.S. and foreign countries of respect for cultural products and heritage, and to produce collaborative mechanisms that promote these values;

(3) To develop professional and personal linkages between U.S. and overseas individuals, institutions, and communities that will lead to sustained interaction in the future.

Program activities should not focus on the creation of art or cultural objects, but on the capacity of communities to address issues of local cultural significance. Proposals should include U.S.-based and in-country activities. Projects should bring experts and practitioners in the U.S. and overseas together in hands-on sessions to explore and develop innovative approaches to cultural issues. Proposals should demonstrate that applicant organizations possess a thorough understanding of the current state and needs of the target countries/regions in one of the four sub-themes below. Proposals that propose support for academic research or faculty/student fellowships, production or presentation of artistic works, or commercial business enterprises will be considered technically ineligible.

For questions about all sub-topics in this theme, please contact Christina Miner, tel: (202) 401–7342, e-mail: *MinerCX@state.gov.*

Specific Themes

4.a. Cultural Heritage (Artifacts/Objects)

Proposals in this topic should focus on cooperative approaches between organizations or institutions in the U.S. and overseas to deter the illicit trade in cultural artifacts or antiquities. Projects should focus on innovative approaches to protect the contexts within which objects are found, to verify and validate ownership of objects pertaining to local cultural heritage, to communicate effectively about cultural artifacts and heritage issues, and to adopt positive means of deterring illicit trade in cultural properties. Project activities could encompass exchanges, training workshops and other activities relating to the protection of archaeological sites as the sources of pillaged objects; improving security in museums, historic building and other cultural institutions so that objects are less vulnerable to theft; and designing and implementing efforts to inventory and document valued objects and collections in formal museums, as well as in religious and educational establishments, and other locations accessible by the public.

Eligible Countries: Applicants should propose a coherent group of countries with a statement of their rationale for this choice of target countries. Projects may include countries from multiple regions.

4.b. Cultural Identity in a Diverse Society

Proposals in this topic should address ways that local indigenous communities might sustain their cultural identity in a diverse and dynamic society. Projects should exchange expertise and best practices between U.S. and overseas community leaders and members of indigenous groups. Participants should address ways that these populations can manage identity-defining customs, rituals, art forms, or relationships within a broader cultural context (national cultural identity) in a manner that benefits the entire community without compromising the integrity of these practices.

Western Hemisphere

Eligible countries/Regions: Central America and the Andean region.

4.c. Cultural Institutions in a Democratic Society

Projects should focus on ways that local institutions can maintain cultural heritage in a manner responsive to the local community, while respecting cultural diversity and democracy in the broader environment. Projects in this theme should expose managers and staff of locally-based community organizations and other community members, as appropriate, to effective means of managing cultural institutions for the benefit of local communities, including youth outreach and educational activities, without disparaging other cultures or compromising national identity. Projects might focus on institutions such as local historical societies, museums, arts societies, or other organizations involved in cultural heritage. Projects should move beyond technical or day-to-day operational tasks to focus on organizational management, transparency, public outreach, and good governance of cultural institutions. Proposals must demonstrate a practical and sophisticated knowledge of the local non-governmental organization environment.

Africa

Eligible countries: Region-wide.

East Asia

Eligible countries: The Republic of Korea, China.

Europe

Eligible countries: Poland, Hungary, Slovenia, Czech Republic, Slovakia (Proposals should include at a minimum three of these countries).

Near East

Eligible countries: Region-wide.

South Asia

Eligible countries: Bangladesh, India, Nepal, Pakistan.

4.d. Creative and Cultural Property (ECA encourages multi-country / multi-regional project proposals under this theme)

All societies will gain if the global community recognizes creators of cultural property as having a legitimate claim to compensation for the use of their work. ECA seeks innovative proposals to address the protection of intellectual creativity (IPR/copyright) worldwide through a high-level professional exchange. Applicants should engage legislators, enforcement professionals, legal experts, and the judiciary to evaluate techniques designed to deter copyright

infringement, and to limit production and exportation of pirated products. Program content should focus on increasing expertise in intellectual property law and improving prosecution rates for intellectual property offenses, particularly as they relate to copyright infringement.

Eligible countries: Projects on copyright/intellectual property may include some or all of the following countries: Brazil, China, India, Israel, Malaysia, and Russia.

Suggested Program Designs: Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning; extended and intensive workshops; and seminars taking place in the United States or overseas as long as these seminars promote intensive exchange of ideas among participants in the project. Examples of program activities include:

1. A U.S.-based program that includes an orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience with committed people within each country, and become active in a practical and valuable way.

3. Site visits by U.S. facilitators/experts to monitor projects in the region and to encourage further development, as appropriate.

Activities Ineligible for Support: The Office does not support proposals limited to conferences or seminars (*i.e.*, one-to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. *The Office of Citizen Exchanges does not support academic research or faculty or student fellowships.*

Participant Selection: Proposals should clearly describe the types of persons that will participate in the program as well as the participant selection process. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When U.S. participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

Security Considerations: With regard to projects focusing on Afghanistan, Pakistan, and Iraq, applicants should be aware of security issues that will affect the ability of the grantee organization to arrange for the travel of U.S. citizens to these countries or to conduct site visits, participant interviews, seminars, workshops, or training sessions there. All travel to, and activities conducted in these countries will be subject to consultation with and approval of official U.S. security personnel in country. The applicant organization should be prepared to modify timing or to reconfigure project implementation plans as required by security considerations.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY–2005.

Approximate Total Funding: Pending availability of funding, $8 million.

Approximate Number of Awards: 35–40.

Approximate Average Award: $60,000–$250,000.

Floor of Award Range: $30,000.

Ceiling of Award Range: Approximately $250,000.

Anticipated Award Date: Pending availability of funds, July 31, 2005.

Anticipated Project Completion Date: July 31, 2006–May 31, 2009. Projects under this competition may range in length from 1–3 years depending on the number of project components, the country/region targeted and the extent of the evaluation plan proposed by the applicant. The Office of Citizen Exchanges strongly encourages applicant organizations to plan enough time after project activities to measure project outcomes. Please refer to the Program Monitoring and Evaluation section, below, for further guidance on evaluation.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by U.S. public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of proposed programs. Cost sharing is an important element of the ECA-grantee institution relationship, and it demonstrates the implementing organization's commitment to the program. Cost sharing is included as one criterion for grant proposal evaluation. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, successful applicants must maintain written records to support all costs that are claimed as applicant contributions as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event that successful applicants do not provide the minimum amount of cost sharing as stipulated in the approved budget, the Bureau's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel.: (202) 260–6230 or (202) 401–6885; fax: (202) 619–4350; e-mail: *GustafsonDP@state.gov* or *RectorVA@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–05–01 when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document that consists of required application forms, and standard guidelines for proposal preparation.

Please specify the Bureau Program Officer listed for each region and theme above and refer to Funding Opportunity Number ECA/PE/C–05–01 for all specific inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and ten copies (11 proposals total) of the application should be sent per the instructions under IV.3f. "Submission Dates and Times section" below.

IV.3a. Applicant institutions are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. Applicant institutions must have nonprofit status with the U.S. Internal Revenue Service (IRS) at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to all Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and requires all grantee program organizations and program participants to adhere to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, fax: (202) 401–9809.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. Diversity should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

The Bureau places significant emphasis on monitoring and evaluation of its initiatives. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. Applicants should include a monitoring and evaluation plan that clearly distinguishes between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes. The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation.

The Bureau encourages applicants to assess the following four levels of

outcomes, as they relate to the program goals set out in the RFGP (listed here in order of importance):

1. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

2. Participant behavior, concrete actions on the part of program participants to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

3. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

4. Participant satisfaction with the program and exchange experience.

Overall, the quality of monitoring and evaluation plans will be judged on how well they: (1) Specify intended outcomes; (2) give clear descriptions of how each outcome will be measured; (3) identify when particular outcomes will be measured; and (4) provide a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups).

Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, participant satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

The Bureau recommends that proposals include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions).

Applicants may include costs in their program budgets to hire an outside evaluator to assess project impact. In the case that an external evaluator is hired, the proposal should include information on the evaluator's experience as well as all of the information requested above.

Grantees will be required to provide reports (See VI.3, "Reporting Requirements" below) analyzing their evaluation findings to the Bureau in their regular program reports. Information and feedback provided through program monitoring will form the basis for interim reports, and grantee organizations should share any lessons learned and/or organizational challenges with Bureau program officers in these reports. Final evaluations will form the basis of the final program report. Grantee organizations will be required to provide summary data in tabular and graphic form to demonstrate the conclusions of the evaluation and examples of all data collection instruments used in the evaluation. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Applicants should take the following information into consideration when preparing project budgets:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. For this competition, requests should not exceed approximately $250,000. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Proposal budgets must include a summary budget as well as breakdowns reflecting both administrative and program costs. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

1. Travel. International and domestic airfare (per the "Fly America Act"), ground transportation, and J–1 visas for U.S.-bound participants. (J–1 visas for ECA-supported participants are issued at no charge.)

2. Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html.* ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/html.*

3. Interpreters. For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both "lodging" and "M&IE") and "home-program-home" transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. Book and Cultural Allowances. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Such subcontracts should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. Room rental. The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. Materials. Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. Equipment. Applicants may propose to use grant funds to purchase equipment, such as computers and printers. Costs for furniture are not allowed.

9. Working meal. Only one working meal may be provided during the program. Per capita costs may not exceed $8 for a lunch and $20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered "participants."

10. Return travel allowance. A return travel allowance of $70 for each foreign

participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Wire transfer fees. When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. In-country travel costs for visa processing purposes. Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive on cost effectiveness. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: Friday, November 19, 2004.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package. Expensive paper and bindings or elaborate visual or other presentation aids are neither necessary nor desired.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and ten (total of 11) copies of the application (bound with large binder clips) should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–05–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h.1. Funding Restrictions: Funding restrictions, which must be taken into account while writing your budget are as follows:

Applicants may not submit more than two (2) proposals per program theme and may not submit more than four (4) proposals total for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a State Department panel.

IV.3h.2. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) and, where required, U.S. consulate(s) for review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Diplomacy section overseas, where appropriate, will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described.

2. *Institutional Capacity:* Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards—U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect

the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) and the Diversity, Freedom and Democracy Guidelines section above for additional guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities should not appear in the proposal budget, but should be outlined in the narrative.

6. *Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, etc.) in Tab E. See the "Evaluation" section (above) for more information on the components of a competitive evaluation plan. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant. Please refer to the "Evaluation" section above for more guidance.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments"'.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web-sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

Winning applicants must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Any interim report(s) required in the Bureau grant agreement document.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer (two copies) and ECA Program Officer (one copy) listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Successful applicants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S.-based activities must be received by the ECA Program Officer at least three workdays prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: The Office of Citizen Exchanges, ECA/PE/C, Room 220, ECA/PE/C–05–01, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA–44, 301 4th

Street, SW., Washington, DC 20547, tel.: (202) 260–6230 or (202) 401–6885; fax: (202) 619–4350; *GustafsonDP@state.gov* or *RectorVA@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–05–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: September 23, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–22000 Filed 9–29–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4847]

Privacy Act of 1974 Amendment of Prefatory Statement of Routine Uses to Department of State Privacy Act Issuances

Summary: Notice is hereby given that the Department of State proposes to amend the Prefatory Statement of Routine Uses to Department of State Privacy Act Issuances, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a (r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on September 10, 2004.

It is proposed that the amended Prefatory Statement notify individuals of two additional routine uses of Privacy Act information. The first amendment is proposed in accordance with Homeland Security Presidential Directive 6 (HSPD–6) and is necessary to support the U.S. Government's efforts to protect against acts of terrorism. The second amendment authorizes disclosure of records to the Department of Justice for the purpose of representing the Department of State, or any of its officers or employees, in actual or potential litigation.

Any persons interested in commenting on these amendments to the Prefatory Statement of routine uses to Department of State Privacy Act Issuances may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/RPS/IPS; U.S. Department of State, SA–2; Washington, DC 20522–6001.

These amendments to the Prefatory Statement of Routine Uses to Department of State Privacy Act Issuances will be effective 40 days from the date of publication, unless we receive comments that result in a contrary determination.

These amendments will read as set forth below.

Dated: September 9, 2004.

William Eaton,

Assistant Secretary for the Bureau of Administration, Department of State.

Department of State

Prefatory Statement of Routine Uses

The following routine uses apply to, and are incorporated by reference into, each system of records set forth below:

Law Enforcement

In the event that a system of records maintained by this agency to carry out its functions 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 regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Routine Use Amendment 1

Terrorism and Homeland Security

A record from the Department's systems of records may be disclosed to the Federal Bureau of Investigation, the Terrorist Threat Integration Center (TTIC), or the Terrorist Screening Center (TSC), and other federal agencies (such as the Department of Homeland Security), for the integration and use of such information to protect against terrorism, if that record is about one or more individuals known, or suspected, to be or to have been involved in activities constituting, in preparation for, in aid of, or related to terrorism. Such information may be further disseminated by FBI, TTIC or TSC, and the agencies participating therein, to Federal, State, local, territorial, tribal, and foreign government authorities, and to support private sector processes as contemplated in Homeland Security Presidential Directive/HSPD–6 and other relevant laws and directives, for terrorist screening, threat-protection and other homeland security purposes.

Disclosure When Requesting Information

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

Disclosure of Requested Information

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. A record from this system of records may be disclosed to a federal, state, local or foreign agency as a routine use response to such an agency's request, where there is reason to believe that an individual has violated the law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, if necessary, and only to the extent necessary, to enable such agency to discharge its responsibilities of investigating or prosecuting such violation or its responsibilities with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. A record from this system of records may be disclosed to a foreign agency as a routine response to such an agency's request when the information is necessary for the foreign agency to adjudicate and determine an individual's entitlement to rights and benefits, or obligations owed to the foreign agency, such as information necessary to establish identity or nationality.

Office of Management and Budget

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with review of private relief legislation, as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that Circular.

Members of Congress

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. Contractor information from

a system of records may be disclosed to anyone who is under contract to the Department of State to fulfill an agency function but only to the extent necessary to fulfill that function. Courts information from a system of records may be made available to any court of competent jurisdiction, whether Federal, state, local or foreign, when necessary for the litigation and adjudication of a case involving an individual who is the subject of a Departmental record.

National Archives, Government Services Administration

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration and the General Services Administration: for records management inspections, surveys and studies; following transfer to a Federal records center for storage; and to determine whether such records have sufficient historical or other value to warrant accessioning into the National Archives of the United States.

Routine Use Amendment 2

Department of Justice

A record may be disclosed as a routine use to any component of the Department of Justice, including United States Attorneys, for the purpose of representing the Department of State or any officer or employee of the Department of State in pending or potential litigation to which the record is pertinent.

[FR Doc. 04–21999 Filed 9–29–04; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 17, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–19112.
Date Filed: September 13, 2004.
Parties: Members of the International Air Transport Association.
Subject:

PTC1 0300 dated 20 August 2004
TC1 Areawide Resolutions r1–r3, PTC1 0301 dated 20 August 2004
TC1 Caribbean Resolutions r4–r16
TC1 0302 dated 20 August 2004
TC1 Longhaul (except USA-Chile, Panama) Resolutions r17–r55
TC1 0303 dated 20 August 2004
TC1 Longhaul USA-Chile, Panama Resolutions r56–r70
PTC1 0304 dated 20 August 2004
TC1 Within South America Resolutions r71–r82

Intended effective date: 1 November 2004/1 January 2005.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–21979 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Turbine Engine Repairs and Alterations—Approval of Technical and Substantiation Data

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability and request for comments of draft Advisory Circular (AC), No. 33.XX, Turbine Engine Repairs and Alterations—Approval of Technical and Substantiation Data.

DATES: Comments must be received on or before January 28, 2005.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Dorina Mihail, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299.

FOR FURTHER INFORMATION CONTACT: Dorina Mihail, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7153, fax (781) 238–7199. If you have access to the Internet, you may also obtain further information by writing to the following address: *Dorina.Mihail@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You may obtain a copy of the draft AC by contacting the person named under **FOR FURTHER INFORMATION CONTACT**, of if using the Internet, you may obtain a copy at the following address: *http://www.airweb.faa.gov/rgl.* Interested persons are invited to comment on the proposed AC and to submit written data, views, or arguments. Commenters must identify the subject of the AC, and submit comments to the address specified above. The Engine and Propeller Directorate, Aircraft Certification Service, will consider all responses received on or before the closing date for comments before it issues the final AC.

We will also file in the docket all substantive comments received, and a report summarizing them. The docket is available for public inspection both before and after the comment date. If you wish to review the docket in person, you may go to the address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

Background

This draft advisory circular (AC) would provide guidance and acceptable methods, but not the only methods that may be used to obtain Federal Aviation Administration (FAA) approval of technical data for turbine engine repairs and alterations in compliance with Title 14 of the Code of Federal Regulations (14 CFR part 33).

This advisory circular would be published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, and would provide guidance for the requirements in 14 CFR part 33.

Issued in Burlington, Massachusetts, on September 22, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–21869 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Jackson Municipal Airport Authority for Jackson International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Jackson International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or

disapproved on or before March 19, 2005.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 21, 2004. The public comment period ends November 19, 2004.

FOR FURTHER INFORMATION CONTACT: Kristi Ashley, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, Telephone (601) 664–9891. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Jackson International Airport are in compliance with applicable requirements of Part 150, effective September 21, 2004. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 19, 2005. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

Jackson Municipal Airport Authority submitted to the FAA on January 12, 2004 noise exposure maps, descriptions, and other documentation that were produced during the Part 150 Noise Study in October 2003. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Jackson Municipal Airport Authority. The specific documentation determined to constitute the noise exposure maps includes: current and forecast NEM graphics, plus all other narrative, graphic, or tabular representations of the data required by section A150.101 of Part 150, and sections 47503 and 47506 of the Act, more specifically considered by FAA to be Chapters 1 through 5 of the Airport Noise Compatibility Study Update submitted to FAA on January 12, 2004. The FAA has determined that these maps for Jackson International Airport are in compliance with applicable requirements. This determination is effective on September 21, 2004. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished. The FAA has formally received the noise compatibility program for Jackson International Airport, also effective on September 21, 2004. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 19, 2005.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

Jackson Municipal Airport Authority: 100 International Drive, Suite 300, Jackson, MS 39208–2394; Post Office Box 98109, Jackson, MS 39292–8109.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Jackson, MS, September 21, 2004.

Rans D. Black,

Manager, Jackson Airports District Office.

(NOTE 1) March 19, 2005—This date will be 180 days from the date of signature of this Federal Register Notice.

(NOTE 2) September 21, 2004—Date of signature of this **Federal Register** Notice.

[FR Doc. 04–21868 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Thursday, October 14, 2004, starting at 8:30 a.m. Arrange for oral presentations by October 12, 2004.

ADDRESSES: Aerospace Industries Association, 1000 Wilson Boulevard, Suite 1700, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking, ARM–207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5174, FAX (202) 267–5075, or e-mail at *john.linsenmeyer@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held October 14, 2004 at the Aerospace Industries Association in Arlington, Virginia.

The agenda will include:

- Opening remarks.
- FAA report.
- European Aviation Safety Agency/Joint Aviation Authorities report.
- Transport Canada report.
- Executive Committee report.
- Harmonization Management Team report.
- Ice Protection Harmonization Working Group (HWG) report.
- Airworthiness Assurance Working Group presentation of work plan and approval.
- Avionics HWG report.
- § 25.1309 Summary of recent activity on specific risk.
- Written or verbal reports, as required, from the following HWGs: General Structures, Engine, Electromagnetic Effects, Flight Test, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, Electrical Systems, Design for Security, Powerplant Installation, Mechanical Systems, and Human Factors.
- Review of action items and 2005 meeting schedule.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than October 12. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating domestically by telephone, the call-in number is (202) 366–3920; the Passcode is "4087." Details are also available on the ARAC calendar at *http://www.faa.gov/avr/arm/arac/calendarxml.cfm*. To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by October 12. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements by October 12 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the document to be presented to ARAC for decision by the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on September 27, 2004.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–22015 Filed 9–27–04; 4:29 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

General Aviation Training Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: With this notice, the FAA's General Aviation and Commercial Division (AFS–800) announces the availability of three new educational resources for pilots and flight instructors. These are the first in a series of new web-based training materials tailored to the operational needs of the general aviation (GA) community.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Certification and Flight Training Branch, AFS–840, FAA, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7653; fax (202) 267–5094; or e-mail *michael.w.brown@faa.gov*.

Background: In an effort to improve general aviation safety, the FAA continues to focus its attention on the flight training community. Specifically, AFS–800 has been tasked via the Administrator's *Flight Plan 2004–2008* with improving flight training while maintaining or lowering costs. To that end, the FAA is moving forward by developing educational and flight training materials to help improve the quality of flight instruction.

The first resource, titled *Flight Instructor Training Module Volume 1: FAA/Industry Training Standards* (FITS), is designed to achieve two objectives. First, it will familiarize flight instructors with the FITS program, including its history, objectives, methods, and future goals. Second and perhaps most important, this training module will provide instructors with the guidance needed to develop their own FITS-based training curricula.

The second and third resources, titled *System Safety Course Developers' Guide* (parts 1 and 2), will familiarize flight instructors with the concepts, principles, and techniques central to system safety. In addition, these modules will provide instructors with the tools necessary to integrate system safety concepts into their current instructional programs.

While the FAA created these resources for the flight instructor community, all pilots are encouraged to review these materials as part of their initial or recurrent training efforts. Both documents, along with other flight training resources, may be downloaded at *http://www.faa.gov/avr/afs/FITS/training.cfm*.

Issued in Washington, DC, on September 21, 2004.

Robert A. Wright,

Manager, General Aviation and Commercial Division.

[FR Doc. 04–21738 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Interstate 55/U.S. 64 (Crump Boulevard), Shelby County, TN

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement in cooperation with the Tennessee Department of Transportation (TDOT) for potential interchange improvements to the Interstate 55/U.S. 64 interchange at Crump Boulevard in the western portion of Memphis, from McLemore Avenue to just west of Metal Museum Drive in Shelby County. This project is intended to improve regional and national transportation needs.

FOR FURTHER INFORMATION CONTACT: Mr. Scott McGuire, Field Operations Team Leader, Federal Highway Administration—Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville, TN 37211.

SUPPLEMENTARY INFORMATION: The Interstate 55 (I–55) at Crump Boulevard (U.S. 64) Interchange currently handles most north and southbound I–55 traffic through Memphis, Tennessee. Interstate 55 is one of the major transit corridors of the United States, linking New Orleans, Memphis, St. Louis, and Chicago. It accommodates large amounts of personal automobile and commercial truck traffic. The current configuration of the I–55 at Crump Boulevard Interchange in Memphis, Tennessee is antiquated and creates multiple safety and efficiency problems.

With this notice of intent, FHWA and TDOT are initiating the National Environmental Policy Act (NEPA) process for the Interstate 55/U.S. 64 (Crump Boulevard) project to study potential transportation improvements to the interchange. As part of the NEPA process, the purpose and need will be modified as necessary to account for any changes in regional or national needs or goals.

The alternatives development and screening process for the I–55/U.S. 64 project will be used as a starting point for the NEPA process. Recognizing that NEPA requires the consideration of a reasonable range of alternatives that will address the purpose and need, the Environmental Impact Statement will include a range of alternatives for detailed study consisting of a no-build alternative, three build alternatives, as well as alternatives consisting of transportation system management strategies, mass transit, improvements to existing roadways, and/or new alignment facilities. These alternatives will be developed, screened, and carried forward for detailed analysis in the Draft Environmental Impact Statement based on their ability to address the purpose and need that will be developed while avoiding known and sensitive resources. Letters describing the proposed NEPA study and soliciting input will be sent to the appropriate Federal, State, and local agencies who have expressed or are known to have an interest or legal role in this proposal. It is anticipated that one formal agency scoping meeting will be held as part of the NEPA process, in the vicinity of the project, to facilitate local, State, and Federal agency involvement and input into the project in an effort to identify all of the issues that need to be addressed in developing the Environmental Impact Statement. Private organizations, citizens, and interest groups will also have an opportunity to provide input into the development of the Environmental Impact Statement and identify issues that should be addressed. A Public Involvement Plan will be developed to involve the public in the project development process. This plan will utilize the following outreach efforts to provide information and solicit input: newsletters, the Internet, e-mail, informal meetings, public information meetings, public hearings and other efforts as necessary and appropriate. Notices of public meetings or public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and Draft Environmental Impact Statement should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: September 17, 2004.

Scott A. McGuire,

Field Operations Team Leader, Federal Highway Administration, Nashville, Tennessee.

[FR Doc. 04–21925 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Mazda

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Mazda Motor Corporation (Mazda), for an exemption of a high-theft line, the Mazda MX–5 Miata, from the parts-marking requirements of the Federal motor vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated June 2, 2004, Mazda Motor Corporation (Mazda), requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Mazda MX–5 Miata vehicle line beginning with MY 2005. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Section 33106(b)(2)(D) of Title 49, United States Code, gave the Secretary of Transportation the authority to grant a manufacturer one parts-marking exemption per model year for vehicle lines produced MYs' 1997–2000. However, it does not address the

contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. 33103(d)(3), states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts-marking. The Attorney General has not yet made a finding pursuant to 49 U.S.C. 33103(d)(3), *Long Range Review of Effectiveness,* and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, both agencies determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to Section 33103(d)(3).

Mazda's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In its petition, Mazda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. The antitheft device is a transponder-based electronic immobilizer system. Mazda will install its antitheft device, a transponder based electronic engine immobilizer antitheft system as standard equipment on its MX–5 Miata vehicle line beginning with MY 2005.

In order to ensure the reliability and durability of the device, Mazda conducted tests based on its own specified standards. Mazda provided a detailed list of the tests conducted and stated its belief that the device is reliable and durable since it has complied with Mazda's specified requirements for each test. The components of the immobilizer system are tested in climatic, mechanical and chemical environments all keys and key cylinders should meet unique strength tests against attempts of mechanical overriding. The test conducted were for thermal shock, high temperature exposure, low-temperature exposure, thermal cycle, humidity temperature cycling, functional, random vibration, dust, water, connector and lead/lock strength, chemical resistance, electromagnetic field, power line variations, DC stresses, electrostatic discharge, transceiver/key strength and transceiver mounting strength. Mazda's antitheft device is activated when the driver/operator turns off the engine using the properly coded ignition key. When the ignition key is turned to the "start" position, the transponder (located in the head of the key) transmits a code to the powertrain's electronic control module. Mazda stated that encrypted communications exist between the immobilizer system control function and the powertrain's electronic control module. The vehicle's engine can only be started if the transponder code matches the code previously programmed into the powertrain's electronic control module. If the code does not match, the engine will be disabled. Mazda stated that there are approximately 18 quintillion different codes and at the time of manufacture, each transponder is hard-coded with a unique code. Mazda also stated that its immobilizer system incorporates a light-emitting diode (LED) that provides information as to when the system is "unset". When the ignition is initially turned to the "START" position, a one-second continuous LED indicates the proper "unset" state of the device. When the ignition is turned to "OFF", a flashing LED indicates the "unset" state of the system. The integration of the setting/unsetting device (transponder) into the ignition key prevents any inadvertent activation of the system.

Mazda believes that it would be very difficult for a thief to defeat this type of electronic immobilizer system. Mazda believes that its proposed device is reliable and durable because it does not have any moving parts, nor does it require a separate battery in the key. Any attempt to slam-pull the ignition lock cylinder, for example, will have no effect on a thief's ability to start the vehicle. If the correct code is not transmitted to the electronic control module there is no way to mechanically override the system and start the vehicle. Furthermore, Mazda stated that drive-away thefts are virtually eliminated with the sophisticated design and operation of the electronic engine immobilizer system which makes conventional theft methods (*i.e.,* hot-wiring or attacking the ignition-lock cylinder) ineffective.

Mazda reported that in MY 1996, the proposed system was installed on certain U.S. Ford vehicles as standard equipment (*i.e.* on all Ford Mustang GT and Cobra models, Ford Taurus LX, SHO and Sable LS models). In MY 1997, the immobilizer system was installed on the Ford Mustang vehicle line as standard equipment. When comparing 1995 model year Mustang vehicle thefts (without immobilizer), with MY 1997 Mustang vehicle thefts (with immobilizer), data from the National Insurance Crime Bureau showed a 70% reduction in theft. (Actual NCIC reported thefts were 500 for MY 1995 Mustang, and 149 thefts for MY 1997 Mustang.)

Mazda's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lack an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with devices similar to that which Mazda proposes. In these instances, the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

On the basis of this comparison, Mazda has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Mazda, the agency believes that the antitheft device for the Mazda vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that Mazda has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Mazda provided about its device. For the foregoing reasons, the agency hereby grants in full Mazda's petition for exemption for its vehicle line from the parts-marking requirements of 49 CFR part 541.

If Mazda decides not to use the exemption for this line, it should

formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 24, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–21977 Filed 9–29–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34547]

Tonopah & Tidewater Railroad Co.—Lease and Operation Exemption—Pan Western Corporation

Tonopah & Tidewater Railroad Co. (TTRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail line owned by Pan Western, extending from milepost 0.0 to milepost 2.66 in Clark County, NV. Pan Western intends to lease the railroad line to TTRR so that TTRR may initiate and provide common carrier rail operations on and over the line. TTRR will become a Class III rail carrier. TTRR certifies that its projected revenues are not expected to exceed those of a Class III rail carrier or $5 million annually.

The transaction was due to be consummated on or after September 9, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34547, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Jeffrey O. Moreno, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 22, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21981 Filed 9–29–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, VA.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy L. Aisen, Department of Veterans Affairs, Acting Director, Technology Transfer Program, Office of Research and Development (12TT), 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *mindy.aisen@mail.va.gov*. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

PCT Patent Application No. PCT/US03/25189 "Touch Screen Applications for Outpatient Process Automation"

Dated: September 22, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–21919 Filed 9–29–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Leavenworth, KS

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an enhanced-use lease.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 50 acres at the Dwight D. Eisenhower VA Medical Center in Leavenworth, Kansas. The selected lessee will finance, redevelop, manage, maintain and operate a mixed-use development that would provide services and accommodations relating to affordable senior housing, long-term care, long-term housing for veterans, transitional housing with supportive services for veterans, and educational and community support facilities on the site, at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Malinda D. Pugh, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8192.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely

affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: September 22, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–21918 Filed 9–29–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 69, No. 189

Thursday, September 30, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Proclamation 7815—National POW/MIA Recognition Day, 2004

Correction

In Presidential document 04–21124 beginning on page 56151 in Part IV of the issue of Friday, September 17, 2004, make the following correction:

On page 56151 under the heading **Presidential Documents**, "Proclamation 7814 of September 14, 2004" should read "Proclamation 7815 of September 14, 2004".

[FR Doc. C4–21124 Filed 9–29–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

[CMS–6026–CN]

RIN 0938–AM86]

Medicaid Program and State Children's Health Insurance Program (SCHIP); Payment Error Rate Measurement; Correction

Correction

In proposed rule document 04–21198 appearing on page 57244, in the issue of Friday, September 24, 2004, make the following correction:

On page 57244, in the second column, under the **DATES** heading, in the fourth line, "October 21, 2004" should read "October 27, 2004".

[FR Doc. C4–21198 Filed 9–29–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
September 30, 2004

Part II

Small Business Administration

Revision of Privacy Act System of Records; Notice

SMALL BUSINESS ADMINISTRATION

Revision of Privacy Act System of Records

AGENCY: Small Business Administration.

ACTION: Notice of revision of Agency's System of Records pursuant to the provisions of the Privacy Act and to open comment period.

SUMMARY: This notice provides for review and comment on a major revision of the Agency's Privacy Act Systems of Records. Four of the former Systems have been eliminated and four new Systems have been developed. The numbers of all of the Systems have also been changed. All Systems now include electronic formats and access and a new routine use which allows for disclosure to Agency volunteers, interns, experts and contractors when necessary for their official duties. The title of System 8 has been changed to Correspondence and Inquires, and there is a new category of records for System 14, Freedom of Information and Privacy Act Records. The title of System 21 has been changed to the Loan System and a new routine use, (j), for the system is included.

DATES: Written comments on the System of Records must be received on or before October 29, 2004. The notice shall be effective as proposed with or without further publication at the end of the comment period, unless comments are received which would require contrary determination.

ADDRESSES: Written comments on the System of Records should be directed to Lisa J. Babcock, Chief, Freedom of Information/Privacy Acts Office, U. S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Lisa J. Babcock, Chief, Freedom of Information/Privacy Acts Office, (202) 401–8203.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act stipulation that Agencies publish their Systems of Records in the **Federal Register** when there is a revision, change or addition.

Altered Systems of Records; Narrative Statement; U.S. Small Business Administration, Privacy Act System of Records SBA 14, Freedom of Information and Privacy Act Records; Addition of a New Category of Records

A. Narrative Statement

1. The purpose of adding a new category of records to Privacy Act System of Records 14 is to include the Agency's FOI/PA Tracking System that will be used to record and monitor all FOI/PA requests, appeals and inquiries. The Tracking System will be accessed by the FOI/PA Office and their designated contacts in each SBA program and field office. The FOI/PA contacts will have access only to data pertaining to the FOI/PA cases assigned to their office. The FOI/PA Office will have access to all data in the Tracking System.

2. Refer to the following citations: 5 U.S.C. 301, 44 U.S.C. 3101, 15 U.S.C. 634(b)6.

3. The effect on the individual FOI/PA requester and appellant will be minimal. The information contained in the FOI/PA files will be viewed only by Agency personnel, contractors, experts, consultants or volunteers in the line of their official duties. These individuals must comply with the requirements of the PA of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

4. Access and use of FOI/PA files is limited to specified individuals who have a need to know to accomplish their duties. The FOI/PA Tracking System will be accessed via restricted passwords and user identifications.

5. The new proposed category of records use satisfies the compatibility requirement of subsection (a)(4) of the Act as the FOI/PA Tracking System is a "collection, or grouping of information about an individual that is maintained by an agency" and "contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual."

6. This is an internal information collection. The Agency deems the OMB approved information collection requirements unnecessary.

Altered Systems of Records; Narrative Statement; U.S. Small Business Administration, Privacy Act System of Records SBA 21, Loan System; Change of System Name and the Addition of a New Routine Use

B. Narrative Statement

1. The name of the former Privacy Act System of Records 21, Loan Monitoring System is changed to the Loan System. The purpose of adding a new routine use to Privacy Act System of Records 21 is to allow for the disclosure of records from this System to 7(a) and 504 lenders and/or participating contractors for purposes of the Agency's Loan and Lender Monitoring System.

2. Refer to the following citations: Public Law 85–536, 15 U.S.C. 631 *et seq.* (Small Business Act, all provisions relating to loan programs); 44 U.S.C. 3101 (Records Management by Federal Agencies); and Public Law 103–62 (Government Performance and Results Act).

3. The effect on the individual is minimal because the information collected is already being collected by the Department of Treasury Financial Management Service, by the SBA under previously approved manual form and by the SBA's previously established and published Privacy Act System or Records 170, Loan Monitoring System. The information contained in the System will be viewed only by Agency personnel, participating contractors and lenders in the line of their official duties. All of these individuals must comply with the requirements of the PA of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

4. Access and use of Lender System records is limited to Agency officials acting in their official capacities, with a need-to-know, and to SBA Resource Partners and participating contractors. Access and use by SBA Resource Partners and participating contractors will generally be via the Internet, with restricted password(s)/passcode(s).

5. The new proposed routine use satisfies the compatibility requirement of subsection (a)(7) of the Act as follows:

The proposed routine use allows disclosure to 7(a) and 504 lenders and/or participating contractors for purposes of the Loan and Lender Monitoring system (L/LMS). SBA needs to share relevant information with SBA lenders and contractors so that those entities can assist SBA in decisions regarding the making and servicing of business (non-disaster) loans. The information is collected by SBA to assist in its decisions regarding the making and servicing of loans.

6. OMB approved SBA 3245–0016—Application for Business Loans (SBA Form 4, Schedule A, Form 4–1, Form 4L) on 11/7/2001.

Appendix A

Headquarters: 409 Third St., SW., Washington, DC 20416.

Boston Regional Office: 10 Causeway St., Suite 812, Boston, MA 02222–1093.

New York Regional Office: 26 Federal Plaza, Suite 3108, New York, NY 10278.

Philadelphia Regional Office: 900 Market St., 5th Floor, Philadelphia, PA 19107.

Atlanta Regional Office: 233 Peachtree St., NE., South Tower, Suite 496, Atlanta, GA 30303.

Chicago Regional Officec: 500 West Madison St., Suite 1250, Chicago, IL 60661–2511.

Dallas Regional Office: 4300 Amon Carter Blvd., Suite 114,,Fort Worth, TX 76155.

Kansas City Regional Office: 323 West 8th St., Suite 307, Kansas City, MO 64105.

Denver Regional Office: 721 19th St., Suite 101, Denver, CO 80202.

San Francisco Regional Office: 455 Market St., Suite 2200, San Francisco, CA 94105.

Seattle Regional Office: 1200 Sixth Ave., Suite 1805, Seattle, WA 98101–1128.

SBA District Offices

Region I

Maine District Office: 40 Western Ave., Room 512, Augusta, ME 04330.

Massachusetts District Office: 10 Causeway St., Suite 265, Boston, MA 02222–1093.

New Hampshire District Office: 55 Pleasant St., Suite 3101, Concord, NH 03301.

Connecticut District Office: 330 Main St., 2nd Floor, Hartford, CT 06106.

Vermont District Office: 87 State St., Suite 205, Montpelier, VT 05602.

Rhode Island District Office: 380 Westminster Mall, 5th Floor, Providence, RI 02903.

Springfield Branch Office: 1441 Main St., Suite 410, Springfield, MA 01103.

Region II

Buffalo District Office: 111 West Huron St., Room 1311, Buffalo, NY 14202.

Elmira Branch Office: 333 E. Water St., 4th Floor, Elmira, NY 14901.

Melville Branch Office: 35 Pinelawn Road, Suite 207, Melville, NY 11747.

New Jersey District Office: Two Gateway Center, 15th Floor, Newark, NJ 07102.

New York District Office: 26 Federal Plaza, Rm. 3108, New York, NY 10278.

Puerto Rico & Virgin Islands District Office: 252 Ponce De Leon Blvd., Hato Rey, Puerto Rico 00918.

Rochester Branch Office: 100 State Street, Suite 410, Rochester, NY 14614.

Syracuse District Office: 401 South Salina St., 5th Floor, Syracuse, NY 13202.

St. Croix Branch Office: Sunny Isle Professional Building, Suites 5&6, Christiansted, VI 00820.

St. Thomas Branch Office: 3800 Crown Bay Street, St. Thomas, VI 00802.

Region III

Baltimore District Office: 10 S. Howard St., Suite 6220, Baltimore, MD 21201–2525.

Charleston Branch Office: 405 Capitol St., Suite 412, Charleston, WV 25301.

West Virginia District Office: Federal Center, Suite 330, 320 West Pike St., Clarksburg, WV 26301.

Harrisburg Branch Office: 100 Chestnut St., Suite 107, Harrisburg, PA 17101.

Philadelphia District Office: 900 Market St., 5th Floor, Philadelphia, PA 19107.

Pittsburgh District Office: Federal Building, Rm. 1128, 1000 Liberty Ave., Pittsburgh, PA 15222–4004.

Richmond District Office: 400 North 8th St., 11th Floor, Richmond, VA 23240–0126.

Washington District Office: 1110 Vermont Ave., NW., Suite 900, Washington, DC 20005.

Wilkes-Barre Branch Office: 7 North Wilkes-Barre Blvd, Suite 407, Wilkes-Barre, PA 18702.

Delaware District Office: 1318 North Market, Wilmington, DE 19801–3011.

Region IV

Georgia District Office: 233 Peachtree Rd., NE., Suite 1800, Atlanta, GA 30303.

Alabama District Office: 801 Tom Martin Dr., Suite 201, Birmingham, AL 35211.

North Carolina District Office: 6302 Fairview Rd., Suite 300, Charlotte, NC 28210–2227.

South Carolina District Office: 1835 Assembly St., Rm. 358, Columbia, SC 29201.

Gulfport Branch Office: 2909 13th St., Suite 203, Gulfport, MS 39501–1949.

Mississippi District Office: 210 E. Capitol St., Suite 210E, Jackson, MS 39201.

Jacksonville—North Florida District Office: 7825 Baymeadows Way., Suite 100-B, Jacksonville, FL 32256–7504.

Kentucky District Office: 600 Dr. M.L. King Jr. Place, Rm. 188, Louisville, KY 40202.

Miami—South Florida District Office: 100 S. Biscayne Blvd, 7th Floor, Miami, FL 33131.

Tennessee District Office: 50 Vantage Way, Suite 201, Nashville, TN 37228–1500.

Region V

Illinois District Office: 500 West Madison St., Chicago, IL 60661–2511.

Cincinnati Branch Office: 525 Vine St., Suite 870, Cincinnati, OH 45202.

Cleveland District Office: 1111 Superior Ave., Suite 630, Cleveland, OH 44114–2507.

Columbus District Office: 2 Nationwide Plaza, Suite 1400, Columbus, OH 43215–2542.

Michigan District Office: 477 Michigan Ave., Suite 515, Detroit, MI 48226.

Indiana District Office: 429 North Pennsylvania St., Suite 100, Indianapolis, IN 46204–1873.

Wisconsin District Office: 310 West Wisconsin Ave., Suite 400, Madison, WI 53203.

Minnesota Branch Office: 100 North 6th St., 210–C, Minneapolis, MI 55403.

Wisconsin Branch Office: 310 West Wisconsin Ave., Milwaukee, WI 53203.

Minnesota District Office: 100 North 6th St., Minneapolis, MN 55403–1563.

Springfield Branch Office: 511 W. Capitol Ave., Suite 302, Springfield, IL 62704.

Region VI

New Mexico District Office: 625 Silver Ave., SW., Suite 320, Albuquerque, NM 87102.

Corpus Christi Branch Office: 3649 Leopard St., Suite 411, Corpus Christi, TX 78408.

Dallas/Ft. Worth District Office: 4300 Amon Carter Blvd., Suite 108, Dallas, TX 76155.

El Paso District Office: 10737 Gateways West, Suite 320, El Paso, TX 79935.

Houston District Office: 8701 S. Gessner Dr., Suite 1200, Houston, TX 77074.

Arkansas District Office: 2120 Riverfront Dr., Suite 100, Little Rock, AR 72202.

Lower Rio Grande Valley District Office: 222 E. Van Buren St., Rm. 500, Harlingen, TX 78550–6855.

Lubbock District Office: 1205 Texas Ave., Suite 408, Lubbock, TX 79401–2693.

New Orleans District Office: 365 Canal St., Suite 2820, New Orleans, LA 70130.

Oklahoma District Office: 301 Northwest 6th St., Suite 116, Oklahoma City, OK 73102.

San Antonio District Office: 727 E. Durango Blvd., 5th Floor, San Antonio, TX 78206.

Region VII

Cedar Rapids Branch Office: 215 4th Ave., SE., Suite 200, Cedar Rapids, IA 52401–1806.

Des Moines District Office: 210 Walnut St., Room 749, Des Moines, IA 50309–2186.

Kansas City District Office: 323 West 8th Ave., Suite 501, Kansas City, MO 64105–1500.

Nebraska District Office: 11145 Mill Valley Rd., Omaha, NB 68154.

Springfield Branch Office: 830 East Primrose, Suite 101, Springfield, MO 65807–52540.

St. Louis District Office: 815 Olive Street, St. Louis, MO 63101.

Wichita District Office: 271 West Third St., Suite 2500, Wichita, KS 67202–1212.

Region VIII

Wyoming District Office: 100 East B Street, Rm. 4001, Casper, WY 82601.

Denver District Office: 721 19th St., Suite 426, Denver, CO 80202.

North Dakota District Office: 657 Second Ave. North, Room 219, Fargo, ND 58108.

Montana District Office: 10 West 15th St., Suite 1100, Helena, MT 59626.

Utah District Office: 125 South State St., Room 2237, Salt Lake City, UT 84138.

South Dakota District Office: 2329 North Career Ave., Suite 105, Sioux Falls, SD 57107.

Region IX

Agana Branch Office: 400 Route 8, Suite 302, Hagatna, GU 96910–2003.

Fresno District Office: 2719 North Air Fresno Dr., Suite 200, Fresno, CA 93727–1547.

Hawaii District Office: 300 Ala Moana Blvd., Rm. 2–235, Honolulu, HI 96850–4981.

Nevada District Office: 300 Las Vegas Blvd., Suite 110, Las Vegas, NV 89101.

Los Angeles District Office: 330 North Brand Blvd., Suite 1200, Glendale, CA 91203–2304.

Arizona District Office: 2828 North Central Ave., Suite 800, Phoenix, AZ 85004–1025.

Sacramento District Office: 650 Capital Mall, Suite 7–500, Sacramento, CA 95814–2413.

San Diego District Office: 550 West C St., Suite 550, San Diego, CA 92101–3500.

San Francisco District Office: 455 Market St., 6th Floor, San Francisco, CA 94105–2445.

Santa Ana District Office: 200 West Santa Ana Blvd., Suite 700, Santa Ana, CA 92701.

Region X

Alaska District Office: 50 L St., Suite 310, Anchorage, AK 99501.

Boise District Office: 380 East Parkcenter Blvd., Boise, ID 83706.

Portland District Office: 1515 S.W. 5th Ave., Suite 1050, Portland, OR 97201–5494.

Seattle District Office: 1200 6th Ave., Rm. 1700, Seattle, WA 98101–1128.

Spokane Branch Office: 801 West Riverside, Suite 200, Spokane, WA 99201.

Spokane District Office: 801 West Riverside Ave., Suite 200, Spokane, WA 99201–0901.

SBA Area Disaster Offices

Disaster Area 1 Office: 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

Disaster Area 2 Office: One Baltimore Place, NE., Suite 300, Atlanta, GA 30308.

Disaster Area 3 Office: 14925 Kingsport Rd., Fort Worth, TX 76155–2643.

Disaster Area 4 Office: P.O. Box 419004, Sacramento, CA 95841–9004, or 6501 Sylvan Rd., Citrus Heights, CA 95610–5017.

SBA Home Loan Servicing Centers

Birmingham Home Loan Servicing Center: 2121 8th Ave. North, Suite 200, P.O. Box 12247, Birmingham, AL 35202–2247.

New York Home Loan Servicing Center: 201 Varick St., Rm. 628, New York, NY 10014.

El Paso Home Loan Servicing Center: 10737 Gateway West, Suite 300, El Paso, TX 79935.

Santa Ana Loan Servicing & Liquidation Office: 200 W. Santa Ana Blvd., Santa Ana, CA 92701.

Commercial Loan Servicing Centers

Fresno Commercial Loan Servicing Center: 2719 N. Fresno Dr., Suite 107, Fresno, CA 93727–1547.

Little Rock Commercial Loan Servicing Center: 2120 Riverfront Dr., Suite 100, Little Rock, AR 72202.

Office of the Inspector General

Office of Inspector General, 409 Third Street, SW., Washington, DC 20416.

Office of Inspector General Investigation Division, 409 Third Street, SW., Washington, DC 20416.

Office of Inspector General Auditing Division, 409 Third Street, SW., Washington, DC 20416.

Atlanta Inspector General Auditing Division, 233 Peachtree St., NE., Atlanta, GA 30303.

Dallas/Fort Worth Inspector General Auditing, 4300 Amon Carter Blvd., Suite 116, Fort Worth, TX 76155–2654.

Los Angeles Inspector General Auditing Division, 330 North Brand Blvd., Suite 660, Glendale, CA 91203–2304.

Atlanta Inspector General Investigations Division, 233 Peachtree St., NE., Atlanta, GA 30303.

Chicago Inspector General Investigations Division, 500 West Madison St., Suite 3370, Chicago, IL 60661.

Dallas/Fort Worth Inspector General Investigations Division, 4300 Amon Carter Blvd., Suite 116, Fort Worth, TX 76155–2653.

Houston Investigations Division Resident Office, 9301 Southwest Freeway, Suite 550, Houston, TX 77074–1591.

Kansas City Inspector General Investigations Division, 323 W. 8th St., Room 305, Kansas City, MO 64105.

Los Angeles Inspector General Investigation Division, 330 North Brand Blvd., Suite 1280, Glendale, CA 91203–2304.

New York Inspector General Investigations Division, 26 Federal Plaza, Rm. 41–100, New York, NY 10278.

Philadelphia Inspector General Investigations Division, 625 Walnut St., Suite 860B–W, Philadelphia, PA 19106.

Seattle Inspector General Investigations Division, 1200 Sixth Ave., Suite 1807, Seattle, WA 98101–1128.

Syracuse Inspector General Investigations Division, 401 South Salina St., 5th Floor, Syracuse, NY 13202.

Table of Contents

SBA 1

SYSTEM NAME:

Administrative Claims—SBA 1.

SYSTEM LOCATION:

Headquarters (HQ) and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Individuals involved in accidents or other incidents of loss or damage to government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case report and supporting materials compiled in cases that involve loss or damage to government property. Records of claims up to $5,000 are in District Offices; claims more than $5,000 are in the Office of General Counsel (OGC).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634 (b)(1), 28 CFR 14.11.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the General Services Administration, the court and other parties in litigation, when a suit has been initiated.

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name of involved individual(s).

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule 6.10.

SYSTEM MANAGER(S) AND ADDRESS:

HQ and Field Systems Managers. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to either the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Involved individuals, witnesses and Agency investigation.

SBA 2

SYSTEM NAME:

Administrator's Executive Secretariat Files—SBA 2.

SYSTEM LOCATION:

Headquarters (HQ). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Individuals who correspond with the SBA Administrator.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence in Controlled Documents System from October 1, 1987.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To oversee and maintain Agency correspondence with Government officials, Members of Congress, and the public.

b. To oversee and maintain memoranda or documents detailing policy and operational decisions made by the Administrator.

c. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

f. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By document number, can be cross-referenced by name, subject, keyword, phrase, date, constituent and organizational name.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 00:01.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretariat, HQ. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Correspondence, memoranda authors, and other sources that could engender communication by the SBA Administrator.

SBA 3

SYSTEM NAME:

Advisory Council Files—SBA 3.

SYSTEM LOCATION:

Headquarters (HQ) and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Current, former and prospective members of SBA Advisory Councils.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Information relating to members of SBA Advisory Councils.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To disclose information about an Advisory Council member to the public.

b. To respond to requests from the National Archives and Records Administration (NARA).

c. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

f. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 95:01.

SYSTEM MANAGER(S) AND ADDRESS:

Field Office Systems Managers. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Manager for Field Office Records or PA Officer for HQ Records.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Record subject, Congressional offices, Agency employees, media, Advisory Council members, Federal Register.

SBA 4

SYSTEM NAME:

Office of Inspector General Records Other Than Investigations Records—SBA 4.

SYSTEM LOCATION:

Office of the Inspector General (OIG) Investigations Division, Audit Division, Headquarters (HQ) duty stations, Agency District and Field Offices and Federal Records Center (FRC). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Individuals covered by the system include the assigned auditor or evaluator, other OIG staff, the audit or evaluation requestor, the interviewee, persons examined by the audit and persons providing information used by the auditors.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Records consist of materials compiled and/or generated in connection with audits, evaluations, and other non-audit services performed by OIG staff. These materials include information regarding the planning, conduct, and resolution of audits and evaluations of SBA programs and participants in those programs, information requests, responses to such requests, reports of findings, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in settlement negotiations when presenting evidence.

c. To any private or governmental source or person, to secure information relevant to an investigation or audit.

d. To other Federal agencies conducting background checks, to the extent that the information is relevant to their function.

e. To any domestic, foreign, international or private agency or organization, including those which maintain civil, criminal or other enforcement information, for the assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent the information is relevant to the agency's decision on the matter.

f. To Federal, State or local bar associations and other professional,

regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries.

g. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

h. To provide data to the General Accounting Office (GAO) for periodic reviews of SBA.

i. To the Office of Government Ethics for any purpose consistent with their mission.

j. To the General Accounting Office and to the General Services Administration's (GSA) Board of Contract Appeals in bid protest cases involving an agency procurement.

k. To any Federal agency which has the authority to subpoena other Federal agencies' records.

l. To the Department of the Treasury and the DOJ when an agency is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

m. To debt collection contractors for collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

n. To a "consumer reporting agency" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), to obtaining information during an investigation or audit.

o. To personnel responsible for Program Fraud Civil Remedies Act litigation, the tribunal and defendant's counsel.

p. To a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that records be introduced to a grand jury.

q. To the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

r. To the DOJ to obtain advice regarding FOIA disclosure obligations.

s. To the Office of Management and Budget to obtain advice regarding PA obligations.

t. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

u. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

v. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

w. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name and cross-referenced to related IG Audit files.

SAFEGUARDS:

Sensitive reports are kept in locked filing cabinets, while others are provided lesser levels of security as appropriate.

RETENTION AND DISPOSAL:

Following final agency action as the result of an audit, records are maintained in the respective field offices for five years and then transferred to the FRC, which destroys them after 20 years. Alphabetical indices are maintained on all investigations for an indefinite period of time.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Auditing or designee. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject individuals, Agency personnel, third parties, the FBI and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11), and (i), to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the OIG's criminal law enforcement function.

SBA 5

SYSTEM NAME:

Business and Community Initiatives Resource Files—SBA 5.

SYSTEM LOCATION:

Headquarters (HQ) and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Users of Business and Community Initiatives training materials, potential speakers, counselors, authors and reviewers.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Information relating to individuals: Biographical sketches, correspondence, copies of travel vouchers and counseling reports, files of accomplishments, publications, news releases and clippings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To provide university coordinators with information about potential speakers at management training sessions.

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act, as amended, 5 U.S.C. 552a.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 65:01, 65:02, 65:03, 65:04, 65:05, 65:07 and 65:09.

SYSTEM MANAGER(S) AND ADDRESS:

Field Office Director and PA Officer. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Managers for Field Office Records or PA Officer for HQ Records.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Record subject, Agency employees, media, educators, universities, professional and civic organizations.

SBA 6

SYSTEM NAME:

Civil Rights Compliance Files—SBA 6.

SYSTEM LOCATION:

Headquarters. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

SBA recipients of Federal financial assistance and individuals who have filed allegations of discrimination against SBA recipients of Federal financial assistance or against Agency programs or program offices based on disability.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Reviews, correspondence, supporting documents, interview statements, program files, information developed in allegation/complaint investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, Civil Rights Compliance SOP 90 30 3 and 13 CFR parts 112, 113, and 117.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

b. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

c. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

d. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By complainant's name, address and four digit fiscal year/order in which received during that fiscal year (four digit number is keyed to Complaint Log for that fiscal year).

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule 1.25.a and d(2).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance (EEO/CRC). *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

SBA recipient of Federal financial assistance reviewed by EEO/CRC personnel and complainants.

SBA 7

SYSTEM NAME:

Combined Federal Campaign—SBA 7.

SYSTEM LOCATION:

Headquarters (HQ) Office and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Information pertaining to SBA employees involved with the campaign.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the public, the names and addresses of employees connected with the drive are released.

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name and/or Social Security Number.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Record Schedule 2.15.

SYSTEM MANAGER(S) AND ADDRESS:

HQ and Field Office Supervisors. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Managers or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject employee.

SBA 8

SYSTEM NAME:

Correspondence and Inquiries—SBA 8.

SYSTEM LOCATION:

Headquarters (HQ) and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Individuals who have corresponded with the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To oversee and maintain correspondence to the Agency.

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name of correspondent.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 00:01.

SYSTEM MANAGER(S) AND ADDRESS:

PA Officer for HQ records and Field Managers for field records. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject individual, Agency personnel, case files and Congressional correspondence.

SBA 9

SYSTEM NAME:

Cost Allocation Data System—9.

SYSTEM LOCATION:

Office of the Chief Financial Officer (CFO), Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

All SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Individual information on all SBA employees, *i.e.*, name, social security number, office code, pay dates, survey results on the percentage of time spent on administration of various SBA programs and activities. Also, Agency-wide costs, *i.e.*, rent, postage, telecommunications, centralized printing, centralized training, employees' relocation costs, credit report costs, performance management appraisal system awards, contractors costs, Agency loan count and SBA employment full time equivalent counts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (Records Management by Federal Agencies), Public Law 101–576 (Chief Financial Officers Act) and Public Law 103–62 (Government Performance and Results Act).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Agency cost contractor for use in the Agency's cost accounting activity.

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be

relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

The electronic form is maintained in a database which is behind the Agency's firewall.

RETRIEVABILITY:

Employee's Social Security Number and first and last name retrieve survey result.

SAFEGUARDS:

Access and use of the CADS are accomplished via the use of restricted password. Access and use are limited to Project Leader and Group members and only those other Agency employees whose official duties require such access.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Retention Schedule 8.1, 8.5, 8.6, 8.7 and 8.8.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, HQ. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

SBA employees.

SBA 10

SYSTEM NAME:

Employee Identification Card Files—SBA 10.

SYSTEM LOCATION:

Office of Human Capital Management (Headquarters), Denver Human Capital Management Operations Division and Disaster Area Offices (DAO). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Employee name and their identification card numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

b. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

c. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

d. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name or identification card number.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Retention Schedule 1.6.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator/Human Capital Management (HQ) and DAO Directors. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject employee, individuals and agency personnel records.

SBA 11

SYSTEM NAME:

Entrepreneurial Development—Management Information System—SBA 11.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using SBA's business counseling and assistance services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual and business information on SBA clients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 85–536, 15 U.S.C. 631 (Small Business Act), sec. 7(j)(1), (Business Counseling), 15 U.S.C. 648 sec. 21 (Small Business Development Centers), 15 U.S.C. 656 sec. 29 (Women's Business Centers), Public Law 106–50 (Veterans' Entrepreneurship and Small Business Development Act of 1999), 44 U.S.C. 3101 (Records Management by Federal Agencies) and Public Law 103–62 (Government Performance and Results Act).

ROUTINE USES OF RECORDS MAINTAINED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Agency service provider (resource partner) who initially collected the individual's information.

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To the Federal, state, local or foreign agency or organization which investigates, prosecutes, or enforces violations, statutes, rules, regulations, or orders issued when an agency identifies a violation or potential violation of law, arising by general or program statute, or by regulation, rule or order.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

f. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Electronic form in secured database on a dedicated computer.

RETRIEVAL:

By SBA Customer Number and cross-referenced by individual or business name.

SAFEGUARDS:

Access and use over the Internet with a restricted numerical password. Access and use is limited to Federal officials with a need-to-know and to designated resource partners. SBA resource partners will have access only to those individuals that were collected by that particular resource partner. Designated program managers in HQ and district directors will have access to individual records only as needed for program management.

RETENTION AND DISPOSAL:

In accordance with EDMIS N1–309–03–06.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy Administrator for Entrepreneurial Development and designee in Headquarters.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager or PA Office.

ACCESS PROCEDURES:

The Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject individuals or businesses.

SBA 12

SYSTEM NAME:

Equal Employment Opportunity Pre-Complaint Counseling—SBA 12.

SYSTEM LOCATION:

Headquarters and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Current/former SBA employees, members of a group (class complaints)

who have requested counseling regarding employment discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Case files may include employee and interview statements. The Equal Employment Opportunity (EEO) Counselor's Report becomes part of the EEO Complaint case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR part 1611.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To report counseling activity to the Office of Equal Employment Opportunity and Civil Rights Compliance (EEO/CRC).

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By employee name.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification code.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule 1.25.a.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator for EEO&CRC and Field Office Systems Managers. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Employee requesting counseling, other employees, EEO Counselor, personnel and employment records.

SBA 13

SYSTEM NAME:

Equal Employment Opportunity Complaint Cases—SBA 13.

SYSTEM LOCATION:

Headquarters (HQ). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Current/former SBA employees and/or members of a class complaint who have requested counseling regarding employment discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Complaint files, Equal Employment Opportunity (EEO) Counselor's Report, information from investigations, notes, hearing report, Hearing Examiner's recommendations and Agency action. Closed cases are included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR part 1611.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To report to the Equal Employment Opportunity Commission (EEOC).

b. To the EEOC when there is a hearing, these records will be used in the case.

c. To the EEOC when a complaint is appealed, these records will be used by the Office of Equal Employment Opportunity and Civil Rights Compliance (EEO/CRC) in their decision making.

d. To the Office of General Counsel and the Department of Justice (DOJ) when a complaint results in a suit in a Federal court, these records will be referred and used to prepare and present the case in court.

e. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

f. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

g. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

h. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name of complainant.

SAFEGUARDS:

Access and use is limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule 1.25.a.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator for EEO/CRC and Field Office Systems Managers and the Office of the Inspector General (OIG). *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer. *See* Appendix A.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORY:

Complainant, witnesses, hearing transcript, personnel and employment records, examiner's recommendations and agency investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1) Pursuant to 5 U.S.C. 552a(j)(2), records in this system of records which belong to the OIG are exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4)(A) through (F),(e)(6), (7), (9), (10), (11), and (i), to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the Office of the Inspector General's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552a(k)(2)and (k)(5), except as otherwise provided therein, all OIG's investigatory material compiled for law enforcement purposes for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information contained in this system of records is exempt from sections 3(c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f) of the PA, 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f). This exemption is necessary in order to protect the confidentiality of sources of information and to maintain access to sources necessary in making determinations of suitability for employment.

SBA 14

SYSTEM NAME:

Freedom of Information and Privacy Acts Records—SBA 14.

SYSTEM LOCATION:

Headquarters (HQ) and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Persons who have submitted requests or appeals under either of the Acts.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Files created for Freedom of Information/Privacy Acts (FOI/PA) appeals and agency-wide database to track FOI/PA requests and appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 15 U.S.C. 634(b)(6), 5 U.S.C. 552 and 5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To review individual cases, keep logs and records, comply with statutory time limitations and prepare mandated reports.

b. To the Federal, State, local or foreign agency or professional organization, including SBA offices, which investigates prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

c. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

d. To agency personnel responsible for bringing Program Civil Remedies Act litigation to the tribunal hearing litigation or any appeals and to counsel for the defendant party in any such litigation.

e. To a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that records be released for introduction to a grand jury.

f. To a Federal agency which has the authority to subpoena other Federal agencies records and has issued a valid subpoena.

g. To the public pursuant to the provisions of the FOIA, 5 U.S.C. 552.

h. To the Department of Justice (DOJ) in order to obtain that department's advice regarding an agency's FOIA disclosure obligations.

i. To the Office of Management and Budget to obtain that office's advice regarding an agency's PA obligations.

j. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to

assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

k. To the DOJ when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

l. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Locked file cabinets and electronic files.

RETRIEVAL:

By name or database number.

SAFEGUARDS:

Access and use limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

Retention is in accordance with National Archives and Records Administration's General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

PA Officer for HQ records and Field Managers for field records. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager.

ACCESS PROCEDURES:

The Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Correspondence submitted directly to and replies from the SBA.

SBA 15

SYSTEM NAME:

Grievances and Appeals—SBA 15.

SYSTEM LOCATION:

Servicing Personnel Office and the Office of Hearings and Appeals (OHA) where grievances or appeals have been filed. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

SBA employees who have filed grievances or disputes under applicable procedures or Personnel Practices Appeals Procedures.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Correspondence, supporting documents, hearing transcripts, investigation appeal information and decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101, Collective Bargaining Agreements with Unions which represent SBA employees, SOP 37 71–1 and 13 CFR part 134.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Union pursuant to the grievance procedure.

b. To the Office of Personnel Management (OPM) or used in reporting to the OPM on labor-management relations activity.

c. To a Hearing Examiner from the record of an individual in response to another Agency's inquiry, pursuant to established procedures.

d. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

e. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

f. To the Office of the Special Counsel for any purpose consistent with their mission.

g. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

h. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

Name of filing employee.

SAFEGUARDS:

Access and use limited to persons whose official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

Retention is in accordance with Standard Operating Procedure 00 41 2 30:02.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator for OHA, Chief Human Capital Officer and Field Managers. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Grievants, appellants, employees, Union, personnel and employment records.

SBA 16

SYSTEM NAME:

Investigative Files—SBA 16.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Investigations Division and Federal Records Center (FRC). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Persons against whom are made allegations that are within the jurisdiction of the OIG to investigate; persons identified as making such allegations; or persons cross-referenced in investigative file or subsequent investigations. Applicants to, and participants in SBA programs, their principals, representatives and resource partners; contractors and parties to cooperative agreements and their principals, representatives, and other interested parties; governmental entities; SBA employees, members of the Advisory Councils, Service Corps of Retired Executive volunteers in connection with allegations of wrongdoing that are within the jurisdiction of the OIG to investigate.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Material provide to, gathered or created by OIG in investigating, or otherwise dealing with allegations that are within the jurisdiction of the OIG to investigate, documentation of allegations, consultations, decisions, interviews, records reviews, reports of investigations, and various correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3 (The Inspector General Act of 1978), 15 U.S.C. Chapters 14A and 14B and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To a grand jury, court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

c. To other Federal agencies conducting background checks; only to the extent the information is relevant to the requesting agencies' function.

d. To any Federal, State, local, foreign or international agency, in connection with such entity's assignment, hiring and retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

e. To a domestic, foreign, or international government agency maintaining civil, criminal, relevant enforcement or other pertinent information, for the assignment hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

f. To Federal, State or local bar associations and other professional regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries.

g. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

h. To the General Accounting Office (GAO) for periodic reviews of SBA.

i. To the Office of Government Ethics for any purpose consistent with their mission.

j. To the GAO, and to the General Services Administration's Board of Contract Appeals in bid protest cases involving an agency procurement.

k. To any Federal agency which has the authority to subpoena otherFederal agencies records and has issued a valid subpoena.

l. To the Department of Treasury and the Department of Justice (DOJ) when an agency is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

m. To debt collection contractors for collecting delinquent debtsas authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

n. To a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a (f) and the Federal Claims Collection Act of 1966 (31 U.S.C. 701(a)(3)), to obtain information during an investigation or audit.

o. To agency personnel responsible for Program Civil Remedies Act litigation, the tribunal and defendant's counsel.

p. To a grand jury agent pursuant either to a Federal or State grand jury subpoena or to a prosecution request that records be introduced to a grand jury.

q. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

r. To the DOJ when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided,

however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

s. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that iscompatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

File folders in filing cabinets and safes, and electronic files.

RETRIEVAL:

Indexed by name of the investigated individual and cross-referenced to the number(s) of the investigative file(s) containing related materials.

SAFEGUARDS:

All filing cabinets are locked. Access to and use limited to those persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 Item Nos. 90:10 and 90:12. Cut off at the end of the calendar year. Transfer to FRC 6 years after cutoff. Destroy 15 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations or designee. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in writing or in person to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject individual, Agency personnel, informants, the Federal Bureau of Investigation and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1) Pursuant to 5 U.S.C. 552a(j)(2), records in this system of records are exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11), and (i), to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offendersand consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the Office of the Inspector General's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552(a)(k)(2) and (k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfillcommitments made to protect the confidentiality of sources and to protect subjects of investigations from frustrating the investigatory process.

SBA 17

SYSTEM NAME:

Investigations Division Management Information System—SBA 17.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Investigations Division. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM INCLUDES:

Persons against whom are made allegations that are within the OIG's jurisdiction to investigate, persons identified as making allegations or persons who are cross-referenced to an investigative file, principals, representatives of applicants, participants, contractors, grantees, participants in cooperative agreements, resource partners and their principals and representatives and other interested parties participating in SBA programs, and members of Advisory Councils and SCORE/ACE volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Material gathered or created during preparation for, conduct of and follow-up on investigations conducted by OIG, the FBI and other Federal, State, local, or foreign regulatory or law enforcement agency. May include alphabetical indices of names and case numbers and information about allegations, decisions, investigative assignments and special techniques, and reports and results of investigations and time spent by investigators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3 (The Inspector General Act of 1978), 15 U.S.C. Chapters 14A and 14B; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in

settlement negotiations when presenting evidence.

c. To the General Accounting Office for periodic reviews of the SBA.

d. To the Office of Government Ethics for any purpose consistent with their mission.

e. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

f. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

g. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Self-contained system and computer disks.

RETRIEVAL:

Subjects' name, company name, case number, agent's name, Social Security Number or agent's identification number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 Items 90:10 and 90:12. Retained on computer disks indefinitely. Hard copies are made monthly, retained for five years before being destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations or designee. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject individual, Agency personnel, informants, the Federal Bureau of Investigation and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552(a)(k)(2) and (k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfill commitments made to protect the confidentiality of sources and to protect subjects of investigations from frustrating the investigatory process.

SBA 18

SYSTEM NAME:

Legal Work Files on Personnel Cases—SBA 18.

SYSTEM LOCATION:

Headquarters (HQ), Office of the Inspector General (OIG) and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Opinions, advice, transcripts, witness statements, *etc.* maintained by the Office of General Counsel (OGC) on personnel cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

b. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

c. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that

litigation is likely to affect the agency or any of its components.

d. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By employee name.

SAFEGUARDS:

Access to and use limited to those persons with official need to know to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 70:01, 70:07 and 70:11.

SYSTEM MANAGER(S) AND ADDRESS:

OGC and OIG. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or the PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Office of Human Capital Management and third party witnesses.

SBA 19

SYSTEM NAME:

Litigation and Claims Files—SBA 19.

SYSTEM LOCATION:

Headquarters (HQ), Field Offices, Disaster Area Offices (DAO) and Disaster Home Loan Servicing Centers (DHLSC). *See* Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

All Disaster Home Loan recipients and individuals involved in lawsuits or claims pertaining to SBA.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Records relating to recipients classified as "in litigation" and all individuals involved in claims by or against the Agency. Wherever applicable: affidavits, briefs, pleadings, depositions and interrogatories, loan status summaries with litigation progress, opinions, copies of Department of Justice (DOJ) papers concerning loan case litigation, summary foreclosures, chattel lien searches, requests and responses under the Freedom of Information Act, loan modifications, recipients' attorneys' names, amount of liability, narrative report of actual and contingent liabilities and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or organization that investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the agency identifies a violation or potential violation of law arising by general or program statute, or by regulation, rule or order.

b. To the Federal, State or local private credit agency maintaining civil, criminal or other relevant information to determine an applicant's suitability for a loan; this may be requested individually or part of a computer match program.

c. To a request from a State or Federal agency in connection with the issuance of a grant, loan or other benefit by that agency which is relevant to their decision on the matter; this may be requested individually or part of a computer match. SBA will provide information to the Department of Housing and Urban Development (HUD) to be maintained in a central repository where agencies can request information on a case-by-case basis or as part of a computer match.

d. To another Federal agency, including Defense Manpower Data Center, U.S. Postal Service and HUD, to conduct computer matching programs to locate delinquent SBA borrowers who are receiving Federal salaries or benefit payments.

e. To a consumer reporting agency.

f. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in settlement negotiations when presenting evidence.

g. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

h. To a grand jury agent pursuant either to a federal or state grand jury subpoena or to a prosecution request that such record be introduced to a grant jury.

i. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

j. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or here individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

k. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency

determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosures of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By recipient and claimant name.

SAFEGUARDS:

Access to and use limited to those persons with official need to know to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with SOP 00 41 2 70:09 and 70:13.

SYSTEM MANAGER(S) AND ADDRESS:

DAO and DHLSC Directors and Office of General Counsel. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 Item Nos. 70:07, 70:08, 70:09, 70:10, 70:11, 70:13, 70:14 and 70:15, OGC NI–309–88–1, OGC NI 309–99–1, OGC NI–309–88–1. In accordance with National Archives and Records Administration General Records Schedule 14.11.

SYSTEM MANAGER(S) AND ADDRESS:

OGC and Field Office Systems Manager. *See* Appendix A.

SOURCE CATEGORIES:

Subject employee, Agency personnel, the public, the DOJ, bankruptcy notices, court records, title companies, and Loan Case Files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order for the Agency legal staff to properly perform its functions.

SBA 20

SYSTEM NAME:

Disaster Loan Case File—SBA 20.

SYSTEM LOCATION:

SBA Disaster Area Offices and the Department of Housing and Urban Development (HUD). *See* Appendix A for SBA addresses; HUD addresses are published by HUD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Applicants and recipients of disaster home loans.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Information relating to applicants and recipients of a disaster home loan from the time of application until the date of payment in full or charge-off is approved; or until the date of an official denial if declined. These records include: Loan applications, supporting documents, personal history, financial statements, credit information investigative reports, appraisers' reports, waivers, loan record transfers, correspondence, recommendations, authorizations, disbursement amount, term and rate, payment history, collateral, UCC filings and re-filings, collection and liquidation activities, financial statements, settlements and compromises, participating bank information, field visit reports, borrowers insurance information and loan accounting information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the public on approved loans, information is limited to recipient name and address, term and rate of the loan, and the apportioned amount of the loan for real or personal property loss.

b. To provide information to potential investors who are interested in bidding on loans made available by the Agency in a sale of assets. Investors will be required to execute a confidentiality agreement prior to reviewing any record or information.

c. To the public, under certain conditions, on losses incurred by the government due to non-payment of obligations by individuals. In these cases, the name and address of the obligator and amount incurred (amount written-off from Agency assets) will not be released to the public unless the borrower consents to disclosure or is required pursuant to the Freedom of Information Act.

d. To the Federal, State, local or foreign agency or professional organization which has responsibility for investigating, prosecuting or enforcing violations, statute rules, regulations or orders issued when the Agency locates a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

e. To request information from a Federal, State or local agency or a private credit agency maintaining civil, criminal or other information relevant to determining an applicant's suitability for a loan; this may be requested individually or part of a computer match.

f. To provide data to the General Accounting Office for periodic reviews of SBA.

g. To a request from a State or Federal agency in connection with the issuance of a grant, loan or other benefit by that agency which is relevant to their decision on the matter; this may be requested individually or part of a computer match. SBA will provide information to HUD to be maintained in a central repository where agencies can request information on a case-by-case basis or as part of a computer match.

h. To another Federal agency, HUD, to conduct computer matching programs to locate delinquent SBA borrowers who are receiving Federal salaries or benefit payments and programs to identify delinquent SBA borrowers receiving federal salaries or benefit payments. Disclosure will be made if the records indicate the loan is in default, at least 30 days past due or to update a previous

disclosure. SBA will make the disclosures to obtain repayments of debts under the provisions of the Debt Collection Act of 1982 by voluntary repayment, or by administrative or salary offset procedures.

i. To a consumer reporting agency.

j. To provide the Internal Revenue Service (IRS) with access to an individual's records for an official audit to the extent the information is relevant to the IRS's function.

k. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in settlement negotiations when presenting evidence.

l. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

m. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

n. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

o. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By applicant/recipient name, cross-referenced loan number or borrower's Social Security Number.

SAFEGUARDS

Access and use limited to persons with official need to know to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 Item Nos. 70:09 and 70:13.

SYSTEM MANAGER(S) AND ADDRESS:

Disaster Area Office Director. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager of PA Officer. *See* Appendix A.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Subject, individuals, Agency employees, financial institution, law enforcement agencies, and Federal Emergency Management Agency.

SBA 21

SYSTEM NAME:

Loan System—SBA 21.

SYSTEM LOCATION:

Headquarters (HQ), Regional Offices, District Offices, Branch Offices, Processing Centers, and Servicing Centers. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (*i.e.*, borrowers, guarantors, principals of businesses named in loan records), throughout the life of SBA's interest in a loan, under all of the Agency's business (non-disaster) loan programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and commercial information (*i.e.*, credit history, financial information, identifying number or other personal identifier) on individuals named in business loan files, throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 85–536, 15 U.S.C. 631 *et seq.* (Small Business Act, all provisions relating to loan programs); 44 U.S.C. 3101 (Records Management by Federal Agencies); and Public Law 103–62 (Government Performance and Results Act).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:

a. To the SBA Resource Partner, its successors or assigns, (*i.e.*, participating lender, certified development company, micro lender) who initially collected the individual's information for the purpose of making and servicing loans.

b. To a Congressional office from an individual's record when the office is inquiring on the individual's behalf. The Member's access rights are no greater than the individual's.

c. To the Federal, state, local or foreign agency or organization which investigates, prosecutes, or enforces violations, statues, rules, regulations, or orders issued when an agency identifies a violation or potential violation of law, arising by general or program statute, or by regulation, rule, or order.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To qualified investors who have signed a confidentiality agreement related to review of files for the purpose of evaluating, negotiating and

implementing the purchase of loans from the Agency as a part of the Agency's Asset Sales program.

f. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

g. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

h. To request information from a Federal, State, local agency or a private credit agency maintaining civil, criminal or other information relevant to determining an applicant's suitability for a business loan. This applies to individuals involved in business loans.

i. To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

j. To 7(a) and 504 lenders and/or participating contractors for purposes of the Loan and Lender Monitoring System (L/LMS).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Electronic Records are in a secured server and paper records are in files. Loan files are in a secured area in either locked files or locked file rooms.

RETRIEVABILITY:

Electronic Records: By individual name, personal identifier, SBA Identifier, Participating Lender Identifier, Participating Lender Name, business name, and business identifier.

PAPER RECORDS: BY INDIVIDUAL NAME, PERSONAL IDENTIFIER AND SBA IDENTIFIER.

SAFEGUARDS:

Electronic Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know, and to SBA Resource Partners. Access and use by SBA Resource Partners will generally be via the Internet, with restricted password(s)/passcode(s). SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner.

Information contained in files will be available only to potential asset sale purchasers who have executed a confidentiality agreement. Only SBA employees in the performance of their official duties, who are granted access to the records by Agency issuance of User ID and/or passcode, may amend or review the records.

Paper Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know. SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner. Information contained in loan files will be available only to potential asset sale purchasers who have executed a confidentiality agreement. Only those SBA employees in the performance of their official duties may amend or review the records.

RETENTION AND DISPOSAL:

In accordance with SBA Standard Operating Procedure 00 41 2, Item Nos. 50:04, 50:08, 50:09, 50:10, 50:11, 50:12, 50:13, 50:19, 50:22, 55:02. Records are retained for the life of SBA's interest in the business loan and are disposed of according to the reference in the SOP that pertains to a particular type of record; retention period varies according to the type of record.

SYSTEM MANAGERS AND ADDRESSES:

Associate Administrator for Capital Access, Associate Administrator for Lender Oversight, Associate Administrator for Financial Assistance, Regional Administrators, District Directors, Branch Managers, Loan Service Center Director and Loan Processing Centers Directors. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a written record inquiry to the appropriate Systems Manager or PA Officer.

RECORDS ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING RECORD PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

RECORD SOURCE CATEGORIES:

Subject individuals and businesses, financial institutions, credit reporting agencies, law enforcement agencies and SBA resource partners.

SBA 22

SYSTEM NAME:

Outside Employment Files—SBA 22.

SYSTEM LOCATION:

Headquarters (HQ) and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

SBA employees who have requested permission for outside employment.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Correspondence concerning requests for outside employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To a Congressional office from an individual's record, when office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

b. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of

these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

c. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

d. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By employee name.

SAFEGUARDS:

Access and use limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 Item 2 30.01.

SYSTEM MANAGER(S) AND ADDRESS:

HQ and Field Managers. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Requesting employee and other Agency personnel.

SBA 23

SYSTEM NAME:

Payroll Files—SBA 23.

SYSTEM LOCATION:

Office of Human Capital Management, Headquarters (HQ). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Active and inactive SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Employee name, Social Security Number (SSN), date of birth, grade, step, and salary; organization, retirement and FICA codes and date as applicable; Federal, State and local tax deductions; savings bond and charity deductions; co-owner and/or beneficiary of bonds, insurance deduction and plan or code; cash award data; union dues deductions; type and amount of allotments; financial institution code and account number; status and data on all types of leave; time and attendance records, including breakdown of hours worked; mailing address; marital status and number of dependents; notification of Personnel Actions; unemployment records; register of separations; annual leave restoration; over-payment indebtedness; correspondence from employees concerning payroll.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 6 General Accounting Office (GAO) Policy and Procedures Manual, 31 U.S.C. 285, sections 112(a) and 113 of the Budget and Accounting Procedures Act of 1950 and 5 U.S.C. Chapters 55 through 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To transmit data to U.S. Department of Treasury to effect issuance of paychecks to employees and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes.

c. To the GAO for audit purposes.

d. To Internal Revenue Service and appropriate State and local authorities when reporting tax withholding; FICA deductions to the Social Security Administration; dues deductions to labor unions; withholdings for health insurance to insurance carriers and the Office of Personnel Management; charity contribution deductions to agents of charitable institutions; annual W–2 statements to taxing authorities and the individual.

e. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

f. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services to locate individuals in order to establish paternity and modify orders of child support, identify sources of income, and other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193), SBA will provide the names, SSN, home addresses, dates of birth and hire, quarterly earnings, employer identifying information, and State of hire of employees.

g. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

h. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

i. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By employee name and/or SSN.

SAFEGUARDS:

Physical, technical and administrative security is maintained and admission to record storage areas limited to authorized personnel.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Record Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Human Capital Officer, Headquarters. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer. *See* Appendix A.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject employee, individuals, supervisors, timekeepers, official personnel records, and IRS.

SBA 24

SYSTEM NAME:

Personnel Security Files—SBA 24.

SYSTEM LOCATION:

Office of Inspector General (OIG), Investigations Division, Office of Security Operations (OSO). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Active and inactive SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Active and inactive personnel security files, employee or former employee's name, background information, personnel actions, Office of Personnel Management (OPM) and/or authorized contracting firm background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101, Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To other Federal Agencies, upon request, that are conducting background checks.

c. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in settlement negotiations when presenting evidence.

d. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

e. To the Office of Personnel Management in accordance with that agency's authority to evaluate Federal personnel management.

f. To the Merit Systems Protection Board in connection with its consideration of appeals of personnel actions.

g. To physicians conducting fitness for duty examinations.

h. To any Federal, State, local, foreign or international agency, in connection with their assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent the information is relevant to their decision on the matter.

i. To a grand jury agent pursuant either to a Federal or State grand jury subpoena or to a prosecution request that record be released for introduction to a grand jury.

j. To the Office of Government Ethics for any purpose consistent with their mission.

k. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

l. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

m. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Rotary diebold power files and electronic data systems. OPM National Agency checks that are not immediately referred to OPM are maintained in locked safes.

RETRIEVAL:

By employee name.

SAFEGUARDS:

All file cabinets are locked. Access and use limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

Upon separation of an employee from SBA, OIG/OSO destroys all non-derogatory information, derogatory information is retained by OIG/OSO and transferred to Federal Records Centers (FRC) five years after cutoff (date of separation). After 15 years, FRC destroys the files.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations or designee. *See* Appendix A:

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Inspector General or designee.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

SBA employees, Office of Human Capital Management, witnesses and OPM.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Agency regulations. This exemption is necessary in order to fulfill commitments made to protect the confidentiality of sources and to maintain access to sources necessary in making determinations of suitability for employment.

SBA 25

SYSTEM NAME:

Portfolio Reviews—SBA 25.

SYSTEM LOCATION:

Headquarters (HQ), Disaster Area Offices (DAO) and Disaster Home Loan Service Centers (DHLSC). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Recipients of SBA Disaster Home Loans.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Reports compiled by the Office of Portfolio Review during review of field office loan processing. Disaster Home Loans may be included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the General Accounting Office in the course their review of the Agency.

b. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

c. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the

DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By borrower's name, loan number and Social Security Number.

SAFEGUARDS:

Access and use limited to persons with official need to know to know; personnel screening and computer passwords used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

In accordance with SOP 00 41 2 Item Nos. 95:04 and 95:06.

SYSTEM MANAGER(S) AND ADDRESS:

DAO and DHLSC Managers. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Office of Portfolio Review, Loan Case Files, SBA personnel and field visits to borrowers.

SBA 26

SYSTEM NAME:

Power of Attorney Files—SBA 26.

SYSTEM LOCATION:

Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Insurance agents who have the authority to execute a surety bond.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Records that identify individuals authorized to execute bonds for surety companies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6) and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

b. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

c. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

d. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By agent and broker name.

SAFEGUARDS:

Access and use limited to persons with an official need to know; personnel screening and computer passwords used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

In accordance with SOP 00 41 2 Item No. 50:21.

SYSTEM MANAGER(S) AND ADDRESSES:

Field Office Systems Managers. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a records inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Authorizing surety company.

SBA 27

SYSTEM NAME:

Security and Investigations Files—SBA 27.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Investigations Division, Headquarters duty stations in the field and Federal Record Center (FRC). *See* Appendix for SBA addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Active SBA employees that are subjects of investigations involving alleged administrative violations or irregularities that may warrant administrative disciplinary action. Inactive SBA employees that are subject of Workers' Compensation Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Material gathered or created during preparation for, conduct of and follow-

up on investigations conducted by OIG, the Federal Bureau of Investigation (FBI) and other Federal, State, local or foreign regulatory or law enforcement agencies as well as other material submitted to or gathered by OIG in furtherance of its investigative function. These records include FBI and other Federal, State, local and foreign regulatory or law enforcement investigative reports, personal history statements, background character checks, field investigations, arrest and conviction records, parole and probation data, recommendations and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3 (The Inspector General Act of 1978), 15 U.S.C. Chapters 14A and 14B; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in settlement negotiations when presenting evidence.

c. To any private or governmental source or person to secure information relevant to an investigation or audit.

d. To other Federal conducting background checks, to the extent the information is relevant to their function.

e. To any Federal, State, local, foreign, international, private agency or organization for the hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent the information is relevant to their decision on the matter.

f. To Federal, State or local bar associations and other professional regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries.

g. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

h. To the General Accounting Office (GAO) for periodic reviews of this SBA.

i. To the Office of Government Ethics for any purpose consistent with their mission.

j. To the GAO and to the General Service Administration's Board of Contract Appeals in bid protest cases involving an agency procurement.

k. To any Federal agency which has the authority to subpoena other Federal agencies records and has issued a valid subpoena.

l. To the Department of the Treasury and the Department of Justice (DOJ) when an agency is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

m. To debt collection contractors collecting delinquent authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

n. To a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 701(a)(3)), to obtain information during an investigation or audit.

o. To agency personnel responsible for Program Civil Remedies Act litigation, the tribunal and defendant's counsel.

p. To a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that records be introduced to a grand jury.

q. To the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

r. To the DOJ,to obtain advice regarding FOIA disclosure obligations.

s. To the Office of Management and Budget to obtain that advice regarding PA obligations.

t. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

u. To the DOJ when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

v. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Rotary diebold power files, file cabinets and electronic systems.

RETRIEVAL:

By name and referenced to the number of the IG file(s) containing related material.

SAFEGUARDS:

Records are stored in locked filing cabinets or in filing cabinets located in locked rooms. Access and use limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 Item No.s 90:10 and 90:12. Cut off on separation of employee. OIG destroys records of a non-adverse nature. Records containing adverse information are retained by OIG and transferred to FRC five years after cutoff. Destroy 15 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations or designee. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer. *See* Appendix A.

ACCESS PROCEDURES:

IG or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Subject individual, Agency personnel, informants, the FBI and investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1) Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11), and (i), to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the OIG's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), except as otherwise provided therein, all investigatory material compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information contained in this system of records is exempt from sections 3(c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f) of the PA. 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f). This exemption is necessary in order to protect the confidentiality of sources of information and to maintain access to sources necessary in making determinations of suitability for employment.

SBA 28

SYSTEM NAME:

Small Business Person and Advocate Awards—SBA 28.

SYSTEM LOCATION:

Headquarters (HQ) and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Candidates and winners of the Small Business Person of the Year Awards, Advocate Awards, Minority Small Business Person and Phoenix Award.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Information regarding the candidacy and selection of Small Business Person of the Year, Minority Small Business Person and Advocate of the Year in field offices, applications, biographical summaries, correspondence, recommendations and narratives. The record of Community Development Awards in HQ includes biographical and qualifying information as well as recommendations from field offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the news media for public disclosure of the name, address, and biography of award recipients.

b. To communicate with State and local governments about the status of a particular candidate.

c. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

f. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES, PRACTICES, RETRIEVAL, ACCESS, RETENTION AND DISPOSAL OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By individual name.

SAFEGUARDS:

Access and use limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule 10.8.

SYSTEM MANAGER(S) AND ADDRESS:

Field Office Systems Managers. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORY:

Subject individual, recommendations from individual sponsors, Advisory Council members, Agency personnel, research publications, directories and news media.

SBA 29

SYSTEM NAME:

Standards of Conduct Files—SBA 29.

SYSTEM LOCATION:

Headquarters (HQ), Office of the Inspector General and Field Offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Confidential employment and financial statements of employees Grade 13 and above, Grade 12 Branch Managers and other designated individuals. Ad Hoc Committee decisions and memoranda concerning standards of conduct questions used as precedent for later decisions (HQ only). Correspondence concerning conflicts of interest. List of all SBA employees who have been indicted or convicted in matters involving SBA business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

13 CFR 105 parts 101 and 401.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in settlement negotiations when presenting evidence.

c. To the Office of Personnel Management when requested.

d. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

e. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

f. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

g. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES, PRACTICES, RETRIEVAL, ACCESS, RETENTION AND DISPOSAL OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By employee name and/or Social Security Number.

SAFEGUARDS:

Access strictly limited to those employees with an official need to know; computers secured by passwords and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule 1.1.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Managers. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Confidential statement of employment and financial interests by the employee. Any adverse information could come from other employees or from a member of the general public with specific knowledge of the matter reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), all investigatory material in the record compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfill communications made to protect the confidentiality of sources and maintain access to sources necessary in making determinations of suitability.

SBA 30

SYSTEM NAME:

Servicing and Contracts System/ Minority Enterprise Development Headquarters Reporitory—SBA 30.

SYSTEM LOCATION:

SBA Headquarters and all SBA district offices. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDE:

Applicants and program participants in SBA's 8(a) Business Development program (8(a).

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDE: -

8(a) Business Development program applications, business development working files, business plan files and contract files containing personal and financial information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 100–656, Small Business Act 15 U.S.C. 636, section (j) (Technical and Management Assistance); Public Law 100–656, 15 U.S.C. 637, section 8(a) (Business Development).

PURPOSE:

To collect confidential business and financial information used to determine if applicants and current 8(a) participants are in compliance with statutory and regulatory requirements for continued eligibility for program participation. This information facilitates the Agency in carrying out the functions of the Office of 8(a) Business Development.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:

a. To a Congressional office, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

b. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

c. To the Federal, state, local or foreign agency or professional organization which investigates, prosecutes, or enforces violation or potential violation of law, arising by general or program statute, or by regulation, rule, or order.

d. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

e. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, ACCESS, RETENTION AND DISPOSAL OF RECORDS:

STORAGE:

Electronic database records reside on the SBA secured mainframe system.

RETRIEVAL:

Name of individual and business name.

SAFEGUARDS:

Access and use is limited to persons whose official duties designate such a need; personnel screening by password is used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

In accordance with SACS/MEDHR NI–309–03–4.

SYSTEM MANAGER(S) AND ADDRESS:

PA Officer, Associate Administrator for 8(a) Business Development and the Field Office Systems Manager. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual, who is inquiring whether the System of Records contain information about him or her, may submit a record inquiry either in person or in writing to the PA Officer, Associate Administrator for 8(a) Business Development or, Field Office Systems Manager.

ACCESS PROCEDURES:

PA Officer or Field Office Systems Manager will determine procedures.

CONTESTING PROCEDURES:

Individuals seeking to contest or amend information contained in this system of records should contact the system manager listed above, state the reason(s) for contesting the record and the proposed amendment sought.

RECORD SOURCE CATEGORIES:

Small business concerns who have applied to or are participants in the 8(a) Business Development program.

SBA 31

SYSTEM NAME:

Temporary Disaster Employees—SBA 31.

SYSTEM LOCATION:

Office of Disaster Assistance (ODA): HQ and Field locations. *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have been temporarily employed by the ODA.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Name, address, telephone number, Social Security Number (SSN), Disaster Area, job series, grade and title, dates of employment, reason for termination, supervisor's name and job and summary of supervisor's evaluation. Possible violations of the Agency's Standards of Conduct (13 CFR Part 105) and information, if any, concerning official investigations and disciplinary actions taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:

a. To verify previous employment with SBA when a former employee is considered for reemployment.

b. To locate current or former employees with special skills or

language capabilities needed in specific situations.

c. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

f. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES, PRACTICES, RETRIEVAL, ACCESS, RETENTION AND DISPOSAL OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By name and/or SSN.

SAFEGUARDS:

Access and use limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Records and Archives Administration General Records Schedule 1.10.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator for Disaster Assistance. *See* Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a record inquiry in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Disaster Area Offices.

SBA 32

SYSTEM NAME:

Tort Claims—SBA 32.

SYSTEM LOCATION:

Headquarters (HQ), Field Offices, Disaster Area Offices (DAO) and Federal Records Center (FRC). *See* Appendix A for SBA addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDES:

Government employees and other individuals involved in accidents.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Contains reports on accidents which result in tort claims involving the Government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 42 U.S.C. 3211.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:

a. To the Department of Justice (DOJ) for handling of the suit and the preparation and presentation of the case in the event that a tort claim results in a court suit.

b. To the General Services Administration for reporting on accidents and tort claims.

c. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

d. To a rental car company responsible for personal injuries and property damage.

e. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

f. To the DOJ when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

g. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES, PRACTICES, RETRIEVAL, ACCESS, RETENTION AND DISPOSAL OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

Name of involved individual.

SAFEGUARDS:

Locked cabinets. Access and use limited to persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule 6.10.

SYSTEM MANAGER(S) AND ADDRESS:

Field Office Systems Manager or DAO Director. *See* Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Individuals involved in accident, witnesses, investigation of the accident.

SBA 33

SYSTEM NAME:

Travel Files—SBA 33.

SYSTEM LOCATION:

All SBA offices, Denver Financial Center, Denver and Federal Records Center (FRC). *See* Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Employee travel vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:

a. To the General Accounting Office in the course of an audit of the SBA.

b. To the appropriate Federal, State, local or foreign agency or professional organization which has responsibility for investigating, prosecuting or enforcing violations, statutes rules, regulations or orders issued when the Agency identifies a violation or potential violation of law arising by general or program statute, by regulation, rule or order.

c. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

f. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES, PRACTICES, RETRIEVAL, ACCESS, RETENTION AND DISPOSAL OF RECORDS:

STORAGE:

Paper and electronic files.

RETRIEVAL:

By employee name.

SAFEGUARDS:

Access and use limited to persons with official need to know; computers are protected by passwords and user identification codes.

RETENTION AND DISPOSAL:

Records are maintained according to National Archives and Records Administration's General Record Schedule 6.1.a.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer. *See* Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in person or in writing to the Systems Manager or PA Officer. *See* Appendix A.

ACCESS PROCEDURES:

System Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above, state the reason(s) for contesting it and the proposed amendment sought.

SOURCE CATEGORIES:

Employees Travel Vouchers.

Dated: September 21, 2004.

Delorice P. Ford,

Senior Privacy Act Official, Small Business Administration.

[FR Doc. 04–21670 Filed 9–29–04; 8:45 am]

BILLING CODE 8025–01–P

Federal Register

Thursday,
September 30, 2004

Part III

Election Assistance Commission

Publication of State Plans Pursuant to the Help America Vote Act; Notice

ELECTION ASSISTANCE COMMISSION

Publication of State Plans Pursuant to the Help America Vote Act

AGENCY: Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to section 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to HAVA State plans previously submitted by California, Florida, Kansas, Nevada, Pennsylvania, South Carolina and Tennessee.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual States at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the 50 States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254 (a)(11) through (13). EAC wishes to acknowledge the effort that went into the revising the State plans and encourages public comment. EAC also notes that plans published herein include only those that have already met the notice and comment requirements of HAVA section 256.

Upon the expiration of 30 days from October 30, 2004, the States whose plans are published herein will be eligible to implement any material changes addressed therein, in accordance with HAVA section 254(a)(11)(C). At that time, in accordance with HAVA section 253(d), California, Florida, Kansas and Tennessee also may file a statement of certification to obtain fiscal year 2004 requirements payments for which the State did not previously qualify under HAVA section 253(b)(1). The statement of certification must confirm that the jurisdiction is in compliance with all of the requirements referred to in HAVA section 253(b) and must be provided to the Election Assistance Commission in order for the State to receive a requirements payment under HAVA Title II, Subtitle D.

Chief State Election Officials

California

The Honorable Kevin Shelley, Secretary of State, 1500 11th Street, Sacramento CA 95814–2974, Phone: (916) 653–7244, Fax: (916) 653–4620, e-mail: *hava@ss.ca.gov.*

Florida

The Honorable Glenda E. Hood, Secretary of State, R.A. Gray Building-Room 316, 500 S. Bronough Street, Tallahassee FL 32399–0250, Phone: (850) 245–6500, Fax: (850) 245–6125, e-mail: *secretaryofstate@mail.dos.state.fl.us.*

Kansas

The Honorable Ron Thornburgh, Secretary of State, Memorial Hall—1st Flr., 120 SW., 10th Avenue, Topeka KS 66612–1594, Phone: (785) 296–4575, Fax: (785) 291–3051, e-mail: *election@kssos.org.*

Nevada

The Honorable Dean Heller, Secretary of State, Capitol Building, 101 North Carson Street—Suite. 3, Carson City NV 89701–4786, Phone: (775) 684–5708, Fax: (775) 684–5725, e-mail: *sosmail@govmail.state.nv.us.*

Pennsylvania

The Honorable Pedro A. Cortes, Secretary of the Commonwealth, 302 North Office Building, Harrisburg PA 17120–0029, Phone: (717) 787–6458, Fax: (717) 787–1734, e-mail: *gborger@state.pa.us.*

South Carolina

Ms. Marci Andino, Executive Director, State Election Commission, PO Box 5987, Columbia SC 29250–5987, Phone: (803) 734–9060, Fax: (803) 734–9366, e-mail: *Elections@scsec.state.sc.us.*

Tennessee

Mr. Brook Thompson, Coordinator of Elections, Elections Division, Office of the Secretary of State, 9th Floor, William R. Snodgrass Tower, 312 8th Avenue North, Nashville TN 37243–0309, Phone: (615) 741–7956, Fax: (615) 741–1278, e-mail: *Tennessee.Elections@state.tn.us.*

Thank you for your interest in improving the voting process in America.

Dated: September 23, 2004.

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

BILLING CODE 6820–MP–U

SECRETARY OF STATE **KEVIN SHELLEY**

My Vote Counts: The California Plan for Voting in the 21st Century

HAVA California State Plan 2004 Update

September 2004

Submitted to the Election Assistance Commission After Public Inspection and Comment

Secretary of State Kevin Shelley
hava@ss.ca.gov

myVOTE COUNTS

Help America Vote Act

HAVA CALIFORNIA STATE PLAN 2004 UPDATE

The *HAVA California State Plan 2004 Update* is hereby created as follows:

The *HAVA California State Plan 2003* submitted to the Federal Election Commission, as custodian for the Election Assistance Commission, on August 27, 2003, and thereafter published in the *Federal Register* by the Election Assistance Commission on or about March 24, 2004, entitled *My Vote Counts-California's Plan for Voting in the 21st Century*, is hereby incorporated by reference in its entirety, except the following shall replace the provisions indicated. (The italics are for clarification only.)

1. **Section Six: Budget, beginning on Page 24 of *My Vote Counts-California's Plan for Voting in the 21st Century*, is amended as follows:**

   a. The last paragraph of the portion beginning on Page 24 entitled "Voting Systems Standards" is amended on Page 25 to read as follows:

   Preliminarily, the cost of this component is estimated to be $75,677,843, including costs associated with accessibility for individuals with disabilities and language needs, but actual costs may be less than or more than this amount. In any case, this component shall be the priority in allocating funds.

   b. The last paragraph of the portion beginning on Page 25 entitled "Provisional Voting" is amended on Page 25 to read as follows:

   Preliminarily, the cost of this component is estimated to be $600,000 but actual costs may be less or more, with continuing ongoing costs.

   c. The last paragraph of the portion beginning on Page 25 entitled "Voting Information" is amended on Page 25 to read as follows:

   Preliminarily, the cost of this component is estimated to be $200,000 but actual costs may be less or more with continued ongoing costs.

   d. The last paragraph of the portion beginning on Page 25 entitled "Statewide Database" is amended on Page 26 to read as follows:

Preliminarily, the cost of the statewide database is estimated to be $40 million but actual costs may be less or more, with substantial ongoing costs.

e. The last paragraph of the portion on Page 26 entitled "Requirements for Voters Who Register by Mail" is amended on Page 26 to read as follows:

Preliminarily, the cost of this component is estimated to be $1.1 million but actual costs may be less or more with continued ongoing costs.

f. The last paragraph of the portion beginning on Page 26 entitled "Voter Education" is amended on Page 26 to read as follows:

Preliminarily, the cost of this component is estimated to be $30 million but actual costs may be less or more, with continued ongoing costs.

g. The last paragraph of the portion beginning on Page 26 entitled "Elections Official Education" is amended on Page 26 to read as follows:

Preliminarily, the cost of this component is estimated to be $20 million but actual costs may be less or more, with continued ongoing costs.

h. The last paragraph of the portion beginning on Page 26 entitled "Poll Worker Education" is amended on Page 26 to read as follows:

Preliminarily, the cost of this component is estimated to be $20 million but actual costs may be less or more, with continued ongoing costs.

i. The last paragraph of the portion beginning on Page 26 entitled "Complaint Procedure" is amended on Page 26 to read as follows:

Preliminarily, the cost of this component is estimated to be $300,000 but actual costs may be less or more, with continued ongoing costs.

j. The last paragraph of the portion beginning on Page 27 entitled "Voting Rights of Military And Overseas Citizens is amended on Page 27 to read as follows:

Preliminarily, the cost of this component is estimated to be $200,000 with continued ongoing costs.

k. A paragraph is added on Page 27, following the section titled "Voting Rights of Military And Overseas Citizens" and before the paragraph titled "Summary of Costs And Portions Used to Carry Out Activities," to read as follows:

A "Prudent Reserve Fund" of 25% of the requirements payments for FY 2003 and FY 2004 is created to accommodate uncertainties associated with the costs of complying with HAVA and to provide a minimum level of financial support to fund ongoing federal mandates beyond FY 2005-06.

l. The portion beginning on Page 27 entitled "Summary of Costs and Portions Used to Carry Out Activities," including the chart, is amended to read as follows:

*Based on requirements payments of $94,559,169 for FY 2003 and $169,677,955 for FY 2004 for a total of $264,237,124,[22] the best estimates of the distribution is shown in the chart below, subject to the provisions of the Budget Act of 2004 (Statutes of 2004, Chapter 208), and any appropriate oversight.**

[22] No assumption is made with respect to appropriations made in subsequent years.

1	Voting Equipment Modernization	301(a)(2)	$42,577,718	16.11%
2	Voting Equipment Accessibility for Disabled and Language Minorities	301(a)(3)	$32,500,125 (Items 1 + 2= $75,077,843)	12.30% (Items 1 + 2 = 28.41%)
3	Accessibility for Language Minorities	301(a)(4)	$100,000	.04 %
4	Evaluation of Voting Systems	301(a)(5)	$300,000	.11%
5	Definition of Vote	301(a)(6)	$200,000	.08%
6	Provisional Ballots Regulations/Guidelines	302(a)(6)	$100,000	.04%
7	Provisional Ballots Free Access System	302(a)(5)	$500,000	.19%
8	Postings of Information	302(b)	$200,000	.08%
9	Statewide Voter Registration Database	302(a)	$40,000,000	15.14%
10	New Registration Forms	303(a)	$500,000	.19%
11	Soliciting and Processing Registration Forms	303(a)	$500,000	.19%
12	Verification of Information	303(a)	$2,000,000	.76%
13	Identification of Certain Voters Regulations/Guidelines	303(b)	$100,000	.04%
14	Identification Processes	303(b)	$1,000,000	.38%
15	Complaint Procedures	402	Included in Item 32	
16	Assistance in Voting	702	$200,000	.08%
17	Payment Distribution Controls	254(a)(2)	$200,000	.08%
18	Voter Education Unit	254(a)(3)	$3,900,000	1.48%
19	County Education Programs	254(a)(3)	$15,000,000	5.68%
20	Election Official and Poll Worker Education and Training	254(a)(3)	$25,000,000	9.46%
21	Education Outreach through Print and Electronic Media	254(a)(3)	$16,100,000	6.09%
22	Education and Training Grants	254(a)(3)	$10,000,000	3.78%
23	Certification and Decertification of Voting Systems	254(a)(4)	$600,000	.23%
24	Source Code Review	254(a)(4)	$800,000	.30%
25	Hearings of Voting Systems and Procedures Panel	254(a)(4)	$200,000	.08%
26	Regulations to Comply with Section 301	254(a)(4)	$200,000	.08%
27	Fiscal and Audit Control Processes	254(a)(5)	$600,000	.23%
28	Fiscal and Audit Controls	254(a)(5)	$3,400,000	1.29%
29	Budget	254(a)(6)	Included in Item 28	
30	Enhancing Rather Than Replacing State Resources	254(a)(7)	Included in Item 28	
31	Performance Goals and Measures	254(a)(8)	$200,000	.08%
32	Complaint Procedures	254(a)(9) and Section 402	$300,000	.11%
33	Managing State Plan	254(a)(11)	$300,000	.11%
34	Poll Monitoring	Other	$600,000	.23%
35	Prudent Reserve Fund of 25%	Other	$66,059,281	25.00%
		TOTALS	**$264,237,124**	**100% of $264, 237,124**

*Note that continued ongoing costs are not included and that the costs and portions indicated are subject to change based on the variables indicated earlier. Such anticipated changes, unknown at this time, are deemed to be included in this Plan as if set forth in detail.

2. Section Twelve: Changes to State [Plan] from Previous Fiscal Year, on Page 33 of *My Vote Counts-California's Plan for Voting in the 21st Century*, is hereby amended to read as follows:

SECTION TWELVE: CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR

Section 254(a)(12) Page 75

In the case of a state with a State Plan in effect under this Subtitle during the previous fiscal year, a description of how the Plan reflects changes from the State Plan for the previous fiscal year and how the state succeeded in carrying out the State Plan for such previous fiscal year.

Because of the delay in the creation of the United States Election Assistance Commission, no requirements payment was made to California during the 2003 fiscal year. The 2003 State Plan (the prior fiscal year) was, therefore,

not fully operative. It will become operative, as amended by *the HAVA California State Plan 2004 Update*, in the current fiscal year (2004). The amendments included herein reflect the only material changes in the State Plans between 2003 and 2004.

STATE OF FLORIDA
HAVA PLAN

UPDATE JUNE 2004

As required by the

HELP AMERICA VOTE ACT
OF 2002 (HAVA)

TABLE OF CONTENTS

STATE OF FLORIDA
DEPARTMENT OF STATE

JEB BUSH
Governor

GLENDA E. HOOD
Secretary of State

September 3, 2004

DeForest B. Soaries, Jr., Chairman
Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

Dear Mr. Soaries:

As Chief Election Officer of the State, I am pleased to present the State of Florida's HAVA Plan which has been revised for FY 2004. As indicated in the initial Plan submitted in 2003, Florida has already succeeded in meeting many of the requirements in HAVA. During Florida's Fiscal Year 2003-04, a number of additional requirements were met including the development of performance goals and measures. These are reflected in the revised Plan.

Florida's revised plan was developed through the Help America Vote Act Planning Committee, a group of dedicated individuals representing various constituency groups throughout the State. This Committee developed Florida's original HAVA Plan and agreed to serve again in 2004. Although the Florida Department of State does not necessarily agree with all of the Committee's recommendations and conclusions, I commend the Committee for its continuing hard work and diligence in developing revisions to the Plan.

The revised Plan recognizes that additional resources are required in order for our Supervisors of Elections to provide continuing voter education to the citizens of the State, to recruit qualified poll workers, and to provide the necessary training for those workers. As chief Election Officer, I am committed to working closely with and supporting our Supervisors as we continue to ensure Florida voters have every confidence that their vote counts.

We have accepted the Committee's work without revision, however, we will revise and update the Plan as necessary to reflect the progress made in implementing HAVA and to chart the future goals and plans for elections. We look forward to continuing our election reform efforts to make this state the model for elections reform throughout the nation.

Sincerely,

Glenda E. Hood

Glenda E. Hood

Office of the Secretary
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125 • WWW: http://www.dos.state.fl.us

Introduction

Since the aftermath of the General Election of 2000, Florida has led the nation in its election reform efforts to ensure that every registered voter should have the opportunity to vote and to ensure that every vote counts.

The goal is perfection. Reaching that goal in an ever changing democracy and within a diverse population is an ongoing task that requires constant experimentation and learning. The people and the leadership of Florida have dedicated themselves to this course of action.

The struggle for improving our election process reveals itself in many ways. Citizens have increased their involvement by serving on local and State election task forces, researching new voting technologies, debating new standards for poll worker training, increasing voter education opportunities, and registering new voters. The people of Florida continue to make election reform a top priority.

The leadership of Florida has also acted decisively. Florida has enacted legislative and local reforms during the last two years that lead the nation. These reforms include cutting-edge voting system standards, millions of dollars for new voting technology, expanded voter education efforts, and thousands of newly trained poll workers. A statewide poll taken the day of the 2002 General Election found that Floridians gave high marks to the election reform changes including a 91% "excellent-good" rating for poll workers and an 88% confidence rating from voters that their votes will count. These results are not "perfect," but Florida is moving in a positive direction to make all facets of the election process better each time an election is held.

With the passage and signing of the Help America Vote Act of 2002 (HAVA) on October 29, 2002, election reform will spread throughout the nation. The new federal law asks States to develop election reform plans that will improve election administration in many areas. Florida embraces the new federal law and hopes that other States will use it as an opportunity to share new election reform ideas and practices with one another.

The people of Florida have learned many things about election reform. Yet, there are enduring principles which are reflected within many recommendations and changes of Florida's election reform efforts. These principles were developed by Florida's first task force in the aftermath of the 2000 General Election:

Enduring Principles of Elections

- **Elections are first and foremost acts of millions of individual people: citizens who register and vote; candidates who offer themselves and their platforms for public judgment; poll workers who put in long days at precincts; and election officials who**

supervise the process. Honest, responsible, intelligent people will make most technology systems work well.

- Voting should be a simple, convenient and friendly process that encourages each citizen to express his or her choices.
- Voting systems should be designed to determine voter intent, to the extent that is humanly possible.
- Voting methods for statewide and national elections should meet uniform standards and national standards for fairness, reliability and equal protection of voting opportunity.
- Elections must meet two competing objectives: certainty (making every vote count accurately) and finality (ending elections so that governing can begin).
- While voting should be individual and private, procedures for counting and challenging votes should be open, transparent, and easily documented to ensure public confidence in the results.

Fulfilling the promises of these enduring principles will require continued vigilance and action. With this HAVA Plan, Florida continues its journey to mount an increasingly open and fair system of determining the will of the people.

The Help America Vote Act of 2002 requires all States to develop and implement a statewide plan. Listed below are the thirteen primary elements that must be addressed in the plan.

Help America Vote Act of 2002 (HAVA)
Public Law 107-252 – October 29, 2002

SEC. 254. STATE PLAN.
(a) IN GENERAL.—The State plan shall contain a description of each of the following:

Element 1.
How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Element 2.
How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

Element 3.
How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Element 4.
How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

Element 5.
How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

Element 6.
The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on —

A) The costs of the activities required to be carried out to meet the requirements of Title III;

B) The portion of the requirements payment which will be used to carry out activities to meet such requirements; and

C) The portion of the requirements payment which will be used to carry out other activities.

Element 7.
How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

Element 8.
How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Element 9.
A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

Element 10.
If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Element 11.
How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change —

A) Is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;
B) Is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and
C) Takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

Element 12.
In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Element 13.
A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

Element 1. Use of Title III Requirements Payments:
A. Voting Systems

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Introduction
Following the 2000 General Election, the people of Florida made a concerted effort to improve all facets of its election procedures, standards and voting systems. The first major changes were the recommendations advanced by the 2001 Governor's Select Task Force on Election Procedures, Standards and Technology followed by the passage of the Florida Election Reform Act of 2001. A central component of Florida's new election law mandated the replacement of punch card voting systems, lever machines, paper ballots and central count optical scanning systems with precinct tabulated Marksense voting systems or the Direct Recording Electronic voting systems. The new voting systems were put into service to reduce voter error, to improve tabulation accuracy, and to restore voter confidence in Florida's elections.

Florida has adopted voting system standards which meet and exceed standards established by the Federal Election Commission. Florida's voting system standards are reviewed every two years to determine whether they are adequate and effective in carrying out fair and impartial elections. The Bureau of Voting Systems Certification within the Department of State has statutory authority to adopt rules which establish minimum standards for voting systems purchased and used in Florida. Florida's 67 counties have authority to purchase and to maintain the appropriate certified voting system for their registered voters. Since 2001, the State of Florida has provided $24 million to assist counties in purchasing new certified voting systems.

Only two types of voting systems are certified for use in Florida's 67 counties— Direct Recording Electronic (DRE or "touchscreen") voting systems and Marksense with precinct-based tabulation.

There are three manufacturers who have certified voting systems for use in Florida: Diebold; Elections Systems and Software, Inc. (ES&S); and Sequoia Voting Systems, Inc. (SP). The Diebold system that has been certified by the State of Florida consists of a Global Election Management System Software (GEMS) Voting System consisting of GEMS, Release 1-18-19; one or more AccuVote TS R6 Touch Screen Ballot Station Version 4.3.15D (Windows CE 3.0) devices; one or more AccuVote-OS Optical Scan Tabulators with Firmware Version 1.94w and VLR firmware 13.9; Key Card Tool Version 1.0.1; Voter Card Encoder Version 1.3.2; and optionally one or more AccuFeed units, Revision D or E OS (optical scan) Firmware 1.94w.

The following chart details the types of voting systems used in Florida, the respective manufacturer, and the number of counties using the voting systems.

**DRE Voting Systems ("touchscreen")
And Number of Florida Counties in Use
For Precinct Voting**

DRE VOTING SYSTEM MANUFACTURER	COUNTIES (PRECINCT VOTING)
ES&S Voting System Release 3	6
ES&S Voting System Release 4.2	5
SP AVC Edge Voting System	4
Diebold Election Systems, Inc. 2003 B (Blended) + (Plus Audio)	0
TOTAL	15

**Marksense Voting Systems ("optical scanning")
And Number of Counties in Use
For Precinct and Absentee Voting**

MARKSENSE VOTING SYSTEM MANUFACTURER	COUNTIES (PRECINCT VOTING)	COUNTIES (ABSENTEE VOTING)
Diebold AccuVote ES 2001 B	30	30
ES&S Voting System Release 1.1	2	2
ES&S Voting System Release 2.1	1	1
ES&S Voting System Release 3	4	10
ES&S Voting System Release 3.2	1	1
ES&S Voting System Revised Release 3.1	3	3
ES&S Voting System Release 4.2	3	8
ES&S Optech IIIP Eagle	2	2
ES&S Optech IIIP/Optech IVC	5	5
SP Optech III-P Eagle	1	1
SP AVC Edge Voting System	0	4
TOTAL	52	67

The Help America Vote Act of 2002 (HAVA) establishes new minimum requirements for administering federal elections. These new voting system requirements are found in Title III of the federal law. The new requirements shape the performance and the administration of voting systems. Florida is in compliance with many of these new federal directives and these are addressed in the HAVA State Plan.

Section 301(a) of HAVA requires that Florida's voting systems meet the following requirements by January 1, 2006. Florida will be in compliance with all of these requirements by the federal deadline of January 1, 2006.

Section 301(a) Voting System Standards and Requirements

Section 301(a)(1)(A)(i): Do Florida's voting systems permit the voter to verify in a private and independent manner the votes selected by the voter before the ballot is cast and counted?

Yes, and no further actions are required.
Section 101.5606(1), *Florida Statutes*, states that no voting system in Florida shall be approved by the Department of State unless it "permits and requires voting in secrecy."

Florida Voting System Standards (April 2002) state that "the voter must be able to review the candidate selections, which he or she has made. Prior to the act of casting a ballot, the voter must be able to change any selection previously made and confirm the new selection." (p. 21)

Florida Voting System Standards (April 2002) state that the voting function standards applicable to all Electronic Voter Interfaces must provide "after the initial instructions, which the system requires election officials to provide to each voter, the voter should be able to independently operate the voter interface through the final step of casting a ballot without assistance." (p. 20)

Section 301(a)(1)(A)(ii): Do Florida's voting systems provide the voter with the opportunity in a private and independent manner to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error)?

Yes, and no further actions are required.
Florida Voting System Standards (April 2002) state that "the voter must be able to review the candidate selections, which he or she has made. Prior to the act of casting a ballot, the voter must be able to change any selection previously made and confirm the new selection." (p. 21)

Section 101.5606(12), *Florida Statutes*, requires that electronic voting systems should "permit each voter to change his or her vote for any candidate or upon any question appearing on the official ballot up to the time that the voter takes the final step to register his or her vote and to have the vote computed."

Section 101.5608(2)(b), *Florida Statutes*, requires that "Any voter who spoils his or her ballot or makes an error may return the ballot to the election official and secure another ballot, except that in no case shall a voter be furnished more than three ballots. If the vote tabulation device has rejected the ballot, the ballot shall be considered spoiled and a new ballot shall be provided to the voter unless the voter chooses to cast the rejected ballot. The election official, without examining the original ballot, shall state the possible reasons for the rejection and shall provide

instruction to the voter pursuant to s. 101.5611. A spoiled ballot shall be preserved, without examination, in an envelope provided for that purpose. The stub shall be removed from the ballot and placed in the envelope."

Section 101.5611(1), *Florida Statutes*, requires that the "supervisor of elections shall provide instruction on the proper method of casting a ballot for the specific voting system utilized in that jurisdiction. Such instruction shall be provided at a place which voters must pass to reach the official voting booth."

Section 301(a)(1)(A)(iii): If the voter selects votes for more than one candidate for a single office, do Florida's voting systems: (1) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (2) notify the voter before the ballot is cast and counted of the effect of casting the multiple votes for the office; and (3) provide the voter with the opportunity to correct the ballot before the ballot is cast?

Yes, and no further actions are required.

Section 101.5606(3), *Florida Statutes*, requires voting systems to immediately reject "a ballot where the number of votes for an office or measure exceeds the number which the voter is entitled to cast or where the tabulating equipment reads the ballot as a ballot with no votes cast."

Section 101.5606(4), *Florida Statutes*, requires that systems using paper ballots accept a rejected ballot if the voter chooses to cast the ballot after it has been rejected, but the ballot will record no vote for any office that has been overvoted or undervoted.

Section 101.5608(2)(b), *Florida Statutes*, provides that "Any voter who spoils his or her ballot or makes an error may return the ballot to the election official and secure another ballot, except that in no case shall a voter be furnished more than three ballots. If the vote tabulation device has rejected the ballot, a ballot shall be considered spoiled and a new ballot shall be provided to the voter unless the voter chooses to cast the rejected ballot. The election official, without examining the original ballot, shall state the possible reasons for the rejection and shall provide instruction to the voter pursuant to s. 101.5611. A spoiled ballot shall be preserved, without examination, in an envelope provided for that purpose. The stub shall be removed from the ballot and placed in an envelope."

Section 101.5611(1), *Florida Statutes*, requires that the "supervisor of elections shall provide instruction on the proper method of casting a ballot for the specific voting system utilized in that jurisdiction. Such instruction shall be provided at a place which voters must pass to reach the official voting booth."

Florida Voting System Standards (April 2002) state that "the system must prevent the voter from over voting any race." In addition, "there must be a clear, identifiable action, which the voter takes to 'cast' the ballot. The system must make clear to the voter how to take this action, such

that the voter has minimal risk of taking the action accidentally, but when the voter intends to cast the ballot, the action can be easily performed." (p. 21)

Florida Voting System Standards (April 2002) state that "Marksense systems shall reject blank ballots and ballots with overvoted races. Electronic voter interfaces shall prevent a voter from overvoting a race, and shall provide a means of indicating, to the voter, any races that may have been undervoted before the last step necessary to cast the ballot." (p. 22)

Section 301(a)(1)(B): Does Florida's mail-in absentee and mail-in ballot process meet the requirements of subparagraph (A)(iii) by: (I) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple ballots for an office; and (II) providing the voter instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)?

Yes, and no further actions are required.

The Florida Legislature has amended Section 101.65, *Florida Statutes*, to require the instructions for absentee voters to include the following language:

Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one candidate, your vote in that race will not be counted.

In addition, Rule 1S-2.032, *Florida Administrative Code (F.A.C.)*, (Uniform and General Election Ballot Design) instructs all voters on how to correct their ballots and how to request a replacement ballot if the voter is unable to change or correct the original ballot.

Instructions on how to correct the error through issuance of a replacement ballot are:
If you make a mistake, don't hesitate to ask for a new ballot. If you erase or make other marks, your vote may not count.

The HAVA Planning Committee also suggested that absentee voters should be given clear notification that the deadline for submitting absentee ballots is by 7:00 p.m. of election night and that mailing the ballot may not ensure that it will arrive in time to be counted.

Section 301(a)(1)(C): Does Florida's absentee and mail-in ballot process preserve the privacy of the voter and the confidentiality of the ballot?

Yes, and no further actions are required.
Section 101.65, *Florida Statutes*, requires supervisors of elections to enclose with each absentee ballot a separate printed instruction form, a secrecy envelope, a Voter's Certificate and a mailing envelope. The instructions provide the following guidelines:

- Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.
- Place your ballot in the enclosed secrecy envelope.
- Insert your secrecy envelope into the enclosed mailing envelope which is addressed to the supervisor.

Section 101.68(2)(d), *Florida Statutes*, contains a detailed policy and procedure instructing the local canvassing boards in the manner of handling absentee ballots to ensure that the confidentiality of the ballot is maintained.

Section 301(a)(2)(A): Do Florida voting systems produce a record for audits?

Section 301(a)(2)(B): Do the voting systems produce a permanent paper record with a manual audit capacity?

Section 301(a)(2)(C): Is the paper record produced in subparagraph (A) available as an official record for any recount conducted with respect to any election in which the system is used?

Yes, and no further actions are required.
The HAVA Planning Committee determined through research conducted by staff, through testimony offered by Congressional staff, and through testimony given by staff from the Division of Elections that Florida complies with the HAVA audit requirement. Florida voting system standards require DRE machines to maintain a random sorted file of ballot images for every vote cast, and they also have to maintain detailed logs for each election from the time they are first programmed for an election until the results are copied to archival media. Certified voting systems in Florida are required to print out a paper tape of summary totals in each precinct. The paper record is produced to reconcile the consolidated totals for the county in the event of a recount.

Staff from the Division of Elections testified before the HAVA Planning Committee that Florida's State and local security measures make it highly unlikely any tampering could take place with the voting systems. In addition, staff also testified that Florida's certified voting

systems are tested in public forums for logic and accuracy before the election. There are also thorough procedural and security controls in place at the local level to safeguard against someone tampering with the voting systems. The Division of Elections' staff cited Rule 1S-2.015(5)(m)3.a., *F. A. C.*, relating to minimum election security procedures which requires the "printing of precinct results and results from individual tabulating devices" for every election. In addition, the Florida Legislature has authorized the Department of State to promulgate rules which would require supervisors to check those paper totals against electronic totals during machine recounts. The following statutes and rules lay the groundwork for Florida's ability to comply with the audit requirements of HAVA:

Section 101.015(5)(a), *Florida Statutes*, requires the Department of State to adopt rules which establish standards for voting systems, including audit capabilities.

Section 101.5606(11 & 13), *Florida Statutes*, requires the Department of State to approve only voting systems that are capable of automatically producing precinct totals in printed, marked, or punched form or a combination thereof. The voting systems must be capable of providing records from which the operating system of the voting system may be audited.

Florida Voting System Standards (April 2002) provide general functional requirements of voting systems which "shall include the capability to produce records, generated by the system components, or in some cases, by the system operators from which all operations may be audited. Except for the storage of vote images, which shall be maintained in a random sequence, the records shall be created and maintained in the sequence in which the operations were performed." (pp. 16-17)

Florida Voting System Standards (April 2002) require precinct count systems to provide a means for obtaining a printed report of the votes counted on each voting device, and to provide a means for extracting this information to a transportable memory device or data storage medium. (p. 23)

Florida Voting System Standards (April 2002) require the generation of reports by the system to be performed in a manner which does not erase or destroy any ballot image, parameter, tabulation or audit log data. The system shall provide a means for assuring the maintenance of data integrity and security for a period of at least 22 months after the closing of the polls. (p. 24)

Section 102.166(5)(d), *Florida Statutes*, requires the Department of State to adopt detailed rules prescribing additional manual recount procedures for each certified voting system which shall be uniform to the extent practicable. The rules shall address, at a minimum, the following areas:

- Security of ballots during the recount process
- Time and place of recounts
- Public observance of recounts

- Objections to ballot determinations
- Record of recount proceedings
- Procedures relating to candidate and petitioner representatives

Section 301(a)(3)(A): Does Florida have certified voting systems for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters?

Section 301(a)(3)(B): Does Florida meet the requirement in subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place?

Partially meets, and further actions are required.
In 2001, the Secretary of State appointed a task force to conduct a comprehensive review of Florida's election laws and procedures. The task force recommended legislation to insure that Florida's voters with disabilities could fully exercise their right to a secret ballot, as guaranteed by Florida's Constitution. Many of the recommendations of the task force were passed by the Legislature and signed into law by Governor Bush in 2002 and are found in Chapter 2002-281, *Laws of Florida*. Several sections of the law, including sections setting forth specific standards that voting systems must meet, did not become effective immediately, however. They were made contingent on further appropriations by the Legislature, in expectation of the receipt of federal funding as now provided in HAVA.

HAVA requires that all voting systems be accessible to persons with disabilities by January 1, 2006, but does not specifically define what is required to accomplish this. HAVA's definition of what constitutes a voting system, however, found in Section 301(b), is comprehensive. Florida has already done the difficult and time consuming work of defining what makes a Florida voting system accessible for persons with disabilities and these standards are found in Chapter 2002-281, *Laws of Florida*. However, as noted above, many sections are not currently in effect. Some slight additional changes to Florida law will need to be made to include provisional ballots, which HAVA requires to be accessible, within Florida's accessibility requirements.

Not only has Florida already enacted much of the required accessibility reforms required by HAVA, but the intent of the Legislature to comply fully with Federal requirements is clearly set out in statute. Section 101.56063, *Florida Statutes*, provides that:

> It is the intent of the Legislature that this state be eligible for any funds that are available from the Federal Government to assist states in providing or improving accessibility of voting systems and polling places for persons having a disability. Accordingly, all state laws, rules, standards, and codes governing voting systems and polling place accessibility must be maintained to ensure the state's eligibility to receive federal funds. It is the intent of the Legislature that all state requirements meet or exceed the minimum federal requirements for voting systems and polling place accessibility.

In addition to the above, Florida must take steps now in the certification and system procurement processes to insure that it is able to meet the HAVA requirements in time. HAVA requires that voting systems themselves, not just Florida law, must meet the accessibility requirements by January 1, 2006. The HAVA Planning Committee heard testimony from Division of Elections' staff who cautioned that Florida cannot compel any voting systems vendor to bring equipment to the State for certification. Staff testimony further noted that the lack of available certifiable equipment has been a significant problem in the past that continues to the present. With the proper incentives for vendors and tools for counties to require compliance with accessibility standards, Florida will be able to comply with HAVA requirements by January 1, 2006.

Accordingly, the HAVA Planning Committee recommends that the Division, beginning immediately, require that all new certified voting systems comply with the requirements of Section 101.56062, *Florida Statutes*. Further, any purchase of a voting system by a governmental entity after July 1, 2004 should be required to include a contract for future upgrades and sufficient equipment to meet the requirements of Section 101.56062 and Section 101.5606, *Florida Statutes*. Finally, all voting systems in use as of January 1, 2006, should be required to be both certified to meet, and be deployed in a configuration that meets, the requirements of Section 101.56062 and Section 101.5606, *Florida Statutes*.

The Florida Legislature during the 2004 Session triggered the accessibility standards found in Chapter 2002-281 by making HAVA funds available to counties through the Department of State. The language is as follows:

From the funds in Specific Appropriation 28711, $11,600,000 shall be distributed by the Department of State to county supervisors of elections for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for disability requirements which is accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place.

The funds are to be distributed according to the number of machines that are accessible for persons with disabilities that are needed in order for each county to have one per polling place. No supervisor of elections shall receive any funds until the county supervisor of elections certifies to the Department of State: 1) the number of precincts in the county; 2) the number of polling places in the county; 3) the number of voting machines the county has that meet the disability requirement; 4) the county's plan for purchasing the DRE's; and 5) the date that the county anticipates being in compliance. The Department of State will determine the number of DRE's needed in each county based on the certifications provided by the supervisors of elections. Any county that receives funds from Specific Appropriation 28711 that is not in compliance with the accessibility requirements in Section 301(a)(3) Title III of the Help America Vote Act by January 1, 2006, shall be required to return those funds to the State.

The HAVA Planning Committee encourages the Legislature to continue to support accessible voting for persons with disabilities by mandating that provisional ballots for voters with disabilities shall be provided to them by a system that meets the requirements of Section 101.56062, *Florida Statutes*, by January 1, 2006.

The HAVA Planning Committee encourages the Legislature to continue to support accessible voting for persons with disabilities by enacting a HAVA Implementation Bill which immediately requires:

A. All electronic and electromechanical voting systems certified by the State must meet the requirements of Section 101.56062, *Florida Statutes*, (except subsection (1)(d), which is exempted in the statute);

B. Any purchase of a voting system by any county, municipality or by the State must include a contract for future upgrades and sufficient equipment to meet the requirements of Section 101.56062 and Section 101.5606, *Florida Statutes*; and

C. All electronic and electromechanical voting systems in use on or after January 1, 2006 must be certified to meet and be deployed in a configuration which meets the requirements of Section 101.56062 and Section 101.5606, *Florida Statutes*.

The HAVA Planning Committee also discussed polling place accessibility even though this topic is not required to be addressed in the HAVA plan. It was noted that the State of Florida has taken the initiative to contract with the Disability Relations Group to help it comply with HAVA. In addition, the Division of Elections has applied for polling place accessibility funding with the U.S. Department of Health and Human Services. The Division of Elections has been awarded two grants in the amount of $687,278 and of $492,941.

Several members of the HAVA Planning Committee also noted there is a sense of urgency to bring polling places into compliance. One Committee member referred to a recent United States Supreme Court decision that requires government to comply with the Americans With Disabilities Act. The HAVA Planning Committee recommended that the State of Florida address the polling place issue quickly by asking the Governor to provide emergency funding to bring polling places into ADA compliance.

Section 301(a)(3)(C): Will Florida purchase voting systems with funds made available under Title II on or after January 1, 2007, that meet the voting system standards for disability access (as outlined in this paragraph)?

Yes, and no further actions are required.

Section 301(a)(4): Does Florida have certified voting systems that provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a)?

Yes, and no further actions are required.
In order to be certified for use in Florida, DRE voting systems must provide alternative language accessibility for all interfaces in order to meet the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa through 1a). Florida Voting System Standards (April 2002) require that all configurations must support all voter interface functions in at least the following languages: English, Spanish, and Haitian Creole. (p. 22)

Counties using Marksense voting systems must meet the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa through 1a) by printing ballots in the required languages.

Section 301(a)(5): Does Florida have certified voting systems that comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Elections Commission which are in effect on the date of the enactment of this Act?

Yes, and no further actions are required.
Florida Voting System Standards (April 2002) contain voting system accuracy standards which exceed the error standards established by the Federal Elections Commission. (pp. 35-36)

Section 301(a)(6): Has Florida adopted uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting systems used in the State?

Yes, and no further actions are required.
Section 102.166(5)(a), *Florida Statutes*, states that "a vote for a candidate or ballot measure be counted if there is a clear indication on the ballot that the voter has made a definite choice."

Section 102.166(5)(b), *Florida Statutes*, requires the Department of State to "adopt specific rules for each certified voting system prescribing what constitutes a 'clear indication on the ballot that the voter has made a definite choice.' The rules may not:

1. Exclusively provide that the voter must properly mark or designate his or her choice on the ballot; or
2. Contain a catch-all provision that fails to identify specific standards, such as 'any other mark or indication clearly indicating that the voter has made a definite choice.'"

Rule 1S-2.027, *F. A. C.*, entitled "Clear Indication of Voters Choice on a Ballot" provides specific standards for determining votes on optical scan ballots.

Element 1. Use of Title III Requirements Payments: B. Provisional Voting and Voting Information

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Section 302(a) Provisional Voting Requirements
The Help America Vote Act of 2002 (HAVA) requirements for provisional voting state that if an individual declares that he or she is a registered voter in the jurisdiction in which they are attempting to vote but their name does not appear on the official list of eligible voters, they are to be permitted to cast a provisional ballot.

Section 302(a)(1) Do Florida's election laws require election officials at the polling place to notify individuals that they may cast a provisional ballot?

Yes, and no further actions are required.
Section 101.031(2), *Florida Statutes*, states that the supervisor of elections in each county shall have posted at each polling place in the county the Voter's Bill of Rights and Responsibilities. Included in the Voter's Bill of Rights is the right of each registered voter to cast a provisional ballot, if his or her registration is in question.

The Division of Elections' Polling Place Procedures Manual instructs poll workers to read informational signs that appear in print on the walls of the polling place and to offer magnifying sheets for visually impaired voters.

In addition, modifications to Section 101.043(3), *Florida Statutes*, were included in Chapter 2003-415, *Laws of Florida*, which was effective January 1, 2004. This change provided that certain first-time voters would be allowed to vote a provisional ballot.

Section 302(a)(2) Do Florida's election laws state that any person attempting to vote whose name does not appear on the official list of eligible voters be permitted to cast a provisional ballot at the polling place upon the execution of a written affirmation by the individual that they are: (A) a registered voter in the jurisdiction in which the individual desires to vote; and (B) eligible to vote in that election.

Yes, and no further actions are required.
Section 101.048(1), *Florida Statutes*, states that any voter claiming to be properly registered and eligible to vote, but whose eligibility cannot be determined, will be given a provisional ballot. A Provisional Ballot Voter's Certificate and Affirmation must be completed by the individual casting a provisional ballot indicating that they are registered to vote and are a qualified voter of

the county in which they are attempting to vote, and that they have not previously voted in the election.

In addition, according to Section 101.048(2), *Florida Statute*, if it is determined that the person voting the provisional ballot was not registered or entitled to vote at the precinct where the person cast a vote in the election, the provisional ballot shall not be counted and the ballot shall remain in the envelope containing the Provisional Ballot Voter's Certificate and Affirmation and the envelope shall be marked "Rejected as Illegal."

Currently, in Florida, in order for provisional ballots to count they must be cast in the precinct in which the voter is registered. This means that votes for President, U.S. Senate or other statewide officials such as Governor and Attorney General, would not be counted if a voter cast a provisional ballot at a wrong precinct.

Under HAVA, Section 302 requires: If an individual states that [s/he] is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place...such individual shall be permitted to cast a provisional ballot...

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation ...stating that the individual is—

(A) a registered voter in the jurisdiction in which the individual desired to vote; and

(B) eligible to vote in that election.

HAVA does not define jurisdiction, but the National Voter Rights Act (NVRA) defines jurisdiction for federal purposes as the largest geographic area governed by a unit of government (municipality or larger) that performs all the functions of a voting registrar. The HAVA Planning Committee concludes that the provisional ballot set forth in HAVA reinforces protections that the NVRA affords voters who move within the registrar's jurisdiction without updating their registration information, the ability to vote. The HAVA Planning Committee would like to offer Florida voters this same certainty and recommends to the Florida Legislature that the meaning of the term "jurisdiction" in Florida Statutes be changed from "precinct" to "county."

Section 302(a)(3) Do Florida's election laws require a completed provisional ballot be given to an appropriate State or local election official to determine whether the individual is eligible under State law to vote?

Yes, and no further actions are required.

Section 101.048(1), *Florida Statutes*, states that all provisional ballots are placed in a secrecy envelope and then sealed in a provisional ballot envelope. All provisional ballots shall remain sealed in their envelopes for return to the supervisor of elections.

Section 101.048(2)(a), *Florida Statutes*, states the county canvassing board shall examine each provisional ballot envelope to determine if the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election and that the person had not already cast a ballot in the election.

Section 302(a)(4) Is the provisional ballot counted if the appropriate State or local election official determines the individual is eligible under State law to vote?

Yes, and no further actions are required.
Section 101.048(2)(b)1, *Florida Statutes*, states that if it is determined that the person was registered and entitled to vote at the precinct where the person cast a ballot, the canvassing board will compare the signature on the provisional ballot envelope with the signature on the voter's registration record and, if it matches, will count the ballot.

Section 302(a)(5)(A) Are the individuals who cast a provisional ballot given written information that states that any individual who casts a provisional ballot will be able to ascertain whether the vote was counted and, if not, the reason that the vote was not counted?

Yes, and no further actions are required.

Section 101.048(5)(6), *Florida Statutes*, provides that each person casting a provisional ballot shall be given written instructions and information on how to determine whether their vote was counted.

Section 302(a)(5)(B) Has the appropriate State or local election official established a free access system to provide this information to individuals casting provisional ballots?

Yes, and no further actions are required.

Section 101.048(5)(6), *Florida Statutes*, requires each supervisor of elections to establish a free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why.

Section 101.048, *Florida Statutes*, states:
(5) Each person casting a provisional ballot shall be given written instructions regarding the free access system established pursuant to subsection (6). The instructions shall contain information

on how to access the system and the information the voter will need to provide to obtain information on his or her particular ballot. The instructions shall also include the following statement: "If this is a primary election, you should contact the supervisor of elections' office immediately to confirm that you are registered and can vote in the general election."

(6) Each supervisor of elections shall establish a free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why. Information regarding provisional ballots shall be available no later than 30 days following the election. The system established must restrict information regarding an individual ballot to the person who cast the ballot.

It is recommended that each county, as a minimum, provide to voters who cast provisional ballots written notification by mail informing them of whether their ballot was counted and, if not, why it was not counted. Supervisors of elections are also strongly encouraged to develop a toll-free number or access to this information via the Internet.

Each supervisor of elections has established the free access system for their county.

Section 302(a)(5)(B) Has the appropriate State or local official established procedures to protect the security, confidentiality and integrity of the personal information collected and stored by the free access system, restricting access to the individual who cast the ballot?

Yes, and no further actions are required.

Section 101.048, *Florida Statutes*, requires the free access system established by the supervisors of elections to restrict access to information regarding an individual ballot to the person who cast the ballot.

Section 302(b) Voting Information Requirements
HAVA requirements for voting information state that the appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

Section 302(b)(2)(A) Is a sample version of the ballot that will be used for that election posted?

Yes, and no further actions are required.
Section 101.20, *Florida Statutes*, states that two sample ballots shall be furnished to each polling place by the officer whose duty it is to provide official ballots. The sample ballots shall be in the form of the official ballot as it will appear at the polling place on election day. Sample ballots shall be open to inspection by all electors in any election.

Section 302(b)(2)(B) Is information regarding the date of the election and the hours during which polling places will be open posted on election day?

Yes, and no further actions are required.
Information such as the hours of operation of polling places and the date of the election are provided on instructional cards and sample ballots. Section 101.031, *Florida Statutes*, requires the Department of State, or in case of municipal elections the governing body of the municipality, to print, in large type on cards, instructions for the electors to use in voting. Each supervisor of elections shall send a sufficient number of these cards to the precincts prior to an election. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary.

Currently, all cards that are posted in polling places include the hours the polls will be opened.

Section 101.20(1), *Florida Statutes*, states that two sample ballots shall be furnished to each polling place by the officer whose duty it is to provide official ballots. Sample ballots shall be open to inspection by all electors in any election, and a sufficient number of reduced-size ballots may be furnished to election officials so that one may be given to any elector desiring same.

Currently, all sample ballots posted in polling places include the date of the election.

Section 302(b)(2)(C) Are instructions on how to vote, including how to cast a vote and how to cast a provisional ballot posted on election day?

Yes, and no further actions are required.

Section 101.031, *Florida Statutes*, states the Department of State, or in case of municipal elections the governing body of the municipality, shall print, in large type on cards, instructions for the electors to use in voting. It shall provide not less than two cards for each voting precinct for each election and furnish such cards to each supervisor upon requisition. Each supervisor of elections shall send a sufficient number of these cards to the precincts prior to an election. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary.

In addition, Section 101.5611, *Florida Statutes*, states the supervisor of elections shall provide instruction at each polling place regarding the manner of voting with the system. The supervisor of elections shall provide instruction on the proper method of casting a ballot for the specific voting system utilized in that jurisdiction.

During the 2002 legislative session, Senate Bill 1350 was passed amending Section 97.026, *Florida Statutes*, and stated that all forms required to be used in chapters 97 through 106 shall be made available upon request, in alternative formats. Although this statute is not in effect during the development of this Plan, the Department produces forms in alternative formats upon request.

The Division of Elections has updated and reprinted the posters that provide instructions to voters which will be displayed at each polling place on election day. These posters have been distributed to all 67 counties. The posters have been updated to inform voters when they would need to vote a provisional ballot as well as providing instructions on how to cast a provisional ballot. A copy of each version of the poster (touch screen and optical scan) in English and Spanish is included in Appendices A-D. In Miami-Dade and Broward counties, the posters are printed in English, Spanish and Creole.

Included in the new instructions: *If you need instructions on how to use the voting equipment ask a poll worker to assist you. After you have been given instructions, the officer assisting you will leave so that you can cast your vote in secret.*

For touch screen systems: *When you are finished voting your ballot, be sure to press the VOTE or CAST BALLOT button to cast your vote.*

For optical scan systems: *When you are finished marking you ballot, take your ballot and put it into the precinct tabulator.*

If your eligibility is questioned or you are a first-time voter who registered by mail and do not have a photo ID, you will be allowed to vote a provisional ballot. Once you have marked this paper ballot, place it in the envelope provided to you and fill out the Voter's Certificate on the back of the envelope. Your ballot will be presented to the County Canvassing Board for a determination as to whether your ballot will be counted.

Section 302(b)(2)(D) Are instructions for mail-in registrants and first-time voters under section 303(b) posted on election day?

Yes, and no further actions are required.

Under Section 101.031(1), *Florida Statutes*, the Department of State is required to print, in large type on cards, instructions for the electors to use in voting. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary. The cards must also include the list of rights and responsibilities afforded to Florida voters.

The Division of Elections has updated and reprinted the posters that provide instructions to voters and are displayed at each polling place on election day. These posters have been distributed to all 67 counties. The posters have been updated to include instructions for mail-in registrants and first-time voters. A copy of each version of the poster (touch screen and optical scan) in English and Spanish is included as Appendices A-D. In Miami-Dade and Broward counties, the posters are printed in English, Spanish and Creole.

The new instructions state: *If you are a first-time voter who registered by mail and have not already provided identification to the supervisor of elections, you must provide a photo ID with signature. If you do not have the proper ID, you are allowed to vote a provisional ballot.*

Section 302(b)(2)(E) Is general information on voting rights, including information on the right of an individual to cast a provisional ballot posted on election day?

Yes, and no further actions are required.
Section 101.031(2), *Florida Statutes*, requires the supervisor of elections in each county to have posted at each polling place the Voter's Bill of Rights and Responsibilities. The Voter's Bill of Rights states that each registered voter in this State has the right to:

1. Vote and have his or her vote accurately counted.
2. Cast a vote if he or she is in line at the official closing of the polls in that county.
3. Ask for and receive assistance in voting.
4. Receive up to two replacement ballots if he or she makes a mistake prior to the ballot being cast.
5. An explanation if his or her registration is in question.
6. If his or her registration is in question, cast a provisional ballot.
7. Prove his or her identity by signing an affidavit if election officials doubt the voter's identity.
8. Written instructions to use when voting, and, upon request, oral instructions in voting from elections officers.
9. Vote free from coercion or intimidation by elections officers or any other person.
10. Vote on a voting system that is in working condition and that will allow votes to be accurately cast.

Section 302(b)(2)(E) Is contact information posted for voters who allege their rights have been violated?

Yes, and no further actions are required.

Under Section 101.031(1), *Florida Statutes*, the Department of State is required to print, in large type on cards, instructions for the electors to use in voting. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information

about how to vote and such other information as the Department of State may deem necessary. The cards must also include the list of rights and responsibilities afforded to Florida voters.

The Division of Elections has updated and reprinted the Voter's Bill of Rights posters that provide voters with a list of their rights as registered voters. These posters are displayed at each polling place on election day and have been distributed to all 67 counties. The posters have been updated to provide voters with contact information if they believe their voting rights have been violated. A copy of the poster in English and Spanish is included as Appendices E and F. In Miami-Dade and Broward counties, the posters are printed in English, Spanish and Creole.

The specific instruction states: *You may have other voting rights under state and federal laws. If you believe your voting rights have been violated, please contact Florida Department of State, Division of Elections, 1-877-868-3737.*

In the next reprint of these posters, the Division of Elections will modify the instructions to indicate that the number to call (1-877-868-3737) is a toll-free number.

Section 302(b)(2)(F) Is information on laws regarding prohibitions on acts of fraud and misrepresentation posted?

Yes, and no further actions are required.
Section 101.5611(2), *Florida Statutes*, requires the supervisor of elections to have posted at each polling place a notice that reads: "A person who commits or attempts to commit any fraud in connection with voting, votes a fraudulent ballot, or votes more than once in an election can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years."

Section 302(c) Are individuals who vote in an election as a result of a court order or any other order extending the time established for closing the polls by a State law required to cast a provisional ballot? This provisional ballot must be separated and held apart from other provisional ballots cast by those not affected by the order.

Yes, and no further actions are required.

Section 101.049, *Florida Statutes*. permits, under special circumstances, any person voting in an election after the regular poll-closing time pursuant to a court or other order extending the statutory polling hours to vote a provisional ballot. Once voted, the provisional ballot shall be placed in a secrecy envelope and sealed in a provisional ballot envelope. All such provisional ballots will remain sealed and transmitted to the supervisor of elections separate and apart from all other ballots. The supervisor shall ensure that late-voted provisional ballots are not commingled with other ballots.

Section 302(d) The effective date for complying with the Provisional Voting and Voting Information requirements is on and after January 1, 2004.

The Provisional Voting and Voting Information Requirements was completed as required by HAVA on January 1, 2004.

Element 1. Use of Title III Requirements Payments:
C. Voter Registration

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Introduction

The Help America Vote Act of 2002 (HAVA) establishes minimum requirements for a single, centralized, computerized statewide voter registration list and for mail registration as a part of establishing and maintaining such a list.

The effective and efficient administration of elections depends in a major way on the completeness and accuracy of voter registration lists that can be checked quickly and reliably by election workers. Section 303(a) of HAVA establishes minimum requirements for a "single, uniform, official, centralized, interactive, computerized, statewide voter registration list which shall be the single system for storing and managing the list of registered voters throughout the state for the conduct of all federal elections."

Because many voters register by mail instead of in person, the procedures used for mail registration are an important component of establishing and maintaining a complete and accurate statewide voter registration list. Section 303(b) of HAVA requires that a state's mail voter registration system be administered in a "uniform and nondiscriminatory manner" and establishes minimum requirements for such a system.

Until recently, Florida's voters have relied primarily on voter registration lists established and maintained by independent supervisors of elections in each of Florida's 67 counties.[1] These lists are governed by Florida law that specifies qualifications to register or vote, a registration oath, a uniform statewide voter registration application form, acceptance of applications by supervisors of elections, closing of registration books, late registration, declinations to register, special registration for electors requiring assistance, registration identification card, disposition of applications and procedures for cancellation, notices of changes of address, and operation of registration offices. See Sections 97.032 through 97.055, 97.0585 through 97.105, 98.015 through 98.095, and 98.101 through 98.491, *Florida Statutes*.

Additional requirements for establishing and maintaining voter registration lists were enacted in the Federal Voting Rights Act of 1965 and the National Voter Registration Act of 1993 ("Motor Voter Law"). Sections 97.057 through 97.0583, *Florida Statutes*, and other provisions of Florida

[1] A permanent single voter registration system for each Florida county, used for all public elections in that county, improved on practices in early Florida history of requiring separate registrations for municipal elections and new registrations for each new election. See Section 97.105, *Florida Statutes*.

law implemented those Federal laws in the State by providing for registration of voters by the Department of Highway Safety and Motor Vehicles, voter registration agencies,[2] and qualifying educational institutions.

In 1997, the Florida Legislature established a "central voter file" in the Division of Elections that contained voter registration information from all counties. Section 98.097, *Florida Statutes*.

Following the 2000 General Election, the Florida Legislature enacted the Florida Election Reform Act of 2001 that took additional steps to require complete and accurate voter registration lists in the counties and to establish a statewide voter registration database. Sections 98.0977 through 98.0979, *Florida Statutes*, authorized the Department of State to "...analyze, design, develop, operate, and maintain a statewide, on-line voter registration database and associated website, to be fully operational statewide by June 1, 2002. The database shall contain voter registration information from each of the 67 supervisors of elections in this state and shall be accessible through an Internet website. The system shall provide functionality for ensuring that the database is updated on a daily basis to determine if a registered voter is ineligible to vote for any of the following reasons, including, but not limited to:

(a) The voter is deceased;

(b) The voter has been convicted of a felony and has not had his or her civil rights restored; or

(c) The voter has been adjudicated mentally incompetent and his or her mental capacity with respect to voting has not been restored.

The database shall also allow for duplicate voter registrations to be identified."

This statewide database was established in time for use in the 2002 General Elections. Requirements for pre-clearance by the U.S. Department of Justice (DOJ) and negotiations for settlement of a lawsuit by the NAACP delayed use of parts of the database concerning eligibility of voters identified as potentially ineligible because of a felony conviction or adjudication of mental incapacity. With the receipt of DOJ clearance and settlement of the lawsuit now accomplished, the Division of Elections has begun running matches.

[2] A "voter registration agency" is defined by Section 97.012(37), *Florida Statutes*, as "...any office that provides public assistance, any office that serves persons with disabilities, any center for independent living, or any public library."

Section 303(a) Computerized Statewide Voter Registration List Requirements

Section 303(a)(1)(A)(i)-(vii) and 303(a)(2): Does Florida's existing statewide database meet requirements for implementing and maintaining a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State and includes information specified in HAVA?

No, and further actions are required.
Florida has made great strides in recent years in establishing a centralized, computerized statewide voter registration database but that database does not meet the requirements of HAVA Section 303(a)(1)(A) for a single statewide voter registration list "...defined, maintained, and administered at the State level...[with] a unique identifier [assigned] to each legally registered voter in the State..." which serves, under HAVA Section 303(a)1)(A)(vii), as "...the official voter registration list for the conduct of all elections for Federal office in the State." HAVA Section 303(a)(1)(A)(i) further defines this requirement by specifying that "The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State." HAVA Section 303(a)(1)(A) also specifies that the chief State election official (in Florida the Secretary of State) shall implement and maintain the single statewide voter registration list.

Florida currently has 67 official voter registration lists, one established and maintained in each county, that are compiled into the statewide voter registration database required by the Florida Election Reform Act of 2001. The 67 county-based lists, not the statewide database, are the official voter registration lists for voters in Florida. The statewide database is intended primarily to assist supervisors of elections to determine if voters are ineligible to vote (deceased, convicted felons who have not had civil rights restored, or adjudicated as mentally incompetent). It also is intended to identify those voters who are listed more than once. It is not intended to serve as "...the single system for storing and managing the official list of registered voters throughout the State..." as required by HAVA. Information in the statewide database is made available to county supervisors of elections who are responsible for making final determinations of a voter's eligibility and for updating voter registration records.

HAVA's requirement for a single computerized statewide voter registration list cannot be fulfilled quickly. In addition to designing and implementing such a single system that is interactive and assigns unique identifiers to each voter, HAVA requires the system to have adequate technological security measures [HAVA Section 303(a)(3)], meet minimum standards of accuracy and currency [HAVA Section 303(a)(4)], provide for verification with other information such as driver's license numbers and Social Security numbers [HAVA Section 303(a)(5)], and meet other standards. Meeting these requirements and standards will take time, expertise and money.

The Legislature appropriated $1.6 million and nine staff positions to create a master design, including a business plan and budget, for a single statewide voter registration system by January 2004. This design permitted the 2004 Legislature to take action to authorize the implementation of a new single computerized statewide voter registration list in time for the 2006 elections. The State of Florida was granted a waiver under HAVA to have a single statewide voter registration system in place by January 1, 2006, instead of the existing deadline of January 1, 2004. (The requirement for a waiver is discussed subsequently.)

Chapter 2003-415, *Laws of Florida*, authorizes the State to request the Federal Election Assistance Commission to grant a waiver from the January 1, 2004, HAVA deadline. The 2003 Appropriations bill authorizes the funding and staffing positions requested by the Division of Elections.

The Division of Elections has been meeting with representatives of the Florida State Association of Supervisors of Elections, the Department of Highway Safety and Motor Vehicles, the Department of Law Enforcement, the Board of Executive Clemency, the State Technology Office and health officials to begin to find ways to coordinate databases maintained by those agencies as part of the single centralized statewide voter registration list. Because HAVA Sections 303(a)(5)(A)(i)(I) and (II) require an applicant for voter registration to provide either a current and valid driver's license number or supply the last four digits of the applicant's Social Security number, HAVA Sections 303(a)(5)(B)(i)-(ii) require that the State enter into agreements to share such information with the Department of Highway Safety and Motor Vehicles and with the Social Security Administration.

HAVA's requirements are minimum requirements. Florida may establish technology and administrative requirements that are stricter than the Federal requirements as long as they are not inconsistent with HAVA's requirements and other laws, such as the Motor Voter Act, or in conflict with the privacy provisions of the Florida Constitution. See HAVA Section 304.

Florida Voter Registration System - Proposed System Design and Requirements

Strategy to Develop and Implement

The Florida Legislature has directed the Department of State to begin development of a statewide voter registration system that meets the requirements of HAVA. Accordingly, the 2003 Legislature provided $1.6 million to begin implementation of the system. Funds include $1 million for the Needs Assessment Phase along with nine positions to support design, development and implementation of the HAVA requirements. Of the nine positions, five reside in the Department of State and two each in the Department of Highway Safety and Motor Vehicles and the Florida Department of Law Enforcement.

The Division of Elections has been tasked with the responsibility to develop specifications for design and implementation of the Florida Voter Registration System (FVRS). The Division of

Elections has allocated one of the five HAVA-funded positions for a project manager tasked with the responsibility to direct and coordinate development of a comprehensive set of functional requirements, design specifications and preparation of progress reports. The Business Owner of the FVRS is the Director of the Division of Elections and the Project Sponsor is the Florida Secretary of State. The Project Director, Project Executive and Project Administrator are all Division of Elections staff.

The project team has taken every effort to identify alternative approaches to development of the FVRS and assess the relative merits of each approach. Visits to, and interviews with, other states with centralized voter registration have provided insight into the technical, administrative and political systems necessary for successful implementation. Interviews with election officials in other states that are in more advanced stages of meeting HAVA requirements have contributed much to identify the best practices approach.

The project team has also relied heavily on input from the supervisors of elections, their staff and vendors of voter registration systems currently in use throughout the State. A committee drawn from the 67 supervisors of elections was appointed to work with the project team. Additionally, a series of technical workgroups was established to identify issues and assess alternatives in a number of specific areas including:

- maintenance of address systems;
- interfacing of local voter registration systems;
- document and contract management;
- petitions;
- polling place activities;
- security; and
- statutory and legal issues.

The table below provides a proposed project schedule.

Estimated Start Date	Project Phase
September 2003	Phase 1 - Planning & Design
March 2004	Phase 2 - Prototyping and Validation of Design
March 2005	Phase 3 - Iterative Business Function and Performance Testing
August 2005	Phase 4 - Training, Education and Final Statewide Implementation and Acceptance
January 2006	Implementation of Florida Voter Registration System
February 2006	Phase 5 - Final Documentation and Transition to Maintenance and Support
March 2006	Project Close

Section 303(d) Deadlines for Computerized Statewide Voter Registration List

Section 303(d)(1)(A): Can Florida meet HAVA's requirement to have operational a computerized statewide voter registration list, as defined by HAVA, by January 1, 2004?

No, and further actions are required.
The State practically could not meet the January 1, 2004 deadline. Substantial professional and technical work must be done to design and establish a computerized statewide voter registration list that meets HAVA's standards. Chapter 2003-415, *Laws of Florida*, authorizes the State to seek a waiver from the Federal Election Assistance Commission permitted under HAVA Section 303(d)(1)(B) from January 1, 2004, to January 1, 2006, if the State "...will not meet the deadline...for good cause and includes in the certification the reasons for the failure to meet such deadline...."

The Florida Division of Elections has filed with the Federal Election Assistance Commission the appropriate waiver seeking an extension for the development and implementation of the Computerized Statewide Voter Registration list from January 1, 2004 to January 1, 2006. A copy of this letter is included as Appendix G.

Section 303(b) Requirements for Voters Who Register By Mail

Section 303(b)(1) through (4): Does Florida meet HAVA's identification requirements for a voter who registers by mail and has not previously voted in an election for Federal office in the State or registers by mail, has not previously voted in the jurisdiction and is in a State that does not have a computerized statewide voter list that meets HAVA's requirements?

Yes, and no further actions are required.
HAVA requires persons who register by mail and have not voted in an election for federal office to provide identification prior to voting. If the State is able to match the voter's driver's license number or Social Security number against an existing State record bearing the same number, name and date of birth, further identification by the voter is not required.

HAVA Sections 303(b)(2)(i) through (ii) require that a first-time voter who votes in person may be identified by a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. A voter who votes by mail may include with the ballot a copy of a current and valid photo identification or a copy of the other documents listed for the voter who appears in person. An exception is made in HAVA Section 303(b)(3) for mail registrants who provide a copy of required identification at the time of registering, mail registrants whose driver's license number or last 4 digits of the Social Security number are matched with an existing State record, and for those who vote under the Uniformed and Overseas Citizens Absentee Voting Act, the

Voting Accessibility for the Elderly and Handicapped Act, or under some other provision of Federal law (in which case the specific standards of those acts must be met).

Chapter 2003-415, *Laws of Florida*, amends the following sections of Florida law to conform to HAVA's mail registration and other voter registration requirements:

Section 97.052(3)(g), *Florida Statutes*, to require a statement with the uniform statewide voter registration form that informs the applicant that if the form is submitted by mail and the applicant is registering for the first time, the applicant will be required to provide identification prior to voting for the first time.

Section 97.053(5)(a), *Florida Statutes*, that permits the use of a valid Florida driver's license number or the identification number from a Florida identification card issued under Section 322.051, *Florida Statutes*, for purposes of voter registration.

Section 97.0535, *Florida Statutes*, that specifies at length the requirements for identification that a first-time voter can use and that complies with other HAVA requirements outlined previously.

Section 101.043, *Florida Statutes*, (a transfer and renumbering of Section 98.471, *Florida Statutes*) to permit a voter to submit to a poll worker at the time of voting a current and valid picture identification with a signature.

Section 303(b)(4): Does Florida meet HAVA's requirement for language in the mail voter registration form under Section 6 of the National Voter Registration Act of 1993?

Yes, and no further actions are required.
HAVA requires that mail voter registration forms under Section 6 the National Voter Registration Act shall include the following:

"(i) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement 'If you checked 'no' in response to either of these questions, do not complete this form.'

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time."

Section 97.052(2)(b) and (r), *Florida Statutes*, requires that the uniform statewide voter registration form must be designed to elicit information from the applicant about the applicant's date of birth and whether the applicant is a citizen of the United States. The form itself, available on the Division of Elections' website at http://election.dos.state.fl.us, asks for date of birth and asks "Are you a U.S. citizen?" It does not use the specific language required by HAVA.

Chapter 2003-415, *Laws of Florida*, amends Section 97.052, *Florida Statutes*, by adding subsection (g) that requires language about the need for appropriate identification for first time mail applications. It does not require the specific HAVA language about age and citizenship.

The Division of Elections has reviewed this matter orally with Federal legislative and executive representatives and has concluded that the requirement applies only to Federal applications under Section 6 of the National Voter Registration Act. It believes that putting such language on State application forms will confuse voters and discourage first-time registrants. The age question, for instance, does not specify the exact election day to which it is referring and assumes that young voters may be applying to register for a specific election rather than pre-registering as 17 year-olds in order to vote in all elections after they reach the age of 18. The Division notes that the forms used by Florida already elicit the information required by asking for date of birth and citizenship. The forms do not discourage voters by telling them to stop with the application if they must answer "No" to either question. The Division is complying with the substance of HAVA if not with the exact form of the question.

Element 2. Local Government Payments and Activities

How the State will distribute and monitor the distribution of the requirements payments to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

Introduction

The Florida Legislature has broad constitutional authority for appropriating federal and State funds annually through the appropriations bill which is eventually signed by the Governor into law. During the annual appropriations process, the Florida Legislature assesses the needs of the State and makes policy and budget decisions which impact every level of government including local government.

The funding of elections in Florida is primarily a local government responsibility since the constitutional authority for running elections rests with the local supervisor of elections. Funding authority for elections resides with the Boards of County Commissioners. Each of Florida's 67 Boards of County Commissioners receives a budget request from the supervisor of elections and then the Board makes policy and budget decisions based upon county priorities.

There has been one major exception to this election funding scenario. Following the controversial 2000 General Election, the Governor and the citizens of Florida asked the Legislature to enact broad election reforms which included providing State financial assistance to local governments. Over a two-year period, the Legislature provided over $32 million in State funds to supplement local election budgets and to quicken the pace of election reform in Florida. Most of the State funds were appropriated to the Boards of County Commissioners using two different formulas for accomplishing distinct policy goals—to replace voting systems designated to be decertified and to enact comprehensive voter education programs in every county.

The funding formula used to upgrade voting systems had two important policy goals—to provide a minimum voting system standard of precinct-based optical scanning systems throughout Florida and to provide funding assistance to small counties with very small tax bases. The resulting formula achieved that policy goal and was as follows:

- Small Counties (population 75,000 or below) received $7,500/precinct
- Large Counties (population 75,001 and above) received $3,750/precinct

The Legislature used a different formula to provide State funds for voter education and poll worker recruitment and training. This formula was based upon taking available State funds and distributing them on a per registered voter basis per county. The resulting formula was determined by taking approximately $6,000,000 in available State funds and dividing it by the number of registered voters during the 2000 General Election and appropriating that money on a pro-rata basis to each county. The resulting appropriation provided $5,949,375 to counties to fund comprehensive voter education programs and poll worker recruitment and training programs. The combined State and local efforts led to greater voter satisfaction during the 2002 General Election.

Pursuant to the appropriation, the Florida Legislature required each county supervisor of elections to submit a detailed description of the plans to be implemented and also a detailed report on the success of the voter education effort. These reports were sent to the Division of Elections and subsequently compiled by the Division into a report sent to the Governor and Florida Legislature.

While the State funds were widely valued, the counties still provided a majority of funding for election reform efforts. According to the 2002 Governor's Select Task Force on Election Procedures, Standards and Technology, a survey of 33 county governments revealed they spent nearly $110 million toward new voting systems before the 2002 primary and general elections.

If the Florida Legislature determines that it will provide funding for units of local governments and other entities, then how will the requirements payments be distributed and monitored, including—

A. **A description of the criteria used to determine the eligibility of such units and entities for receiving payment.**

B. **A description of the methods to be used by Florida to monitor the performance of the units of entities to whom the payments is distributed, consistent with the performance goals and measures adopted under paragraph (8).**

The HAVA Planning Committee clearly recognizes its advisory role in election reform and acknowledges the authority of the Florida Legislature to make funding decisions for Florida. During HAVA Planning Committee discussions, members proposed several recommendations that would provide funding for units of local government. The recommended payments to local government are listed below:

Replacement and Reimbursement for Punch Card And Lever Machines
The HAVA Planning Committee recommended that the estimated $11.74 million received pursuant to Section 102 of HAVA be distributed by the Florida Legislature to the State and to the counties on a pro-rated basis for their respective contributions to replace punch cards and lever machines during the 2001-2002 and 2002-2003 fiscal years.[3]

The Florida Legislature acted in 2003 to distribute Section 102 federal funds in the amount of $11,581,377 to the State of Florida and not the counties. The $11,581,377 reimbursement is almost one-half the amount the State of Florida invested to replace outdated voting machines between 2001 and 2003.

Accessible Voting Systems for Voters with Disabilities
The HAVA Planning Committee recommended that HAVA funds should be distributed to counties during the 2004-2005 fiscal year to help them meet Section 301 Title III accessibility requirements by the January 1, 2006 deadline. The estimated amount to comply with this requirement is $11.6 million and the funds would be distributed according to the number of machines accessible for persons with disabilities needed for each county to have one per polling place. The Division of Elections would have the responsibility for determining eligibility of counties receiving HAVA funds.

Secondly, if HAVA funds are available, the HAVA Planning Committee recommends that HAVA funds be distributed as a reimbursement on a pro-rated basis to local governments that purchased accessible voting systems and components during the 2001 and 2002 fiscal years.

The 2004 Legislature provided the following in the 2004 General Appropriations Act:
From the funds in Specific Appropriation 2871I, $11,600,000 shall be distributed by the Department of State to county supervisors of elections for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for disability requirements which is accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place. The funds are to be distributed according to the number of machines that are accessible for persons with disabilities that are needed in order for each county to have one per polling place.

No supervisor of elections shall receive any funds until the county supervisor of elections certifies to the Department of State:
1) the number of precincts in the county;
2) the number of polling places in the county;
3) the number of voting machines the county has that meet the disability requirement;
4) the county's plan for purchasing the DRE's; and
5) the date that the county anticipates being in compliance.

[3] The 2003 General Appropriations Act passed by the Legislature required the Department of State to transfer all amounts eligible for reimbursement under Section 102 of HAVA to the State's Working Capital Fund.

Statewide Voter Education Program

For FY 2003-2004, $2,976,755 was appropriated and available to each county for voter education programs. From funds in Specific Appropriation 2871I for FY 2004-2005, $3,000,000 shall be distributed to county supervisors of elections for the following purposes relating to voter education: mailing or publishing sample ballots; conducting activities pursuant to the Standards for Nonpartisan Voter Education as provided in Rule 1S-2.033, F.A.C.; print, radio, or television advertising to voters; and other innovative voter education programs, as approved by the Department of State. No supervisor of elections shall receive any funds until the county supervisor of elections provides to the Department of State a detailed description of the voter-education programs, such as those described above, to be implemented. The HAVA Planning Committee also recommends that local governments receive $3,000,000 for comprehensive voter education efforts in FY 2005-2006.

In FY 2003-2004, distribution was based on a funding level per individual voter multiplied by the number of registered voters in each county for the 2002 General Election. To determine the funding level per individual voter, the Division of Elections divided the total amount of funds appropriated in FY 2003-2004 by the total number of registered voters in the State of Florida for the 2002 General Election.

In FY 2004-2005, the Department shall distribute an amount to each eligible supervisor of elections equal to the funding level per voter multiplied by the number of registered voters in the county for the 2004 Presidential Preference Primary. The Department shall determine the funding level per voters in the state for the 2004 Presidential Preference Primary.

In order for a county supervisor of elections to be eligible to receive state funding for voter education, the county must certify to the Division of Elections that the county will provide matching funds for voter education in the amount equal to fifteen percent of the amount to be received from the state. Additionally, to be eligible, a county must segregate state voter education distributions and required county matching dollars in a separate account established to hold only such funds. Funds in this account must be used only for the activities for which the funds were received. Any funds remaining in the fund at the end of the fiscal year shall remain in the account to be used for the same purposes for subsequent years or until such funds are expended.

Through the 2005-2006 fiscal years, the HAVA Planning Committee recommends that local governments receive a total of $9 million dollars ($3 million each fiscal year) for comprehensive voter education efforts. HAVA funds for voter education should be distributed using a similar formula as used in 2003-2004. The Division of Elections should be responsible for determining eligibility of any county for the receipt of State or federal funds used in HAVA election reform activities.

The Division of Elections will monitor the performance of the contract agreements entered into between the State and each county, in accordance with State procedures. Each county must meet the contractual requirements before payment is approved.

Standard auditing procedures for monitoring the use of federal funds will be used for the receipt and the distribution of HAVA funds. These standard procedures may include random program audits by the Department of State's Inspector General as well as an annual audit by the Florida Auditor General's office to ensure funds are being expended for the authorized purposes.

Payments to Other State Entities

Through the 2005-2006 fiscal years, the Division of Elections recommends that the Department of Highway Safety and Motor Vehicles and the Florida Department of Law Enforcement receive HAVA funding to assist in the development of the new statewide voter registration system. The Division of Elections will enter into a contractual agreement with these other state-level departments and monitor the contracts in accordance with standard auditing procedures for monitoring the use of federal funds.

Element 3. Voter Education, Election Official Education & Training, Poll Worker Training

How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Introduction

A wide array of national and State task force reports have highlighted the need for a more informed electorate. To achieve this goal, voters, election officials, and poll workers must receive better information and training. Florida assigns the primary responsibility for these daunting tasks to the Department of State and the county supervisors of elections. Following election 2000, the Legislature has more clearly delineated the role of each in improving the education of voters, election officials, and poll workers.

The Florida Election Reform Act of 2001 set deadlines, included a wide array of topics to be addressed by State and county election officials, granted rule making authority to the Department of State, and established a procedure for measuring the effectiveness of the programs and making recommendations to the Governor and the State Legislature. Various acts passed during the 2002 legislative session broaden the scope of voter education responsibilities, more definitively spell out voter rights, and ensure that Florida's electoral system conforms to the Americans with Disabilities Act of 1990. Each of these changes has been communicated to election officials at all levels and to the public at-large.

The Election Reform Act of 2001 required all 67 county supervisors of elections to file voter education plans with the Division of Elections in the Department of State in order to qualify for State funds. (The Act appropriated nearly $6 million for voter education in fiscal year 2001-2002 in addition to $24 million for purchase of new voting equipment, fiscal years 2001-2003.) The Department of State, as directed by the Legislature, established minimum standards for nonpartisan voter education to be met by each county.

Legislation passed during the 2003 and 2004 sessions also required all 67 county supervisors of elections to file "a detailed description of the voter-education programs" in order to receive state funds in FY 2003-2004 and FY 2004-2005. The legislation spells out four broad categories of voter education for which these funds may be used: mailing or publishing sample ballots; conducting activities described in the Standards for Nonpartisan Voter Education provided in Rule 1S-2.0333, F.A.C.; for print, radio, or television advertising to voters; and for other innovative voter education programs, as approved by the Department of State. An analysis of the FY 2003-2004 county plans shows that most are using their funds for a variety of activities:

Sample Ballots	91%
Nonpartisan Voter Education	82%

Media Advertising	72%
Innovative Programs Approved by DOS	73%

County voter education plans filed with the Division of Elections in the Secretary of State's office are filled with creative approaches. These outreach mechanisms are designed by the elections supervisors to:

(1) Better inform their county's residents about registration and voting; and,
(2) Reduce the levels of voter error and confusion that existed during the 2000 election cycle.

The approaches used by the 67 individual counties vary considerably, reflecting differences in their demographic and socioeconomic composition (e.g., population size, land area, rural-urban location, age, race/ethnicity, education), county funding levels, and media availability.

For example, small counties (under 100,000) are more likely than larger ones to use their FY 2003-2004 voter education funds for the basics--printing and mailing sample ballots, mailing voter guides, and notifying voters of changes in precinct locations. Larger counties (100,000+) are more likely than smaller ones to spend their funds on radio and television advertising, supervisor participation in media programs and events, targeting college students, voter registration workshops, demonstrating voting equipment, and innovative programs.

Significant changes to Florida's election laws and the advent of new voting equipment have made poll worker education a high priority—as recognized in the Florida Election Reform Act of 2001. Florida's counties have restructured their poll worker training programs. State law now requires supervisors of elections to cast their poll worker recruitment nets wider, as the number of poll workers needed escalates in a fast-growing state.

Section 254(a)(3). How will the State of Florida provide for programs for *voter education* which will assist the State in meeting the requirements of Title III?

The State of Florida has adopted extensive voter education requirements and funded county voter education programs ($6,000,000 in 2001, $2,976,755 for FY 2003-2004, and $3,000,000 for FY 2004-2005). The HAVA Planning Committee recommends an additional $3 million for FY 2005-2006.

Joint Responsibilities of Department of State and County Supervisors of Elections

Voter education in Florida is a joint responsibility of the Department of State and the 67 county supervisors of elections. Both levels of government play a role in designing, implementing, and evaluating voter education activities. Both must constantly react to election-related legislation passed by the Florida Legislature.

Section 98.255(1), *Florida Statutes*, directed the Department of State to "adopt rules prescribing minimum standards for nonpartisan voter education" by March 1, 2002. The standards were to address (but were not limited to):

(1) voter education;
(2) balloting procedures for absentee and polling place;
(3) voter rights and responsibilities;
(4) distribution of sample ballots; and,
(5) public service announcements.

In developing the rules, the Department was instructed to "review current voter education programs within each county of the state." The Department of State adopted Rule 1S-2.033, *F.A.C.*, Standards for Nonpartisan Voter Education on May 30, 2002.

Section 98.255(2), *Florida Statutes*, requires each supervisor of elections to "implement the minimum voter education standards" and "to conduct additional nonpartisan education efforts as necessary to ensure that voters have a working knowledge of the voting process."

Minimum Nonpartisan Voter Education Standards
The Department of State's "Standards for Nonpartisan Voter Education," Rule 1S-2.033, *F.A.C.*, requires the following voter education practices by county supervisors of elections:

Comprehensive Voter Guide: Contents
Department of State Rule 1S-2.033, *F.A.C.*, Standards for Nonpartisan Voter Education, requires supervisors of elections to create a Voter Guide which shall include: how to register to vote; where voter registration applications are available; how to register by mail; dates for upcoming elections; registration deadlines for the next primary and general election; how voters should update their voter registration information such as changes in name, address or party affiliation; information on how to obtain, vote and return an absentee ballot; voters' rights and responsibilities pursuant to Section 101.031, *Florida Statutes*; polling information including what times the polls are open, what to bring to the polls, list of acceptable IDs, what to expect at the polls; instructions on the county's particular voting system; supervisor contact information; and any other information the supervisor deems important.

Voter Guide: Extensive Distribution
Department of State Rule 1S-2.033(1)(b), *F.A.C.*, requires supervisors of elections to "provide the Voter Guide at as many places as possible within the county including: agencies designated as voter registration sites pursuant to the National Voter Registration Act; the supervisor's office; public libraries; community centers; post offices; centers for independent living; county governmental offices; and at all registration drives conducted by the supervisor of elections."

Voter Guide, Sample Ballot, & Website Consistency Required
Department of State Rule 1S-2.033(2), *F.A.C.*, states that: "If a supervisor has a website, it must take into account all of the information that is required to be included in the Voter Guide. In addition, when a sample ballot is available, the website must provide either information on how to obtain a sample ballot or a direct hyperlink to a sample ballot."

Targeted Voter Education: High School Students
Florida's Department of State Rule 1S-2.033(3), *F.A.C.*, instructs the supervisors of elections to work with county school boards to develop voter education and registration programs for high school students. Specifically, the rule requires that "At least once a year in each public high school in the county, the supervisor shall conduct a high school voter registration/education program. The program must be developed in cooperation with the local school board and be designed for maximum effectiveness in reaching and educating high school students."

Targeted Voter Education: College Students
Florida's Department of State Rule 1S-2.033(4), *F.A.C.*, dictates that "At least once a year on each college campus in the county, the supervisor shall provide a college registration/education program. This program must be designed for maximum effectiveness in reaching and educating college students."

Targeted Voter Education: Senior Citizens and Minority Groups
Department of State Rule 1S-2.033(7), *F.A.C.*, requires supervisors of elections to "conduct demonstrations of the county's voting equipment in community centers, senior citizen residences, and to various community groups, including minority groups." Rule 1S-2.033(8), *F.A.C.*, specifically instructs the supervisors to use minority media outlets to provide more information to voters.

Targeted Voter Education: Individuals and Groups Sponsoring Voter Registration Drives
Department of State Rule 1S-2.033(6), *F.A.C.*, specifically instructs supervisors of elections to "provide, upon reasonable request and notice, voter registration workshops for individuals and organizations sponsoring voter registration drives." Section 98.015(9), *Florida Statutes*, states that "each supervisor must make training in the proper implementation of voter registration procedures available to any individual, group, center for independent living, or public library in the supervisor's county."

Posting of Educational Materials on Voter Rights and Responsibilities
Department of State Rule 1S-2.033(5), *F.A.C.*, requires supervisors of elections to "post the listing of the voters' rights and responsibilities pursuant to Section 101.031, *Florida Statutes*, at the supervisor's office." Section 101.031(2), *Florida Statutes*, spells out the specific format of the Voter's Bill of Rights and Responsibilities to be posted by the supervisor of elections at each polling place. The Department of State, or in the case of municipal elections, the governing body of the municipality, is required "to print, in large type on cards, instructions for electors to use in voting," including the list of rights and responsibilities and other information about how to

vote deemed necessary by the Department of State—Section 101.031(1), *Florida Statutes*. At least two cards shall be provided to each precinct.

Educating Voters About Polling Place and Precinct Changes, Revised Voter Identification Cards
Department of State Rule 1S-2.033, *F.A.C.*, mandates that supervisors of elections "shall provide notice of changes of polling places and precincts to all affected registered voters. This notice shall include publication in a newspaper of general circulation as well as posting the changes in at least ten conspicuous places in the county. If the supervisor has a website, the supervisor shall post the changes on the website. The supervisors shall also widely distribute a notice that if a voter does not receive a revised voter identification card within 20 days of the election the voter should contact a specific number at the supervisor's office to obtain polling place information."

Voter Education Through the Media
Department of State Rule 1S-2.033(8), *F.A.C.*, requires supervisors of elections to interface with the media to better inform the electorate. Supervisors are to "participate in available radio, television and print programs and interviews, in both general and minority media outlets, to provide voting information."

Voter Education Includes But is Not Limited to Nonpartisan Voter Education
Beginning in 2003, the State Legislature has expanded its definition of voter education activities for which counties may receive state funds. There are now four broad categories of voter education for which counties may use state funds: mailing or publishing sample ballots; conducting activities described in the Standards for Nonpartisan Voter Education provided in Rule 1S-2.0333, F.A.C.; for print, radio, or television advertising to voters; and for other innovative voter education programs, as approved by the Department of State.

County supervisors of elections must constantly update information disseminated to the public, poll workers, and their own staff to conform to state legislative mandates and HAVA requirements. A number of counties have used their FY 2003-2004 state voter education funds to update materials available at the polling place as well as information (brochures, posters, signs, videos, PSAs) distributed throughout the county.

In line with HB 29B (Chapter 2003-415), educational materials must be updated to provide absentee voters with better instructions on how to mark a ballot and how to correct their ballots and how to request a replacement ballot if the voter is unable to change the original ballot. (This was necessary to meet Section 301(a)(1)(B) HAVA requirements.)

HB 29B (Chapter 2003-415) requires the Department of State and the county supervisors of elections to provide more information regarding voter registration procedures and absentee ballot procedures to absent uniformed services voters and overseas voters.

HB 29B (Chapter 2003-415) requires county supervisors of elections to inform persons registering to vote by mail that if they are registering for the first time, they will be required to provide identification prior to voting the first time.

HB 29B (Chapter 2003-415) requires county supervisors of elections to give written instructions regarding the free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why. This is consistent with Section 302(a)(5)(A)&(B) HAVA requirements.

HB 29B (Chapter 2003-415) makes county supervisors of elections responsible for providing up-to-date information to conform to HAVA voting information requirements—Section 302(b)(2)(A through F): sample ballots at polls; the election date; identification instructions for mail registrants who are first time voters; and information on who to contact if general voting rights under State and federal laws are violated.

Passage of Committee Substitute for Senate Bill No. 2566 (Chapter 2004-232) requires county supervisors of elections to revise the Voter's Certificate and instructions to those voting via an absentee baliot. Under the law, a person casting an absentee ballot is no longer required to have his/her signature witnessed.

Passage of Committee Substitute for Senate Bill Nos. 2346 and 516 (Chapter 2004-252) requires county supervisors of elections to revise Early Voting Voter Certificate information. Under the law, a person casting an Early Vote is no longer required to have his/her signature witnessed.

State Role: Disseminating Information to Voters and Election Officials

Voter Education through the Internet
The Division of Elections' website (http://clection.dos.state.fl.us/) offers extensive information regarding registration, elections (dates, district maps, results, Division reports, forms, publications, press releases, voter turnout, supervisor of elections' contact information), voter fraud, voting systems, laws/opinions/rules, candidates and committees, the initiative petition process, and other helpful government links. Prominently displayed on the Web Site home page is information on: the Voter Assistance Hotline Toll Free Number—for the general public and for people using Text Telephone (TTY); Direct Recording Equipment Voting Systems; the 2004 National Voter Registration Workshops to be held across the state to better inform public officials and the public about the National Voter Registration Act of 1993; a direct link to the Help America Vote Act and the HAVA Planning Committee's activities and recommendations; and the results of an Election Night Voter Report Card (Survey) on the Conduct of Election 2002.

Voter Education About Fraud

Section 97.012(12), *Florida Statutes,* requires the Secretary of State to "...provide election fraud education to the public."

Voter Education Media Campaign: Get Out The Vote Foundation

In FY 2003-2004, the Division of Elections entered into a contract with the Get Out The Vote Foundation, Inc., in the amount of $247,500. This is a non-profit organization of the Florida State Association of Supervisors of Elections (FSASE). The Foundation has hired two well-known communications firms (Ron Sachs Communications and CoreMessage, Inc.) to produce voter education materials for statewide distribution. The two firms will jointly produce a half-hour television news magazine-type program called "Before You Vote" designed to inform voters about new voting rules and procedures and new electronic voting machines. The program will be distributed to all TV stations and cable companies in Florida for broadcast at two time periods—before both the August primary election and the November general election. Prevention of errors on election day is the primary goal of the program. The bipartisan team will also produce eight 30-second TV public service announcements—four each in English and Spanish. These spots-- "Make Freedom Count"--are designed to encourage voters to vote early or by absentee ballot. An additional contract in the amount of $24,750 was issued to the Get Out The Vote Foundation to create media kits full of facts and figures for all 67 county supervisors of elections to use as they interface with the media.

Procedures for Constant Analysis of Voter Education Effectiveness

Section 98.255(3)(a), *Florida Statutes,* requires supervisors of elections to file a report by December 15 of each general election year with the Department of State. This report is "a detailed description of the voter education programs implemented and any other information that may be useful in evaluating the effectiveness of voter education efforts."

Section 98.255(3)(b), *Florida Statutes*, requires the Department of State to review the information submitted by the supervisors of elections and "prepare a public report on the effectiveness of voter education programs" and to "submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31 of each year following a general election."

Further, Section 98.255(3)(c), *Florida Statutes*, instructs the Department of State to use "the findings in the report as a basis for adopting modified [voter education] rules that incorporate successful voter education programs and techniques as necessary."

This procedure was first used in the 2002 election cycle. The Division of Elections requested each supervisor of elections to list in detail the voter education programs conducted during the 2002 election cycle and the approximate cost of each program. The supervisors were asked to rank the effectiveness of each program on a scale of 1 to 5, with 5 being the highest possible rank. On January 31, 2003, the Florida Department of State, Division of Elections, submitted its "Report on Voter Education Programs During the 2002 Election Cycle Pursuant to Section

98.255(3), *Florida Statutes*." (The Report is posted on the Division of Elections Web Site.) The report concluded that "most supervisors ranked the county voter education programs as 4 or 5 in effectiveness in reaching the target community." (There were ten broad categories of voter education programs: sample ballots; elementary/middle school/high school/university and community college outreach; websites; miscellaneous promotional materials; public appearances/television and movie theatre advertisements; banners and billboards, radio and public transport advertisements; newspapers and mailers; voting system demonstrations; outreach to minority, disabled and senior communities; and voter registration drives.) The Department of State made three recommendations in its post-election 2002 report:

(1) The Legislature should provide funding, contingent upon appropriations from Congress through the Help America Vote Act, to the counties for voter education efforts; the State Legislature did this in its FY 2003-2004 and FY 2004-2005 appropriations bills.
(2) The Legislature should require sample ballots to be mailed to households or voters prior to each Primary and General Election. (It is now an alternative to publishing a sample ballot in a general circulation newspaper.)
(3) The Division of Elections should provide a list of cost-effective voter education programs used by counties so that all counties can benefit from these ideas. (Pursuant to Section 98.255(3), *Florida Statutes*, the Division has posted its Report on Voter Education Programs during the 2002 Election Cycle on its web site. The Report lists the effectiveness ratings for individual voter education activities as calculated by individual county supervisors of elections.)

(The 2002 Governor's Select Task Force on Election Procedures, Standards, and Technology report of December 30, 2002 also recommended improving "voter education by requiring all supervisors of elections to mail generic sample ballots to each household with registered voters.")

Under Section 101.20, *Florida Statutes,* county supervisors of elections may now mail a sample ballot to each registered elector or to each household in which there is a registered voter if done at least seven days prior to any election, rather than publish a sample ballot in a newspaper of general circulation. A high percentage of county supervisors have chosen to use their FY2003-2004 state voter education funds and local matching funds to publish and mail out sample ballots to registered voters. The same law requires two sample ballots be placed at each polling place, along with reduced-size sample ballots to give to any voter desiring one. Some supervisors of elections are using FY 2003-2004 voter education monies to pay for sample ballots to be made available at each precinct.

Section 101.595, *Florida Statutes,* also requires supervisors of elections to submit a report to the Department of State no later than December 15 of each general election year detailing "[t]he total number of overvotes and undervotes in the first race appearing on the ballot pursuant to Section 101.151(2), *Florida Statutes,* along with the likely reasons for such overvotes and undervotes and other information as may be useful in evaluating the performance of the voting

system and identifying problems with ballot design and instructions which may have contributed to voter confusion." The Department of State must prepare a report analyzing that information and submit it to the Governor, the President of the Senate, and the Speaker of the House by January 31 of the year following a general election. The report is to include recommendations for correcting any problems with ballot design or instructions to voters.

This procedure was first used in the 2002 election cycle. "Analysis and Report of Overvotes and Undervotes for the 2002 General Election Pursuant to Section 101.595, *Florida Statutes*" found a substantial reduction in the level of overvotes and undervotes in 2002 (compared to 2000) and concluded that new technology and the counties' voter education efforts were major factors contributing to the reduction in voter error. (The report is posted on the Division of Election's Web Site.) The report's recommendations were:

(1) The Division of Elections must continue to monitor the overvotes and undervotes from each general election. (Required under *Florida Statutes*.)
(2) The Florida Legislature should provide funding, contingent upon appropriations from Congress through the Help America Vote Act, to the counties for voter education efforts. The Legislature did this in its FY 2003-2004 and FY 2004-2005 appropriations bills.
(3) The Division of Elections should review the recommendations for ballot instructions for incorporation into the uniform ballot rule. During the 2003 session, the Legislature passed a law delineating the content of separate printed instructions to accompany each absentee ballot (section 101.65, *Florida Statutes*). Rule 1S-2.030 F.A.C. standardizes the basic form of instructions to be sent to all overseas voters.
(4) All voting system vendors should continue to improve the design of their voting systems in order to better meet the needs of Florida voters.

A number of supervisors of elections have implemented their own feedback systems through comment cards distributed at registration sites, workshops, and polling places. Some also allow citizens to make suggestions and complaints via their websites. Several counties have used some of their state voter education funds to solicit voter feedback and suggestions.

Florida's system for constant evaluation of the effectiveness of voter education by both the county supervisors of elections and the Department of State is in place and operating.

Section 254(a)(3). How will the State of Florida provide for programs for *election official education and training* which will assist the State in meeting the requirements of Title III?

The State has assigned responsibility for education and training of election officials to the Secretary of State. The Division of Elections prepares and distributes educational materials for, and conducts the training of, supervisors of elections and their staffs.

The Secretary of State is the State's chief election officer whose responsibilities are spelled out in Section 97.012, *Florida Statutes*. Among those responsibilities are explicit requirements to: "provide technical assistance to the supervisors of elections on voter education and election personnel training services;" "provide technical assistance to the supervisors of elections on voting systems;" "provide training to all affected state agencies on the necessary procedures for proper implementation of [Chapter 97 of the *Florida Statutes*];" and "coordinate with the United States Department of Defense so that armed forces recruitment offices administer voter education in a manner consistent with the procedures set forth in [Florida election] code for voter registration agencies."

The Division of Elections conducts voter education and election personnel training, issues advisory opinions that provide statewide coordination and direction for interpreting and enforcing election law provisions, provides technical advice on voting systems and equipment and State and federal election laws, certifies voting equipment, and provides written election information to candidates (Office of Policy Analysis and Government Responsibility, *Justification Review*, Report No. 02-55, October 2002).

The Division of Elections oversees and approves training courses for continuing education for supervisors of elections. It coordinates, on an annual basis, two statewide workshops for the supervisors of elections by reviewing and providing updates on the election laws to ensure uniformity statewide in the interpretation of election laws. These are generally held in conjunction with the Florida State Association of Supervisors of Elections' Conferences held in January and June. The division oversees certification for supervisors of elections through which supervisors obtain credits to maintain job proficiency. The Division may also conduct regional workshops for supervisors and staff, universities, community colleges and State agencies. When Select Task Forces are created by the Governor, Secretary of State, or other State officials, the Division provides administrative and technical assistance. (Florida Department of State, Division of Elections, 2001 Annual Report).

All Division of Elections' forms, rules, handbooks, opinions, etc. are available on the Internet via the Division's website—an award-winning site (http://election.dos.state.fl.us/). Section 97.026, *Florida Statutes*, states "It is the intent of the Legislature that all forms required to be used in chapters 97-106 [the election code], shall be made available upon request, in alternative formats" including the Internet (with the exception of absentee ballots).

The HAVA Planning Committee recommended that the Division of Elections also conduct training courses for the continuing education of county election officials in conjunction with meetings of the Florida Association of City Clerks. The Division of Elections routinely invites city clerks and supervisors of elections to attend its statewide training meetings held in conjunction with FSASE meetings.

The Florida State Association of Supervisors of Elections, through activities of its Get Out The Vote Foundation, will play a major role in educating and training election officials in 2004. On

May 25, 2004, the Foundation launched its voter education plan. Through it, all 67 county supervisors of elections will have access to professionally prepared public media advertising materials. The Foundation has its own web site (www.getoutthevoteflorida.com) which allows election officials—elected and staff—to access easily comprehended materials on a wide range of timely topics, including Absentee Voting, Early Voting, Registering to Vote, Election Reform in Florida, Voter Identification, Restoration of Felon's Voting Rights, and Information on Direct Recording Equipment Voting Systems, along with posters, ads, and public service announcements.

Section 254(a)(3). How will the State of Florida provide for programs for *poll worker training* which will assist the State in meeting the requirements of Title III?

Florida has adopted extensive poll worker recruitment and training requirements and funded county poll worker training (as part of the $6 million voter education appropriation in 2001). The State has: adopted minimum-hours-of-training requirements; spelled out training content requirements; prepared a uniform polling place procedures manual; and mandated a statewide and uniform program for training poll workers on issues of etiquette and sensitivity with respect to disabled voters. Rule 1S-2.034 F.A.C. requires the Department of State, Division of Elections to establish a polling place procedures manual, Form DS-DE 11 (January 25, 2004).

State law permits inspectors, clerks, and deputy sheriffs attending poll worker training to receive compensation and travel expenses—Section 102.021(2), *Florida Statutes*.

The HAVA Planning Committee recommended state funding for poll worker training and recruitment but the Florida Legislature in 2004 did not appropriate funds for either activity.

Joint Responsibility of Department of State and County Supervisors of Elections
Section 102.014, *Florida Statutes*, assigns responsibility for poll worker training to county supervisors of elections and the Department of State.

Section 102.014(1), *Florida Statutes*, requires supervisors of elections to conduct training for inspectors, clerks, and deputy sheriffs prior to each primary, general, and special election "for the purpose of instructing such persons in their duties and responsibilities as election officials." Training is mandatory to work at the polls.

Section 102.014(5), *Florida Statutes*, directs the Department of State to "create a uniform polling place procedures manual and adopt the manual by rule" and to revise it "as necessary to address new procedures in law or problems encountered by voters and poll workers at the precincts." Rule 1S-2.034, *F.A.C.*, Polling Place Procedures Manual (Form DS-DE 11; Eff. Jan. 04), was recently updated for HAVA compliance. It was pre-cleared on June 3, 2004 by the Department of Justice. The manual, to be available in either hard copy or electronic form at every precinct on Election Day, must be "indexed by subject, and written in plain, clear, unambiguous language."

Under Section 102.014(7), *Florida Statutes*, the Department is assigned the responsibility for developing "a mandatory, statewide, and uniform program for training poll workers on issues of etiquette and sensitivity with respect to voters having a disability." But county supervisors of elections are responsible for conducting such training. They are required to "contract with a recognized disability-related organization, such as a center for independent living, family network on disabilities, deaf service bureau, or other such organization, to develop and assist with training the trainers in disability sensitivity programs."

Poll Worker Training Content
The content of poll worker training is detailed in State statutes.

Clerks must demonstrate "a working knowledge of the laws and procedures relating to voter registration, voting system operation, balloting and polling place procedures, and problem-solving and conflict-resolution skills"—Section 102.014(1), *Florida Statutes*.

The Uniform Polling Place Procedures Manual must include: regulations governing solicitation by individuals and groups at the polling place; procedures to be followed with respect to voters whose names are not on the precinct register; proper operation of the voting system; ballot handling procedures; procedures governing spoiled ballots; procedures to be followed after the polls close; rights of voters at the polls; procedures for handling emergency situations; procedures for dealing with irate voters; the handling and processing of provisional ballots; and security procedures—Section 102.014(5)(a-k), *Florida Statutes*. The manual "shall provide specific examples of common problems encountered at the polls on election day, and detail specific procedures for resolving those problems."

Poll worker training on issues of etiquette and sensitivity for disabled voters "must include actual demonstrations of obstacles confronted by disabled persons during the voting process, including obtaining access to the polling place, traveling through the polling area, and using the voting system"—Section 102.014(7), *Florida Statutes*.

Poll Worker Minimum Hours of Training
Section 102.014(4), *Florida Statutes*, specifies that clerks must have had a minimum of three hours of training prior to each election to be eligible to work at the polls. For inspectors, there is a minimum of two hours of training. Section 102.014(7), *Florida Statutes*, requires one hour involving training related to etiquette and sensitivity with regard to voters with disabilities.

Poll Worker Recruitment
Supervisors of elections are required to "work with the business and local community to develop public-private programs to ensure the recruitment of skilled inspectors and clerks"—Section 102.014(6), *Florida Statutes*.

There is no established procedure for evaluating the effectiveness of poll worker training or recruitment as there is for voter education. The 2002 Governor's Select Task Force on Election Procedures, Standards, and Technology report of December 30, 2002, recommended "establishing minimum standards for poll worker performance" and "improving poll worker recruitment and training by launching a statewide "Be a Poll Worker" campaign.

The HAVA Planning Committee has recommended that the Division of Elections establish a procedure to evaluate the effectiveness of poll worker recruitment and training in all 67 counties. In an effort to increase poll worker recruitment, the Department has initiated a "Be a Poll Worker" campaign which includes airing public service announcements and distributing "Be a Poll Worker" handouts at Department presentations. Some counties are using FY 2003-2004 voter education funds to recruit high school and college students as poll workers as well as the public at-large through publication and dissemination of new brochures and videos.

Element 4. Voting System Guidelines and Process

How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

Introduction

There are several governmental bodies and agencies that participate in the adoption of voting systems in Florida. The Florida Legislature has great authority to set voting system requirements and does so in Chapter 101, *Florida Statutes*. The Legislature also delegates rule making and certification authority to the Bureau of Voting Systems Certification in the Division of Elections under the Secretary of State.

After voting systems are independently tested and certified for use in Florida, Section 101.5604, *Florida Statutes*, provides that the Board of County Commissioners "at any regular or special meeting called for the purpose, may, upon consultation with the supervisor of elections, adopt, purchase or otherwise procure, and provide for the use of any electronic or electromechanical voting system approved by the Department of State in all or a portion of the election precincts of that county."

To keep Florida's voting systems standards up-to-date, Section 101.015, *Florida Statutes*, requires the Department of State to review "the rules governing standards and certification of voting systems to determine the adequacy and effectiveness of such rules in assuring that elections are fair and impartial."

Section 254(a)(4) How will the State of Florida adopt voting system requirements and processes which are consistent with the requirements of Section 301?

Florida's laws and regulations for adopting voting systems that are consistent with the requirements of Section 301 are clearly outlined in *Florida Statutes* and the Florida Voting Systems Standards.

Section 101.015, *Florida Statutes*, authorizes the Department of State to adopt rules which establish minimum standards for hardware and software for electronic and electromechanical voting systems.

Section 101.017, *Florida Statutes*, creates the Bureau of Voting Systems Certification which provides technical support to the supervisors of elections and is responsible for voting system standards and certification.

Section 101.5605, *Florida Statutes*, authorizes the Department of State to examine and approve voting systems through a public process to ensure that the voting systems meet the standards

outlined in Section 101.5606, *Florida Statutes*, and similar standards outlined in the Help America Vote Act of 2002 (HAVA) requirements outlined in Section 301 of Title III.

Section 101.5604, *Florida Statutes*, authorizes the Board of County Commissioners to adopt voting systems.

Sections 101.293-101.295, *Florida Statutes*, outline the public bidding process that counties should follow in purchasing voting systems.

Section 101.56062, *Florida Statutes*, exceeds the accessibility standards of HAVA Section 301 "Accessibility for Individuals With Disabilities." The HAVA Planning Committee has recommended that the Florida Legislature take advantage of federal funding and bring Florida into compliance and make Section 101.56062, *Florida Statutes*, effective by January 1, 2006 or one year after general appropriations are made, whichever is earlier.

Section 101.015, *Florida Statutes*, requires the Department of State to review "the rules governing standards and certification of voting systems to determine the adequacy and effectiveness of such rules in assuring that elections are fair and impartial."

Element 5. Florida's Help America Vote Act of 2002 (HAVA) Election Fund

How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

To clarify, Section 254(b) states that a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.
(B) The requirements payment made to the State under this part.
(C) Such other amounts as may be appropriated under law.
(D) Interest earned on deposits of the fund.

Section 254(a)(5) How will the State of Florida establish a fund for the purpose of administering the State's activities under this part?

All HAVA funds are maintained in a trust fund that has already been established by the Department of State. Within this trust fund, monies received for HAVA Sections 101, 102 and Title II are set up into four accounts: 101-Election Administration, 102-Replace Punch Card and Lever Voting Systems, 251-Requirements Payment, and 261-Access for Individuals with Disabilities.

Section 254(a)(5) How will the State of Florida manage this fund?

Any HAVA funds received by the State are used exclusively for activities authorized by HAVA. The Division of Elections is responsible for tracking and monitoring the use of funds in accordance with established State procedures.

The Director of the Division of Elections has final signing authority for HAVA expenditures. Any interest earned on this trust fund is returned to the principal amount of the trust.

Standard auditing procedures for monitoring the use of federal funds are used for the receipt and the distribution of HAVA funds. These standard procedures include random program audits by the Department of State Inspector General as well as an annual audit by the Florida Auditor General.

The Governor and Secretary of State are responsible under HAVA for ensuring compliance with these requirements. The HAVA Planning Committee recommends that the Governor and the Secretary of State maintain contact with the Senate President and the Speaker of the House of Representatives to ensure they remain aware of the strict requirements set in law for the use of HAVA monies placed in this trust fund.

No audit has been conducted to-date, however, based on recent calls from the Florida Auditor General, it is anticipated that an audit will be conducted during FY 2004-2005.

Element 6 – Florida's Budget for Implementing the Help America Vote Act of 2002 (HAVA)

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on –

(A) the costs of the activities required to be carried out to meet the requirements of Title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

Introduction
The HAVA Planning Committee clearly recognizes its advisory role in election reform and acknowledges the authority of the Florida Legislature to make funding decisions for Florida. This budget reflects the HAVA Planning Committee's best efforts to divide the funds that may be available during the three years identified in HAVA. If Florida receives more funds than are included in this budget, the HAVA Planning Committee will revise the budget to reflect this change.

Reimbursement for replacement of punch card and lever machines.
Following the 2000 General Election, the State of Florida assisted counties by investing approximately $24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 federal funds in the amount of $11,581,377 were returned to the State of Florida as reimbursement.

Statewide Voter Registration System.
The Florida Legislature directed the Department of State to begin development of a statewide voter registration system that meets the requirements of HAVA. Accordingly, the 2003 Legislature provided $1.6 million to begin implementation of the system. Federal funds include $1 million for the Needs Assessment Phase along with nine positions to support design, development and implementation of the HAVA requirements. Of the nine positions, five reside in the Department of State and two each in the Department of Highway Safety and Motor Vehicles and the Florida Department of Law Enforcement.

Phase 2, "Prototyping & Validation of Design," began in March 2004 and includes the following:

- Installation of prototyping equipment and environment

- Prototype the core system configuration and architecture
- Data conversion/migration testing (data & images)
- Prototype remote access to the core system

An estimate of costs for development and operation of the Florida Voter Registration System is provided in the table below.

	Fiscal Year					
Project Component	2003/4	2004/5	2005/6	2006/7	2007/8	Total
Systems Design & Dev.	602,352	1,343,194	759,493	0	0	2,705,038
FVRS IT Infrastructure	444,400	8,836,775	1,030,991	1,049,750	1,069,260	12,431,177
FVRS Operations	206,377	764,293	1,466,087	1,473,766	1,547,454	5,457,977
Total	1,253,129	10,944,262	3,256,571	2,523,516	2,616,714	20,594,192

The Division of Election also anticipates adding 20 full time equivalent positions (FTEs) in FY 2004-2005. The salaries and benefits, expenses and operating capital outlay associated with these 20 positions is expected to be $1,203,650.

Section 301 Accessible Voting Systems

The HAVA Planning Committee recommended the purchase of Direct Recording Equipment (DRE) accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place. The estimated cost is $11.6 million during the 2004-2005 fiscal year. The Florida Legislature authorized the following:

From the funds in Specific Appropriation 2871I, $11,600,000 shall be distributed by the Department of State to county supervisors of elections for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for disability requirements which is accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place. The funds are to be distributed according to the number of machines that are accessible for persons with disabilities that are needed in order for each county to have one per polling place.

In addition, the HAVA Planning Committee in 2003 recommended reimbursing counties that have already purchased voting systems that meet the HAVA accessibility for voters with disabilities requirements. The estimated cost for this reimbursement was $17 million.

Voter Education

The HAVA Planning Committee recommended using HAVA funds for the development and implementation of a comprehensive statewide voter education program. The estimated expenditure is a total of $9 million distributed to the counties and spread over the 2003-2004, 2004-2005 and 2005-2006 fiscal years.

The Florida Legislature authorized the following:

For FY 2003-2004, $2,976,755 was appropriated and available to Florida counties for voter education programs. From funds in Specific Appropriation 2871I for FY 2004-2005, $3,000,000 shall be distributed to county supervisors of elections for the following purposes relating to voter education: mailing or publishing sample ballots; conducting activities pursuant to the Standards for Nonpartisan Voter Education as provided in Rule 1S-2.033, F.A.C.; print, radio, or television advertising to voters; and other innovative voter education programs, as approved by the Department of State. No supervisor of elections shall receive any funds until the county supervisor of elections provides to the Department of State a detailed description of the voter-education programs, such as those described above, to be implemented.

Poll Worker Training

The HAVA Planning Committee recommended using HAVA federal funds in the amount of $250,000 for each fiscal year 2003-2004, 2004-2005 and 2005-2006 for poll worker training. These funds were intended to supplement each county's existing poll worker training budget.

The 2004 Legislature did not appropriate federal funds for conducting a poll worker recruitment campaign.

The HAVA Planning Committee recommends using HAVA federal funds in the amount of $500,000, beginning with FY 2005-2006, for poll worker training and recruitment, with a 15% match required of each county.

Statewide Poll worker Recruitment Campaign

The HAVA Planning Committee recommended that HAVA federal funds be used to implement, through the Division of Elections, a statewide campaign to help recruit qualified poll workers. The increase in the complexity of voting systems and procedures has resulted in a need for more computer literate individuals to staff the polling places and help ensure error-free elections.

The 2004 Legislature did not appropriate federal funds for conducting a statewide poll worker recruitment campaign.

HAVA Oversight and Reporting

The HAVA Planning Committee recommended that the Department of State create three full time positions to manage HAVA implementation.

- HAVA administrator
- Grants specialist
- Administrative assistant

The estimated cost for HAVA oversight and reporting is $206,079 for the 2003-2004 fiscal year, $196,485 for the 2004-2005 fiscal year and $200,719 for the 2005-2006 fiscal year.

The Florida Legislature authorized three positions within the Division of Elections for HAVA Oversight and Reporting. For FY 2003-2004 $206,079 was appropriated for salaries and benefits, expenses and operating capital outlay. The three position titles are

- Senior Management Analyst Supervisor
- Operations and Management Consultant II
- Administrative Assistant II

State Management (HAVA Planning Committee)

The HAVA Planning Committee recommended that the Secretary of State require it to meet twice each year in 2003-2004 and in 2004-2005 to make recommendations and to resubmit the HAVA State Plan to ensure that Florida is meeting the requirements of the Help America Vote Act. The HAVA Planning Committee convened twice in the 2003-2004 fiscal year at an estimated cost of $30,000. The HAVA Planning Committee further recommends that it meet twice in the 2004-2005 fiscal year at an estimated cost of $30,000 and twice in the 2005-2006 fiscal year at an estimated cost of $30,000.

Performance Goals and Measures Adoptions

The HAVA Planning Committee recommended the Secretary of State utilize the HAVA Planning Committee to determine performance goals and measures. The estimated cost is $160,000 to be expended in the 2003-2004 and 2004-2005 fiscal years.

The HAVA Planning Committee determined HAVA performance goals and measures during the meetings that were held to update the HAVA State Plan. Two meetings were held on May 24, 2004 and June 4, 2004 at an estimated cost of $30,000.

Election Administration

The HAVA Planning Committee recommends HAVA funds be used for the design and production of new voter registration forms and publications, and translations for all election administration forms and publications. The estimated cost is $250,000 for each fiscal year 2003-2004, 2004-2005 and 2005-2006.

Complaint Procedures

Section 402(a) of HAVA requires each state to establish state-based administrative complaint procedures for any person who believes that there is or will be a violation of any of HAVA's Title III requirements. The HAVA Planning Committee recommends using HAVA funds in the amount of $50,000 per year for the 2004-2005 and 2005-2006 fiscal years for the administration of the complaint procedures process.

The HAVA Planning Committee recommends that the remaining HAVA funds be reserved for future expenses related to the following items:

1. the continued development and implementation of the Florida Voter Registration System
2. future improvements in voting technology
3. continued funds to local counties for voter education programs
4. accessibility for polling places
5. poll worker recruitment and training

Requirement 6
(A) Based on the state's best estimates, what are the costs of the activities required to carry out to meet the requirements of Title III?
(B) What portion of the requirements payment will be used to carry out activities to meet such requirements?
(C) What portion of the requirements payment will be used to carry out other activities?

This information is displayed in charts on pages 61 and 62.

GLENDA E. HOOD
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
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Election Reform Estimated Revenues 2003-2005 Fiscal Years

	HAVA 101 (2003 actual)	HAVA 102 (2003 actual)	HAVA 252 (2003 Actual) (2004 Estimated)	Total Federal Funds	State Matching Funds
2003	$ 14,447,580	$ 11,581,377	$ 47,416,833	$ 73,445,790	$ 525,000
2004	- 0	0	$ 85,085,258	$ 85,085,258	$ 6,103,018
2005	0	0	TBD	TBD	NA
Total					$ 6,628,018

HAVA Budget Funding by Fiscal Year

	2003-2004 Appropriation	Expenditures thru 6/30/04	Balance	2004-2005 Appropriation	2005-2006
Title I Requirements					
Reimbursement for replacement of punch card and lever machines. (Section 102 HAVA)	11,581,377	11,581,377			
Title III Requirements					
Sec. 303 Statewide Voter Registration System					
Phase One Development –research, planning & design (Section 101 HAVA Funds)	1,000,000	973,078	26,922	0	0
5 full time DOS positions – salaries	290,000	99,965	190,035	290,000	290,000
5 full time DOS positions – expenses	69,575	0	69,575	69,575	69,575
DOS Operating capital outlay	7,500	5,246	2,254	7,500	7,500
2 full time DHSMV positions – salaries	115,000	115,000	0	115,000	115,000
2 full time DHSMV positions – expenses	27,830	27,830	0	27,830	27,830
DHSMV operating capital outlay	3,000	3,000	0	3,000	3,000
2 full time FDLE positions – salaries	115,000	115,000	0	115,000	115,000
2 full time FDLE positions – expenses	27,830	27,830	0	27,830	27,830
DHSMV operating capital outlay	3,000	3,000	0	3,000	3,000
Phase Two – Dev. & Impl. statewide voter reg. system (Section 252 Requirements Payment)	0	0	0	10,179,969	10,179,969
20 full time positions – salaries	0	0	0	976,746	976,746
20 full time positions – expenses	0	0	0	196,404	196,404
20 full time positions – operating capital outlay	0	0	0	30,500	30,500
Sec. 301 Voting System Standards (Section 252 Requirements Payment)					
Accessibility for voters with disabilities (compliance)	0	0	0	11,600,000	0
Accessibility for voters with disabilities (reimbursement to counties)	0	0	0	0	17,000,000
Other Election Reform Activities (Section 101 HAVA funds 2003-2004 activities; Section 101 & Section 252 HAVA fund activities 2004-2005 and beyond)					
Voter Education Programs	2,976,755	2,976,755	0	3,000,000	3,000,000
Poll worker recruitment and training	0	0	0	0	500,000
Poll worker Training	0	0	0	0	0
HAVA Oversight and Reporting					
3 full time positions – salaries	165,230	112,706	52,524	165,230	165,230
3 full time positions – expenses	35,849	7,812	28,037	35,849	35,849
Operating capital outlay	5,000	5,000	0	5,000	5,000
State Management (HAVA Planning Committee)	0	0	0	30,000	30,000
HAVA Plan. Comm. convenes twice/year $30k/mtg)	0	0	0	0	0
HAVA Performance Goals & Measures Adoption HAVA Planning Committee hearings – 4 at $40k/mtg	250,000	247,174	2,826	780,000	250,000
Election Administration – design and production of new voter registration forms and publications, translations for all election administration forms and publications.	0	0	0	0	50,000
Complaint Procedure §402	16,872,946	16,300,773	372,173	27,658,433	33,078,433
Total					

Element 7. Maintenance of Effort

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

Introduction

The funding provided under the Help America Vote Act of 2002 (HAVA) is intended to pay for new or enhanced election efforts and is not intended to supplant existing funding at the State or county level. The projected HAVA budget is based on the assumption that the State of Florida and counties will maintain the foundation of election operating expenditures for the fiscal year ending prior to November 2000.

The Florida Division of Elections provides statewide coordination and direction for the interpretation and enforcement of election laws. The Division's budget supports year-round staff that provides election-related assistance to Florida's 67 county supervisors of elections and their staff, municipalities, special districts, county and city attorneys, candidates, political committees, committees of continuous existence, elected officials, media, the public and other election officials throughout the United States.

Section 254(a)(7) How will the State of Florida maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000?

In determining Florida's maintenance of effort expenditures, the Division of Elections calculated 1999-2000 fiscal year expenditures which included salaries and benefits, operating capital outlay and voter fraud programs for the Division of Elections Director's office and the portion of Bureau of Election Records' expenditures pertaining to election administration. Florida's expenditures for these activities for 1999-2000 fiscal year totaled $3,082,224.

In order to comply with Section 254(a)(7) of HAVA, the Florida Department of State will maintain expenditures on similar activities at a level equal to the 1999-2000 fiscal year budget.

For FY 2003-2004 and FY 2004-2005, the State of Florida exceeded the $3,082,224 required to meet the Maintenance of Effort requirements.

The HAVA Planning Committee recommended that the Secretary of State communicate to the Senate President and the Speaker of the House of Representatives the importance of maintaining this maintenance of effort figure, as a minimum level of expenditures, to ensure the required level of spending is appropriated by the Florida Legislature.

During the 2003 and 2004 Legislative sessions, the Department of State's budget staff and legislative affairs staff maintained and continues to maintain close contact with House and Senate staff to convey the importance of continuing the Maintenance of Effort figure as a minimum level of funding.

Element 8. Performance Goals and Measures

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Introduction

Florida has a very decentralized election governance and administrative system. The Secretary of State is appointed by the Governor and is the legal Chief Election Official in Florida. However, the Secretary of State does not supervise the day-to-day operations of the 67 local supervisors of elections and only provides guidance through technical assistance, rules, advisory opinions, voting system certification, and producing standardized election forms.

In Florida, it is the local supervisor of elections that has constitutional authority to conduct elections through State law and rule. The supervisors are elected to 4-year terms by the registered voters of their respective counties (except for Miami-Dade's appointed supervisor) and have broad authority to conduct the day-to-day election operations by appointing local election officials, administering voter registration, preparing ballots, administering absentee voting, conducting poll worker training, and developing voter education programs.

The Help America Vote Act of 2002 (HAVA) requires the State and not the local supervisors of elections to adopt performance goals and measures for determining statewide and local election reform success. The following performance measures have been adopted by the HAVA Planning Committee for these key elements of the plan:

1. Voting Systems
2. Voting systems guidelines
3. Absentee instructions
4. Voting systems for voters with disabilities
5. Provisional voting
6. Voter registration system
7. Voter education
8. Administrative complaint process

Section 254(a)(12) How will Florida adopt performance goals and measures that will be used by the State to determine its success and the success of local government in carrying out the plan, including—

- **Timetables for meeting the elements of the plan**
- **Descriptions of the criteria the State will use to measure performance**
- **The process used to develop such criteria**
- **A description of which official is to be held responsible for ensuring that each performance goal is met?**

Planning Element:	Element #1, Section 301 – Voting Systems Element # 4, Section 254(a)(4) – Voting System Guidelines
HAVA Deadline:	January 1, 2006
Goal:	Document the performance of Florida's voting systems to continually improve the voting experience for Florida voters.
Performance Measures:	• Record and report to the Florida Legislature the number of overvotes and undervotes appearing in the first race for each General Election • List the likely reasons for such overvotes and undervotes by counties, by voting systems, and by appropriate election races • Suggest improvements to the voting process addressing such issues as voting system performance, ballot design, ballot instructions, election official training, poll worker training, voter education, and policy changes • Review rules and governing standards and certification of voting systems to determine the adequacy and effectiveness of such rules in assuring that elections are fair and impartial
Timetable (If applicable):	On-going
Process used to develop criteria:	Florida Legislature (Section 101.595, Section 101.015, *Florida Statutes*) 2001 Governor's Select Task Force Report on Election Procedures, Standards and Technology HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Chief, Bureau of Voting Systems Certification Supervisors of Elections

Planning Element:	Element #1, Section 301 – Absentee Ballot Instructions
HAVA Deadline:	January 1, 2006
Goal:	Ensure voters have sufficient absentee ballot instructions on how to make corrections by requesting a replacement ballot and the consequences of casting multiple ballots.
Performance Measures:	With receipt of absentee ballots following an election, each county will gather the following information: • Number of absentee/mail-in ballots requested • Number of replacement absentee/mail-in ballots requested • The number of returned absentee ballots not counted because of a) no signature b) non-matching signature
Timetable (if applicable):	September 2004
Process used to develop criteria:	• Department of State, (Rule 1S-2.032, F.A.C.) • HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections

Planning Element:	Element #1, Section 301 – Certified Voting Systems for Voters with Disabilities
HAVA Deadline:	January 1, 2006
Goal:	Provide one accessible voting system for every polling place including non-visual accessibility for the blind and visually impaired that provides the same opportunity for access and participation as other voters.
Performance Measures:	• Legislature appropriates sufficient HAVA funds to purchase accessible voting systems; • Supervisors of elections certify to the Department of State the number of certified accessible voting systems needed to meet the requirement of one per polling place; • Upon approval by the Department of State, supervisors of elections submit recommendations for purchase of certified accessible voting systems to Board of County Commissioners; • Board of County Commissioners receives HAVA funds and appropriates funds to purchase certified accessible voting systems; • Supervisors of elections report to the Department of State before January 1, 2006 that this requirement has been met.
Timetable (if applicable):	Begin July 2004 End December 2005
Process used to develop criteria:	Florida Legislature sets requirements for certifying polling places Division of Elections certifies polling places and voting systems HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections

Planning Element:	Element #1, Section 302 – Provisional Voting
HAVA Deadline:	January 1, 2004
Goal:	Ensure that all voters whose eligibility to vote is questioned be permitted to cast a provisional ballot and notified of outcome.
Performance Measures:	With respect to the voter registration of each county, the following information will be collected to measure compliance performance: County Level • The number of provisional ballots cast in each precinct • The number of registered voters in each precinct • The number of provisional ballots that were verified and counted in each precinct • The number of provisional ballots not counted in each precinct and the reason for not counting State Level • The number of provisional ballots cast in each county • The number of registered voters in each county • The number of provisional ballots that were verified and counted in each county • The number of provisional ballots not counted in each county and the reason for not counting
Timetable (if applicable):	On-going
Process used to develop criteria:	Florida Legislature (Section 101.048, *Florida Statutes*) HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections

Planning Element:	Element #1, Section 303 – Voter Registration System
HAVA Deadline:	January 1, 2006
Goal:	Establish a single, uniform, official centralized, interactive, computerized, statewide voter registration list which shall be the single system for storing and managing the list of registered voters throughout the state for the conduct of all federal elections.
Performance Measures:	• Legislature directs the Division of Elections to develop a statewide voter registration system that meets the requirements of HAVA; • Division of Elections begins Phase 1 of the "Florida Voter Registration System" (FVRS) in September 2003 and develops the specifications for design and implementation. • Division of Elections begins Phase 2 of the FVRS in March 2004 by prototyping and validating system components; • Division of Elections begins Phase 3 of the FVRS in March 2005 by conducting tests, revising modules, and ensuring all system components meet functional and performance standards; • Division of Elections begins Phase 4 of the FVRS in August 2005 by developing and implementing a training and education plan which will result in counties being brought on line as their election schedules permit; • Division of Elections begins Phase 5 of the FVRS in January of 2006 by providing final system documentation and by transitioning to a maintenance and support function
Timetable (if applicable):	Begin September 2003 End December 2005
Process used to develop criteria:	• Public meetings hosted by the Bureau of Voting Systems Certification in consultation with supervisors of elections and other involved state and federal agencies • HAVA Planning Committee
Accountable official(s):	Secretary of State Deputy Secretary of State Director, Division of Elections Chief, Bureau of Voting Systems Certification Supervisors of Elections

Planning Element:	Element #3, Section 254(a)(3) Voter Education
HAVA Deadline:	NA
Goal:	Promote a more educated electorate by providing comprehensive and varied voter education programs throughout each of Florida's 67 counties.
Performance Measures:	• County supervisors of elections will create a Voter Guide including the information defined in Rule 1S-2.033, F.A.C. • Voter education plans will be filed with the Division of Elections by each supervisor of election • The Department of State will prepare a report on the effectiveness of these programs • Each county will document, where applicable: o the number and types of locations in which voter guides are distributed o the number and types of mediums for posting election related information (banners, billboards, etc.) o the number of sample ballots mailed and/or publications where they were published o voter education and registration programs for high school students o college registration/education programs on each college campus in the county o voting equipment demonstrations o where voters rights and responsibilities are posted o registration workshops held o the number and locals of radio, television and print interviews o methods used to reach non-English speaking and citizens with disabilities o number of overvotes and undervotes that occur during an election o the number of provisional ballots cast during an election *(continued on next page)*

Timetable (if applicable):	• Ongoing • Supervisors of elections are required to file a report by December 15th of each general election year with the Dept. of State describing voter education programs implemented. • Department of State is required to review information submitted by supervisors of elections and prepare a public report, to be submitted to Governor, Senate President and Speaker of the House of Representatives, on effectiveness of voter education programs by January 31st of each year following a general election.
Process used to develop criteria:	The Florida Legislature (Section 98.255, Section 101.65, *Florida Statutes*) Department of State (Rule 1S-2.033, F.A.C.) Supervisors of Elections HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections

Planning Element:	Element #3, Section 254(a)(3) – Election Official and Poll Worker Training
HAVA Deadline:	Immediate and Ongoing
Goal:	Provide a simple, friendly voting experience for Florida voters by training election officials and poll workers through professional and frequent instruction.
Performance Measures:	• Document the number of training classes offered at the state and local levels • Document the number of supervisors of elections who receive certification • Document the number of election officials who receive training • Document the number of poll workers who attend the training sessions • Document and report voter satisfaction with the voting process through various methods • Report to the Florida Legislature after each election cycle the effectiveness of election official and poll worker training programs
Timetable (if applicable):	On-going
Process used to develop criteria:	HAVA Planning Committee
Accountable official(s):	Supervisors of Elections Director, Division of Elections

Planning Element:	Element #9, Section 254(a)(a) State-Based Administrative Complaint Procedures to Remedy Grievances
HAVA Deadline:	NA
Goal:	Establish and maintain a state-based administrative complaint procedure for any individual who believes that there has been a violation of any of HAVA's Title III requirements.

Performance Measures:	The following information will be collected to subjectively measure performance:
	• Number of complaints received
	• Number of complaints resolved
	  ◦ Number of complaints resolved in 30 days or less
	  ◦ Number complaints resolved in 60 days
	  ◦ Number of complaints resolved in 90 days
	• Number of complaints unresolved
	  ◦ Description of reason complaint is left unresolved

Timetable (if applicable):	Ongoing
Process used to develop criteria:	Florida Legislature (Section 97.028, *Florida Statutes*) HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections

Element 9. State-Based Administrative Complaint Procedures to Remedy Grievances

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

Introduction
To receive any requirements payment pursuant to the Help America Vote Act of 2002 (HAVA), the State of Florida must establish and maintain State-based administrative complaint procedures which meet HAVA's requirements to:

(1) be uniform and nondiscriminatory;
(2 provide that any person who believes that there is or will be a violation of any of HAVA's Title III requirements may file a complaint;
(3) require the complaint to be in writing, sworn and notarized;
(4) permit complaints to be consolidated;
(5) hold a hearing on the record at the request of the complainant;
(6) provide an appropriate remedy if the State determines that there is a violation of any Title III provision;
(7) if the State determines there is no violation, dismiss the complaint and publish the results of procedures;
(8) make a final determination on a complaint within 90 days after filing unless the complainant consents to a longer period; and,
(9) use alternative dispute resolution procedures to resolve the complaint if the State fails to resolve it within 90 days.

Section 402(a): Has Florida complied with the requirements of HAVA Section 402(a) to establish State-based administrative complaint procedures to remedy grievances?

Yes, and no further actions are required.
Appropriate administrative complaint procedures were included in Chapter 2003-415, *Laws of Florida*. Language in the legislation tracked HAVA's language closely. These procedures are similar to administrative procedures in Section 97.023, *Florida Statutes*, for resolving complaints generated by alleged violations of the National Voter Registration Act of 1993 or a voter registration or removal procedure under the Florida Election Code.

Florida's legislation established a new Section 97.0535, *Florida Statutes*, that in addition to tracking HAVA's minimum requirements, included the following additional requirements not specified by HAVA:

(1) the Department of State would have sole jurisdiction for these purposes and the procedures would be the sole avenue of redress for alleged Title III violations;

(2) a complaint would have to state the alleged violation and the person or entity responsible for the violation;
(3) the Department of State would be required to inform a complainant in writing if a complaint was legally insufficient;
(4) proceedings would be exempt from Chapter 120, *Florida Statutes*, (Administrative Procedures Act);
(5) a hearing would be held by a hearing officer whether or not a complainant requested a hearing and specific procedures for a hearing were included in the legislation;
(6) the hearing officer would direct an appropriate remedy that then would be enforced by the Department of State;
(7) mediation would be the alternative dispute resolution method used if a final determination on a complaint was not made within 90 days of filing.

Element 10. Effect of Title I Payments

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Introduction

Title I of the Help America Vote Act of 2002 (HAVA) is an "early out" money program for use in two areas—improving election administration and the replacement of punch card and lever voting systems. Florida received $26,028,957 under this "early out" program. The HAVA Planning Committee recommended using Section 101 federal HAVA funds for 2003-2004 activities and a combination of Section 101 and Section 252 HAVA federal funds for activities beginning in the 2004-2005 fiscal year and beyond.

Under Title I, Section 101 funds are to be used to improve election administration. Approved use of funds under this section includes:

(A) Complying with the requirements under Title III.
(B) Improving the administration of elections for Federal office.
(C) Educating voters concerning voting procedures, voting rights, and voting technology.
(D) Training election officials, poll workers, and election volunteers.
(E) Developing the HAVA State Plan for requirements payments.
(F) Improving, acquiring, leasing, modifying, or replacing voting systems.
(G) Improving polling place accessibility for voters with disabilities or with limited English.
(H) Establishing toll-free telephone hotlines for voters to access voting information, report voting fraud, or report voting rights violations.

Under Title I, Section 102 federal funds are to be used to replace punch card and lever voting systems.

Following the 2000 General Election, the State of Florida assisted counties by investing approximately $24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 funds in the amount of $11,581,377 were returned to the state as reimbursement.

The HAVA Planning Committee clearly recognizes its advisory role in election reform and acknowledges the authority of the Florida Legislature to make funding decisions for Florida. The following recommendations are based on the HAVA Planning Committee meetings held to develop the HAVA State Plan.

Section 101. How will Title I payments to Florida be used for activities to improve administration of elections?

The State of Florida is using Title I funds for election reform activities necessary to ensure Florida complies with all HAVA requirements. The following list describes the major areas in which funds are used.

(A) Complying with the requirements under Title III

The Division of Elections will implement a statewide voter registration system to comply with HAVA Title III. The Division of Elections used $1 million appropriated from Section 101 federal funds for Phase One development of the new Statewide Voter Registration system. Expenditures for Phase One included:

- Consulting fees for conducting a detailed analysis of connectivity infrastructure available in the 67 supervisor of elections' offices and within all affected offices of the departments of State, Law Enforcement and Highway Safety and Motor Vehicles; working with the counties, the three agencies and the advisory board to create minimum and optimum sets of system requirements; assessing infrastructure needs of all stakeholders to serve the system requirements; conducting "gap" analysis; outlining the physical design of the system; estimating costs and implementation plans for each version for the system to be presented to the 2004 Legislature; and developing and publishing the January 2004 report and recommendations for the 2004 Legislature.
- The purchase of hardware and software for project management and system development.
- Expenses incurred by Division of Elections' staff.
- Travel expenses for visits to every supervisor of elections' office and local driver license office.

In addition, Section 101 HAVA funds were used to create nine full time positions necessary for the design, development and implementation of the Statewide Voter Registration system.

(B) Improving the administration of elections for Federal office.

Upon receipt of Title I monies, the HAVA Planning Committee recommended that the Division of Elections use $250,000 in fiscal year 2003-2004 from Section 101 funds for expenses that include the design and publication of voter registration forms and other election information, translations for all election administration forms and publications, statewide voter education programs and training workshops.

A State-based complaint procedure has been established for anyone who believes that a violation of Title III of the Help America Vote Act has occurred, is occurring or is about to occur. Funds may need to be expended depending on the number and type of complaints filed.

(C) Educating voters concerning voting procedures, voting rights, and voting technology.

The Florida Division of Elections will use approximately $9 million over a three year period for voter education programs. In FY 2003-2004, $2,976,755 was appropriated and distributed to county supervisors of elections for voter education programs. Distribution was based on a funding level per individual voter multiplied by the number of registered voters in each county for the 2002 General Election. To determine the funding level per individual voter, the Division of Elections divided the total amount of funds appropriated in FY 2003-2004 by the total number of registered voters in the State of Florida for the 2002 General Election.

For FY 2004-2005, the Appropriations bill includes $3,000,000 to be distributed to county supervisors of elections for purposes relating to voter education. No supervisor of elections shall receive any funds until the county supervisor of elections provides to the Department of State a detailed description of the voter-education programs, such as those described above, to be implemented.

FY 2004-2005 funds will be distributed to each eligible county supervisor of elections based on a funding level per voter multiplied by the number of registered voters in the county for the 2004 Presidential Preference Primary. To determine the funding level per individual voter, the Division of Elections will divide the total amount of funds appropriated in FY 2004-2005 by the total number of registered voters in the State of Florida for the 2004 Presidential Preference Primary.

(D) Training election officials, poll workers, and election volunteers.

In the original HAVA plan, the HAVA Planning Committee recommended using HAVA funds in the amount of $250,000 for poll worker training in each fiscal year 2003-2004, 2004-2005 and 2005-2006. The Florida Legislature, however, did not appropriate HAVA funds for this use in FY 2003-2004 or FY 2004-2005.

The HAVA Planning Committee would like to reinstate its recommendation to use HAVA funds in the amount of $500,000, beginning with FY 2005-2006, for poll worker training and recruitment, with a 15% match required of each county.

(E) Developing the HAVA State Plan for requirements payments to be submitted under part 1 of subtitle D of Title II.

Title I funds were used to revise the HAVA State Plan in FY 2003-2004. As the State of Florida modifies its plans in future years, HAVA funds may be used.

(F) Improving, acquiring, leasing, modifying, or replacing voting systems.

Florida has already replaced its punch card and lever voting systems. Following the 2000 General Election, the State of Florida assisted counties by investing approximately $24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 funds in the amount of $11,581,377 were returned to the state as reimbursement.

The HAVA Planning Committee recommended that the State of Florida utilize some HAVA funds to help counties meet the accessibility requirements under Title III by the January 1, 2006 deadline. The FY 2004-2005 Appropriations Bill states that $11,600,000 shall be distributed by the Department of State to county supervisors of elections for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for disability requirements which is accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place.

In addition, the HAVA Planning Committee recommends reimbursing counties who have already purchased voting systems that meet the HAVA accessibility for voters with disabilities requirements. The estimated cost for this reimbursement is $17 million and it is anticipated that Section 252 HAVA funds will be used.

(G) Improving polling place accessibility for voters with disabilities or with limited English.

Under Section 261, HAVA states the Secretary of Health and Human Services shall make a payment to eligible States to be used for making polling places accessible to individuals with disabilities and providing information on this accessibility. The HAVA Planning Committee recommends that these funds be distributed to each county to ensure that individuals with disabilities are provided the same opportunity for access and participation as for other voters.

During FY 2003-2004, the State of Florida applied for and received a grant from Health & Human Services (HHS) in the amount of $687,278. Since the Division of Elections did not have budget authority in FY 2003-2004 to spend these dollars, none of the funds have been requested from HHS as of this date. The Division has distributed a survey to all supervisors of elections requesting information regarding the number of polling places that were utilized in the 2004 Presidential Preference Primary. This information will be used to determine the formula for distributing the grant funds to the counties.

The funds will be used as described in the grant application which follows the recommendations in the plan.

The Division of Elections has also been awarded a second grant from Health & Human Services to improve polling place accessibility in the amount of $492,941.

(H)Establishing toll-free telephone hotlines for voters to access voting information, report voting fraud, or report voting rights violations.

Currently, there are no plans to use HAVA funds for establishing a free voting information hotline. If this type of voting information system is desired, it will be the responsibility of each county and monitored by the Division of Elections.

The Division of Elections has already established a voter fraud hotline for individuals who believe they may have witnessed election fraud. In addition, the Division has established a hotline for voters to request voting information.

Section 102. How will payments to Florida be used for the replacement of punch card or lever voting machines?

Following the 2000 General Election, the State of Florida assisted counties by investing approximately $24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 federal funds in the amount of $11,581,377 were returned to the state as reimbursement.

Element 11. Help America Vote Act of 2002 (HAVA) State Plan Management

How the State will conduct ongoing management of the plan, except the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

Introduction
This element of the HAVA State Plan requires Florida to explain how the State of Florida will manage the implementation of the HAVA State Plan and whether it will utilize the same public notice process if any "material change" is made to the administration of the HAVA State Plan.

Section 251(a)(11) How will Florida conduct ongoing management of the HAVA State Plan?

As explained in previous sections of this Plan, the administration of elections in Florida occurs at the State and local levels. The Secretary of State is the Chief Election Officer under Florida law. The Secretary of State as the Chief Election Officer is responsible for the coordination of the State's responsibilities under HAVA Section 253. The Director of the Division of Elections reports to the Secretary of State and will be responsible for the day-to-day monitoring and managing of Florida's HAVA State Plan. The Director has three new positions dedicated to HAVA program management. The scope of responsibilities will range from federal reporting and grant compliance to assistance with voter education, election official training and updating the HAVA State Plan.

Also at the State level, the Secretary of State directs the HAVA Planning Committee to update the HAVA State Plan as required in Section 255. Under Florida's HAVA State Plan, the HAVA Planning Committee is responsible for conducting its business in an open, public forum and for suggesting revisions and updates to the HAVA State Plan.

At the local level, Florida's 67 supervisors of elections will be encouraged to play an active role in the successful implementation of the HAVA State Plan. The Division of Elections will continue to work on a regular basis with local supervisors of elections to develop performance

goals and measures, new voter registration improvements, new voting systems certification upgrades, statewide voter education programs, election official training, and other activities outlined in Florida's HAVA State Plan.

Section 254(a)(11) If Florida makes any material change in the administration of the HAVA State Plan, will the change—

(A) be developed and published in the Federal Register in accordance with Section 255 in the same manner as the HAVA State Plan;

(B) be subject to public notice and comment in accordance with Section 256 in the same manner as the HAVA State Plan; and

(C) take effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A)?

The State of Florida understands and agrees to comply with the HAVA requirements related to ongoing management of the HAVA State Plan. No material changes in the administration of the plan will be made unless:

- the material change is developed and published in the Federal Register in accordance with Section 255 in the same manner as the HAVA State Plan;
- the material change is subject to public notice and comment in accordance with Section 256 in the same manner as the HAVA State Plan; and
- the material change takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

Element 12. Changes to State Plan for Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Introduction
The HAVA State Plan was updated at public meetings held in Orlando, Florida on May 24, 2004 and in Hollywood, Florida on June 4, 2004. The Secretary of State utilized the previous HAVA Planning Committee to make changes. The Collins Center for Public Policy, Inc. was selected in a public competitive process to staff the update process.

The HAVA Planning Committee focused on three types of changes:

1. Substantive changes made by the State of Florida that bring the State into further compliance with HAVA
2. Minor updates that will not affect the State's compliance with HAVA
3. Issues that have arisen that might affect the State's future compliance with HAVA

The HAVA Planning Committee received copies of the original plan. All updates and changes to the original plan from the previous fiscal year were noted as follows:

1. Sections of the plan that were deleted were first shown in a strike-through font
2. Sections of the plan that were new were shown in an underlined font.
3. After the HAVA Planning Committee reviewed and approved the updates, the underline and strike-through fonts were removed.

Section 254(a)(12) When Florida has a HAVA State Plan for the previous fiscal year, will the State of Florida provide a description of how the plan reflects changes from the HAVA State Plan for the previous fiscal year and how the State succeeded in carrying out the HAVA State Plan for such previous fiscal year?

Florida has updated its original HAVA State Plan to bring it into further compliance through legislative action, rule change and updated information. The following chart is a summary on how the HAVA State Plan changed and how the State succeeded in carrying out the HAVA State Plan for the previous fiscal year.

HAVA State Plan Update from Previous Fiscal Year

Element 1-Voting Systems
Florida currently meets all HAVA voting system requirements except with regard to voting systems for voters with disabilities.

Changes	Successes
Voting systems for voters with disabilities: The Legislature appropriated $11.6 million to help Florida's counties provide one certified accessible voting system for voters with disabilities including blind and visually impaired voters by January 1, 2006.	The Department of State is going beyond HAVA by contracting with a disability relations group to act as a consultant to help implement disability access with the supervisors of elections across the state.

Element 1- Provisional Voting and Voting Information
Florida made six (6) changes to the provisional voting process in order to comply with HAVA by January 1, 2004.

Changes	Successes
Free Access System: Updated state law to require each supervisor of elections to establish a free access system that allows each person who casts a provisional ballot to determine whether his/her provisional ballot was counted and, if not, why.	Systems were established by January 1, 2004 and individuals who voted provisional ballots were given notice of whether their ballot was counted.
The HAVA Planning Committee concludes that the provisional ballot set forth in HAVA reinforces protections that the NVRA affords voters who move within the registrar's jurisdiction without updating their registration information, the ability to vote. The HAVA Planning Committee would like to offer Florida voters this same certainty and recommends to the Florida Legislature that the meaning of the term "jurisdiction" in Florida Statutes be changed from "precinct" to "county."	Proper instructions for voting and casting a provisional ballot were displayed in polling places. Proper instructions for mail-in registrants and first-time voters were displayed in polling places. Proper contact information for any voter alleging their rights were violated was displayed in polling places.
Voting instructions including how to cast a provisional ballot: The Division of Elections updated and reprinted posters that are displayed in each polling place on election day to include these instructions. Posting of instructions for mail-in registrants and first-time voters: The Division of Elections updated and reprinted posters that are displayed in each polling place on election day to include these instructions. Posting of contact information for voters who allege their rights have been violated: The Division of Elections updated and reprinted posters that are displayed in each polling place on election day to include these instructions. Effective date for complying with Provisional Voting and Voting Information Requirements: Requirements were completed by HAVA deadline of January 1, 2004.	The State was in compliance by the required deadline.

Element 1- Voter Registration System

Changes	Successes
The Florida Legislature has directed the Department of State to begin the development of the new Florida Voter Registration System (FVRS) that meets the requirements of HAVA. The Division of Elections has been tasked to develop the specifications for the design and implementation. A project team has been established consisting of supervisors of elections, technical experts and other agency representatives and has approved a five (5) phase project plan to be completed by the HAVA deadline.	The State of Florida received an extension for the development and implementation of the computerized statewide voter registration list from January 1, 2004 to January 1, 2006. The Florida Legislature appropriated $1.6 million to begin the project design and implementation of the new Florida Voter Registration System and to fund nine positions.

Element 2- Local Government Payments and Activities

Changes	Successes
The State of Florida reimbursed itself with $11.58 million in Section 102 HAVA funds for replacing outdated voting machines after the 2000 General Election.	The Florida Legislature appropriated $11.6 million in HAVA funds to assist counties in the purchase of accessible voting systems for each polling place. The Florida Legislature appropriated nearly $3 million to counties for nonpartisan Voter Education programs.

Element 3- Voter Education

Changes	Successes
An analysis of FY 2003-2004 voter education programs throughout the state indicate a variety of innovative programs are being used. Beginning in 2003, the Florida Legislature expanded its definition of voter education activities for which counties may receive state funds. HB 29B (Chapter 2003-415) requires: • Education materials to be updated to provide absentee voters with better instructions; • The Department of State and county supervisors of elections to provide more information to absent uniform services voters and overseas voters; • Persons registering to vote be notified of the requirement to provide identification prior to voting the first time; • Written instructions be given regarding the free access system that allows each person who casts a provisional ballot to determine whether their vote counted and, if not, why not; • Supervisors of elections to provide up-to-date information to conform to HAVA	The Florida Legislature appropriated $3 million for voter education programs for FY 2004-2005. Division of Elections contracted with the Get Out the Vote Foundation, Inc., in the amount of $247,500 from FY 2003-2004 appropriations. The Florida State Association of Supervisors of Election, through activities of its Get Out the Vote Foundation, will play a major role in educating and training election officials in 2004. To increase poll worker recruitment, the Department has initiated a "Be a Poll Worker" campaign which includes airing public service announcements and distributing "Be a Poll Worker" handouts at Department presentations.

voting information requirements; Senate Bill No. 2566 (Chapter 2004-232) required county supervisors of elections to revise the Voter's Certificate and instruction to those voting via an absentee ballot indicating an absentee ballot is no longer required to have his/her signature witnessed. Senate Bill No. 2346 (Chapter 2004-252) required county supervisors of elections to revise the Early Voting Certificate information indicating a person casting an Early Vote is no longer required to have his/her signature witnessed. The Division of Election's website enhances voter education through the internet by: • Voter assistance hotline toll free number • 2004 national voter registration workshops to be held across the state • Direct link to Help America Vote Act and HAVA Planning Committee activities • The results of an election night voter report card (survey) Under F.S. 101.20, supervisors of elections may mail a sample ballot to each registered elector or each household if done at least 7 days prior to any election, rather than publishing a sample ballot in a newspaper of general circulation. The HAVA Planning Committee recommended state funding for poll worker training and recruitment but the Florida Legislature in 2004 did not appropriate any funds for either activity.	

HAVA State Plan Update from Previous Fiscal Year

Element 1-Voting Systems
Florida currently meets all HAVA voting system requirements except with regard to voting systems for voters with disabilities.

Changes	Successes
Voting systems for voters with disabilities: The Legislature appropriated $11.6 million to help Florida's counties provide one certified accessible voting system for voters with disabilities including blind and visually impaired voters by January 1, 2006.	The Department of State is going beyond HAVA by contracting with a disability relations group to act as a consultant to help implement disability access with the supervisors of elections across the state.

Element 1- Provisional Voting and Voting Information
Florida made six (6) changes to the provisional voting process in order to comply with HAVA by January 1, 2004.

Changes	Successes
Free Access System: Updated state law to require each supervisor of elections to establish a free access system that allows each person who casts a provisional ballot to determine whether his/her provisional ballot was counted and, if not, why.	Systems were established by January 1, 2004 and individuals who voted provisional ballots were given notice of whether their ballot was counted.
The HAVA Planning Committee concludes that the provisional ballot set forth in HAVA reinforces protections that the NVRA affords voters who move within the registrar's jurisdiction without updating their registration information, the ability to vote. The HAVA Planning Committee would like to offer Florida voters this same certainty and recommends to the Florida Legislature that the meaning of the term "jurisdiction" in Florida Statutes be changed from "precinct" to "county."	Proper instructions for voting and casting a provisional ballot were displayed in polling places. Proper instructions for mail-in registrants and first-time voters were displayed in polling places.
Voting instructions including how to cast a provisional ballot: The Division of Elections updated and reprinted posters that are displayed in each polling place on election day to include these instructions.	Proper contact information for any voter alleging their rights were violated was displayed in polling places. The State was in compliance by the required deadline.
Posting of instructions for mail-in registrants and first-time voters: The Division of Elections updated and reprinted posters that are displayed in each polling place on election day to include these instructions.	
Posting of contact information for voters who allege their rights have been violated: The Division of Elections updated and reprinted posters that are displayed in each polling place on election day to include these instructions.	
Effective date for complying with Provisional Voting and Voting Information Requirements: Requirements were completed by HAVA deadline of January 1, 2004.	

Element 1- Voter Registration System

Changes	Successes
The Florida Legislature has directed the Department of State to begin the development of the new Florida Voter Registration System (FVRS) that meets the requirements of HAVA. The Division of Elections has been tasked to develop the specifications for the design and implementation. A project team has been established consisting of supervisors of elections, technical experts and other agency representatives and has approved a five (5) phase project plan to be completed by the HAVA deadline.	The State of Florida received an extension for the development and implementation of the computerized statewide voter registration list from January 1, 2004 to January 1, 2006. The Florida Legislature appropriated $1.6 million to begin the project design and implementation of the new Florida Voter Registration System and to fund nine positions.

Element 2- Local Government Payments and Activities

Changes	Successes
The State of Florida reimbursed itself with $11.58 million in Section 102 HAVA funds for replacing outdated voting machines after the 2000 General Election.	The Florida Legislature appropriated $11.6 million in HAVA funds to assist counties in the purchase of accessible voting systems for each polling place. The Florida Legislature appropriated nearly $3 million to counties for nonpartisan Voter Education programs.

Element 3- Voter Education

Changes	Successes
An analysis of FY 2003-2004 voter education programs throughout the state indicate a variety of innovative programs are being used. Beginning in 2003, the Florida Legislature expanded its definition of voter education activities for which counties may receive state funds. HB 29B (Chapter 2003-415) requires: • Education materials to be updated to provide absentee voters with better instructions; • The Department of State and county supervisors of elections to provide more information to absent uniform services voters and overseas voters; • Persons registering to vote be notified of the requirement to provide identification prior to voting the first time; • Written instructions be given regarding the free access system that allows each person who casts a provisional ballot to determine whether their vote counted and, if not, why not; • Supervisors of elections to provide up-to-date information to conform to HAVA	The Florida Legislature appropriated $3 million for voter education programs for FY 2004-2005. Division of Elections contracted with the Get Out the Vote Foundation, Inc., in the amount of $247,500 from FY 2003-2004 appropriations. The Florida State Association of Supervisors of Election, through activities of its Get Out the Vote Foundation, will play a major role in educating and training election officials in 2004. To increase poll worker recruitment, the Department has initiated a "Be a Poll Worker" campaign which includes airing public service announcements and distributing "Be a Poll Worker" handouts at Department presentations.

voting information requirements; Senate Bill No. 2566 (Chapter 2004-232) required county supervisors of elections to revise the Voter's Certificate and instruction to those voting via an absentee ballot indicating an absentee ballot is no longer required to have his/her signature witnessed. Senate Bill No. 2346 (Chapter 2004-252) required county supervisors of elections to revise the Early Voting Certificate information indicating a person casting an Early Vote is no longer required to have his/her signature witnessed. The Division of Election's website enhances voter education through the internet by: • Voter assistance hotline toll free number • 2004 national voter registration workshops to be held across the state • Direct link to Help America Vote Act and HAVA Planning Committee activities • The results of an election night voter report card (survey) Under F.S. 101.20, supervisors of elections may mail a sample ballot to each registered elector or each household if done at least 7 days prior to any election, rather than publishing a sample ballot in a newspaper of general circulation. The HAVA Planning Committee recommended state funding for poll worker training and recruitment but the Florida Legislature in 2004 did not appropriate any funds for either activity.	

Element 4- Voting System Guidelines and Processes

Changes	Successes
There were no changes in this element of the HAVA State Plan.	

Element 5- HAVA Election Fund

Changes	Successes
The HAVA fund has not undergone any structural changes in the way the trust fund was set up. Recent calls from the Florida Auditor General indicate a possible audit during FY 2004-2005.	The Florida Legislature has appropriated funds received for election-related activities as required by HAVA.

Element 6- HAVA Budget

Changes	Successes
	The State of Florida reimbursed itself with $11.58 million in Section 102 HAVA funds for replacing outdated voting machines after the 2000 General Election.
The HAVA Planning Committee approved the projected cost of the Florida Voter Registration System and recommended that the Florida Legislature continue funding the development of this project for a estimated total of $20.6 million through 2008.	The Florida Legislature appropriated $1.6 million in FY 2003-2004 to begin the development of the Florida Voter Registration System which will meet HAVA requirements.
The HAVA Planning Committee continued to recommend that the State of Florida reimburse counties that have already purchased voting systems that meet the HAVA accessibility requirements for voters with disabilities.	The Florida Legislature appropriated $11.6 million in HAVA funds, in FY 2004-2005, to assist counties in the purchase of accessible voting systems for each polling place by January 1, 2006.
The HAVA Planning Committee recommended using $9 million of HAVA funds during FY 2003-2004, FY 2004-2005 and FY 2005-2006 to develop and implement a statewide voter education program.	The Florida Legislature appropriated nearly $3 million to counties for nonpartisan Voter Education programs in FY 2003-2004 and FY 2004-2005.

The HAVA Planning Committee recommended using $500,000 for FY 2005-2006 in a matching grant program for counties to conduct election official and poll worker training. The HAVA Planning Committee did not recommend renewing its recommendation to develop a statewide poll worker recruitment campaign. The HAVA Planning Committee recommended continued funding of the three positions providing administrative oversight for HAVA. The HAVA Planning Committee recommended funding future HAVA Planning Committee meetings at $30,000 for each fiscal year through FY 2005-2006. The HAVA Planning Committee recommended funding the following future activities: 1. continued development and expansion of the Florida Voter Registration System 2. future improvement to voting technology 3. continued funds for county voter education programs 4. accessibility for polling places 5. poll worker recruitment and training.	The Florida Legislature funded three positions to provide administrative oversight for HAVA in FY 2003-2004.

Element 7- Maintenance of Effort

Changes	Successes
The State of Florida exceeded the Maintenance of Effort payments for FY 2003-2004 and FY 2004-2005.	The State of Florida provided funds of just over $3,082,224 for election activities in order to meet the HAVA Maintenance of Efforts requirement.

Element 8- Performance Measures

Changes	Successes
The HAVA Planning Committee approved performance measures for the following plan elements: 1. Voting systems 2. Voting systems guidelines 3. Absentee instructions 4. Voting Systems for voters with disabilities 5. Provisional voting 6. Voter registration 7. Voter Education 8. Administrative complaint process	

Element 9-Administrative Complaint Process

Changes	Successes
There were no changes for this element of the HAVA State Plan.	

Element 10- Effect of Title One Payments

Changes	Successes
Florida received $26,028,957 in Title I funds. These Title I, Section 102 funds were returned to the state as reimbursement for funds invested in the counties to replace outdated voting machines following the 2000 General Election instead of being distributed to counties as recommended by the HAVA Planning Committee. Title III funds were used as recommended by the HAVA Planning Committee to begin development of the statewide voter registration system. Title I funds were used as recommended by the HAVA Planning Committee for voter education programs over a two year period. The Florida Legislature did not appropriate HAVA funds for use in training election officials and poll workers as recommended by the HAVA Planning Committee. The Florida Legislature appropriated $11.6 million for distribution to supervisors of elections for the purchase of equipment which is accessible to persons with disabilities.	The Division of Elections used $1 million for Phase 1 of the new voter registration system. The Division of Elections distributed $3 million to Florida counties for voter education activities and is scheduled to distribute an additional $3 million in FY 2004-2005. Funds will be distributed to supervisors of elections to purchase equipment which is accessible to persons with disabilities. The State of Florida applied for and has been awarded two grants from Health & Human Services in the amount of $687,278 and $492,941 to be used for making polling places accessible to individuals with disabilities. The Division of Elections has distributed a survey to all supervisors of elections requesting information regarding the number of polling places that were utilized in the 2004 Presidential Preference Primary in order to determine the formula for distributing grant funds to counties.

Element 11- HAVA State Plan Management Section

Changes	Successes
The HAVA Planning Committee updated this element to reflect the three new HAVA oversight positions in the Division of Elections	The Division of Elections created three new positions and hired staff in FY 2003-2004 to oversee the HAVA State Plan implementation and reporting.

Element 12- HAVA Changes in State Plan for Previous Fiscal Year

Changes	Successes
The HAVA State Plan was updated to reflect changes from FY 2003-2004.	

Element 13- HAVA State Plan Development and Planning Committee

Changes	Successful
The HAVA Planning Committee met twice in 2004 to update the HAVA State Plan. The HAVA Planning Committee welcomed three new members: 1. Brenda Snipes, Supervisor of Elections for Broward County 2. Constance Kaplan, Supervisor of Elections for Miami-Dade County 3. Jennifer Carroll, State Representative from District 13	

Element 13. State Plan Development and HAVA Planning Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

Introduction
To comply with the requirements of the Help America Vote Act of 2002 (HAVA), the HAVA State Plan must be developed by the chief State election official through a committee of appropriate individuals. After a preliminary plan is developed, it must be published for public inspection and comment. State officials must take public comments into account in preparing the HAVA State Plan submitted to the Federal Elections Commission.

Section 255: Has Florida complied with the requirements of section 255(a) to have the chief State election official develop the HAVA State Plan through a committee of appropriate individuals?

Yes, and no further actions are required.
Florida's Chief State Election Official, Secretary of State Glenda Hood, has the responsibility under HAVA to develop the HAVA State Plan with the assistance of the statewide HAVA Planning Committee. Section 255(a) of HAVA requires that "The chief State election official shall develop the HAVA State Plan under this subtitle through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the State, other local election officials, stakeholders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official."

Members of the HAVA Planning Committee for the State of Florida, appointed by Secretary of State Hood, are as follows:

Chairman:
Jim Smith of Leon County, former Secretary of State and former Attorney General

Chief Election Officials of the Two Most Populous Jurisdictions within the State:
Brenda Snipes, Supervisor of Elections for Broward County
Constance Kaplan, Supervisor of Elections for Miami-Dade County

Other Local Election Officials:
Kurt Browning, Supervisor of Elections for Pasco County
Susan Gill, Supervisor of Elections for Citrus County
Shirley Green Knight, Supervisor of Elections for Gadsden County

Stakeholders/Representatives of Groups of Individuals with Disabilities:
Dave Evans, State Board Member of the National Federation of the Blind
Jim Kracht, Assistant County Attorney for Miami-Dade County and member of the American Blind Lawyers Association, American Council of the Blind and the Florida Council of the Blind
Richard LaBelle, Secretary of the Florida Coalition on Disability Rights

Other Stakeholders and Citizens:
Joe Celestin, Mayor of the City of North Miami
Anna Cowin, State Senator from District 20
Jane Gross, President of the Florida League of Women Voters
Jennifer Carroll, State Representative from District 13
Arthur Hernandez, Vice Chairman of the Jacksonville Mayor's Hispanic American Advisory Board
Percy Luney, Dean and Professor of Law at Florida A&M University
Reggie McGill, Human Relations Director for the City of Orlando
Isis Segarra, private citizen from Hillsborough County
Lori Stelzer, Former President of the Florida Association of City Clerks and City Clerk for the City of Venice
Raiza Tamayo, Regional Director of the United States Hispanic Chamber of Commerce

This HAVA Planning Committee convened two rimes in public meetings to update the State Plan—Orlando, Florida on May 24, 2004 and Hollywood, Florida on June 4, 2004. All meetings were noticed in the *Florida Administrative Weekly*. Members of the public and press were welcomed at the meetings. The HAVA Planning Committee heard public comment at each meeting. It was assisted by a non-profit, non-partisan organization, the Collins Center for Public Policy, Inc., that was selected in a public bidding process to serve as staff for the HAVA Planning Committee in updating the HAVA State Plan, and by the Division of Elections of the Florida Department of State.

The HAVA Planning Committee operated in an open process with public deliberations, systematic procedures in accordance with *Robert's Rules of Order*, and majority vote of members who were present when votes were taken. A majority quorum of HAVA Planning Committee members was present for the Orlando meeting. At the Hollywood meeting, the HAVA Planning Committee was one member short of meeting a majority quorum. As a result, members present at the Hollywood meeting conducted a workshop on the proposed changes. At the end of the meeting, the nine HAVA Planning Committee members in attendance moved to approve the changes they had discussed. The Collins Center then obtained approval from the members not present at the Hollywood meeting to incorporate the changes into the working draft. The HAVA Planning Committee received two drafts of the final plan before voting to approve the updates and sending the plan to the Division of Elections.

The Collins Center, as staff, prepared written materials for the meetings, made presentations to focus the HAVA Planning Committee on decisions that needed to be made, and took notes of all meetings. A formal transcript of each meeting also was made. All agendas and other published materials for meetings of the HAVA Planning Committee were made available at the meetings. The website of the State Division of Elections also included much of this material.

All meetings were held in accessible facilities and were compliant with the Americans with Disabilities Act. Closed captioning service was available at all meetings. Agendas were printed in Braille as well as Spanish and Creole.

Section 256: Will Florida comply with the requirement of Section 256 to have the HAVA State Plan meet the public notice and comment requirements of HAVA?

Yes, and no further actions are required.

Section 256 of HAVA requires that the HAVA State Plan meet the following public notice and comment requirements:

(1) not later than 30 days prior to the submission of the plan, the State shall make a preliminary version of the plan available for public inspection and comment;
(2) the State shall publish notice that the preliminary version of the plan is so available; and
(3) the State shall take the public comments made regarding the preliminary version of the plan into account in preparing the plan which will be filed with the Election Assistance Commission.

After the final updated HAVA State Plan is submitted to the Election Assistance Commission, that Commission shall cause the HAVA State Plan to be published in the Federal Register in accordance with Section 255(b).

These tasks were performed by the Division of Elections and not by the HAVA Planning Committee or its consultants. The work of the HAVA Planning Committee and its consultants was completed when a preliminary version of the HAVA State Plan was prepared, approved by the HAVA Planning Committee, and submitted to the Secretary of State.

After notice is given in the *Florida Administrative Weekly*, the preliminary version of the HAVA State Plan will be posted on the Department of State's and the Governor's websites. A link is available on the Department's website so that public comment can be made electronically. Public comments also will be received by U. S. mail. Public comments will be considered in preparing the final plan.

Help America Vote Act of 2002 State Plan Chart

Help America Vote Requirement		Status 2003 HAVA Submission			Status As of 6/1/04
Voting Systems—Section 301 (Compliance January 1, 2006)					
Verify Ballot	X				Meets
Change or Correct Ballot	X				Meets
Prevent Overvotes	X				Meets
Absentee Instructions	X				Meets
Absentee privacy and confidentiality	X				Meets
Paper record for audits	X				Meets
Systems for voters with disabilities		X			Partially meets
Future voting systems purchases comply with HAVA	X				Meets
Alternative language accessibility	X				Meets
Comply with FEC error rates	X				Meets
Define what constitutes a vote	X				Meets
Provisional Voting and Voter Information—Section 302 (Compliance January 1, 2004)					
Laws require notification to cast provisional ballot	X				Meets
Provisional ballots permitted with written affirmation of voter eligibility	X				Meets
Provisional ballots given to election officials for determination	X				Meets
Provisional ballots counted if voter is determined to be eligible	X				Meets
Voters provided information to ascertain if provisional ballot counted	X				Meets
"Free access system" provided to ascertain if provisional ballot counted	X				Meets
Sample ballots are posted for election	X				Meets
Date of election and polling place hours are posted	X				Meets
Voting instructions and provisional voting instructions are posted on election day	X				Meets
Voting instructions for mail-in registrants and first-time voters on election day	X				Meets
Voting rights information and provisional ballot information posted	X				Meets
Contact information posted for voters whose rights have been violated	X				Meets
Information posted on prohibition of fraud and misrepresentation	X				Meets

Help America Vote Requirement		Status 2003 HAVA Submission			Status As of 6/1/04
Provisional ballots segregated for those who vote after special extended poll hours	X				Meets
Voter Registration—Section 303 (Compliance January 1, 2004 or when fully implemented 2006)					
Single, uniform, official centralized, interactive computer statewide, voter registration list			X		Does not meet
Can Florida meet January 1, 2004 deadline? Need to apply for January 1, 2006 waiver	X				Meets
HAVA's ID requirements for voters who register by mail and not previously voted	X				Meets
HAVA's requirement for voter registration language in mail registration forms	X				Meets
Local Government Payments and Activities—Section 254(a)(2)					
Describe criteria for funding				X	Updated
Describe methods to monitor performance				X	Updated
Voter Education—Section 254(a)(3)					
Describe voter education programs to support Title III				X	Updated
Describe election official education and training to support Title III				X	Updated
Describe poll worker training to support Title III				X	Updated
Voting System Guidelines and Processes—Section 254(a)(4)					
Describe Florida's voting system guidelines and processes consistent with Section 301				X	Meets
HAVA Election Fund—Section 254(a)(5)					
Describe how Florida will establish a HAVA fund				X	Updated
Describe how Florida will manage the HAVA fund				X	Updated
Florida's HAVA Budget—Section 254(a)(6)					
Describe costs of activities to meet Title III				X	Updated
Describe portion of requirements payment to carry out requirements activities				X	Updated
Describe portion of requirements payment to carry out other activities				X	Updated
Florida's Maintenance of Effort—Section 254(a)(7)					

STATE OF FLORIDA
HAVA PLAN UPDATE / 100

GLENDA E. HOOD
SECRETARY OF STATE
STATE OF FLORIDA

Appendix A

INSTRUCTIONS TO VOTERS

1. Polls open at 7 a.m. and close at 7 p.m.
2. Sample ballots will be posted in the polling room for your information.
3. When you enter the polling room and before being permitted to vote, you are required to present a photo ID with signature. If you do not have the proper ID, you will be allowed to sign an affidavit and vote.
4. If you are a first-time voter who registered by mail and have not already provided identification to the supervisor of elections, you must provide a photo ID with signature. If you do not have the proper ID, you are allowed to vote a provisional ballot.
5. If you need instructions on how to use the voting equipment, ask a poll worker to assist you. After you have been given instructions, the officer assisting you will leave so that you can cast your vote in secret.
6. You are required to occupy the voting booth alone, unless you requested assistance at the time of registration or when you signed in at the polls.
7. When you are finished marking your ballot, take your ballot and put it into the precinct tabulator.
8. After you cast your vote, you are required to leave the polling room and you will not be allowed to re-enter.
9. If your eligibility is questioned or you are a first-time voter who registered by mail and do not have a photo ID, you will be allowed to vote a provisional ballot. Once you have voted your provisional ballot, place it in the envelope provided to you and fill out the Voter's Certificate on the back of the envelope. Do not put your ballot through the precinct tabulator. Your ballot will be presented to the County Canvassing Board for a determination as to whether your ballot will be counted.
10. The poll workers possess full authority to maintain order in the polling area.

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STATE OF FLORIDA

GLENDA E. HOOD
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN UPDATE / 99

Help America Vote Requirement	Status: Does HAVA State Plan				Status As of 9/1/04
Florida's Performance Goals and Measures [Section 254(a)(8)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how Florida will adopt performance goals measures to determine HAVA success				X	Updated
Administrative complaint process [Section 254(a)(5)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Established a state-based administrative complaint process to remedy grievances	X				Meets
Effect of Title I Payments [Section 254(a)(10)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how Title I payments will affect activities of HAVA plan				X	Updated
HAVA State Plan Management [Section 254(a)(1)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how Florida will manage plan and make material changes to plan				X	Updated
HAVA State Plan for Previous Fiscal Year [Section 254(a)(12)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how this year's plan changed from the previous fiscal year				X	Updated
HAVA State Plan Development and Planning Committee [Section 254(a)(3)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe the committee and procedures used to develop the HAVA plan				X	Updated

GLENDA E. HOOD
SECRETARY OF STATE
STATE OF FLORIDA

Help America Vote Act of 2002 State Plan Chart

Help America Vote Requirement		Status: 2003 HAVA State Plan			Status: As of 6/4/04
Voting Systems–Section 301 (Compliance January 1, 2006)	Meets	Partially Meets	Does Not Meet	Described in Plan	
Verify Ballot	X				Meets
Change or Correct Ballot	X				Meets
Prevent Overvotes	X				Meets
Absentee Instructions	X				Meets
Absentee privacy and confidentiality	X				Meets
Paper record for audits	X				Meets
Systems for voters with disabilities		X			Partially meets
Future voting systems purchases comply with HAVA	X				Meets
Alternative language accessibility	X				Meets
Comply with FEC error rates	X				Meets
Define what constitutes a vote	X				Meets
Provisional Voting and Voter Information–Section 302 (Compliance January 1, 2004)	Meets	Partially Meets	Does Not Meet	Described in Plan	
Laws require notification to cast provisional ballot	X				Meets
Provisional ballots permitted with written affirmation of voter eligibility	X				Meets
Provisional ballots given to election officials for determination	X				Meets
Provisional ballots counted if voter is determined to be eligible	X				Meets
Voters provided information to ascertain if provisional ballot counted	X				Meets
"Free access system" provided to ascertain if provisional ballot counted	X				Meets
Sample ballots are posted for election	X				Meets
Date of election and polling place hours are posted	X				Meets
Voting instructions and provisional voting instructions are posted on election day	X				Meets
Voting instructions for mail-in registrants and first-time voters on election day	X				Meets
Voting rights information and provisional ballot information posted	X				Meets
Contact information posted for voters whose rights have been violated	X				Meets
Information posted on prohibition of fraud and misrepresentation	X				Meets

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Help America Vote Requirement		Status: 2003 HAVA State Plan			Status: As of 6/4/04
Provisional ballots segregated for those who vote after special extended poll hours	X				Meets
Voter Registration–Section 303 (Compliance January 1, 2004 or extension January 1, 2006)	Meets	Partially Meets	Does Not Meet	Described in Plan	
Single, uniform, official centralized, interactive computer statewide, voter registration list			X		Does not meet
Can Florida meet January 1, 2004 deadline? Need to apply for January 1, 2006 waiver	X				Meets
HAVA's ID requirements for voters who register by mail and not previously voted	X				Meets
HAVA's requirement for voter registration language in mail registration forms	X				Meets
Local Government Payments and Activities (Section 254(a)(2))	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe criteria for funding				X	Updated
Describe methods to monitor performance				X	Updated
Voter Education (Section 254(a)(3))	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe voter education programs to support Title III				X	Updated
Describe election official education and training to support Title III				X	Updated
Describe poll worker training to support Title III				X	Updated
Voting System Guidelines and Processes (Section 254(a)(4))	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe Florida's voting system guidelines and processes consistent with Section 301				X	Meets
HAVA Election Fund (Section 254(a)(5))	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how Florida will establish a HAVA fund				X	Updated
Describe how Florida will manage the HAVA fund				X	Updated
Florida's HAVA Budget (Section 254(a)(6))	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe costs of activities to meet Title III				X	Updated
Describe portion of requirements payment to carry out requirements activities				X	Updated
Describe portion of requirements payment to carry out other activities				X	Updated
Florida's Maintenance of Effort (Section 254(a)(7))	Meets	Partially Meets	Does Not Meet	Described in Plan	

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Appendix A

INSTRUCTIONS TO VOTERS

1. Polls open at 7 a.m. and close at 7 p.m.
2. Sample ballots will be posted in the polling room for your information.
3. When you enter the polling room and before being permitted to vote, you are required to present a photo ID with signature. If you do not have the proper ID, you will be allowed to sign an affidavit and vote.
4. If you are a first-time voter who registered by mail and have not already provided identification to the supervisor of elections, you must provide a photo ID with signature. If you do not have the proper ID, you are allowed to vote a provisional ballot.
5. If you need instructions on how to use the voting equipment, ask a poll worker to assist you. After you have been given instructions, the officer assisting you will leave so that you can cast your vote in secret.
6. You are required to occupy the voting booth alone, unless you requested assistance at the time of registration or when you signed in at the polls.
7. When you are finished marking your ballot, take your ballot and put it into the precinct tabulator.
8. After you cast your vote, you are required to leave the polling room and you will not be allowed to re-enter.
9. If your eligibility is questioned or you are a first-time voter who registered by mail and do not have a photo ID, you will be allowed to vote a provisional ballot. Once you have voted your provisional ballot, place it in the envelope provided to you and fill out the Voter's Certificate on the back of the envelope. Do not put your ballot through the precinct tabulator. Your ballot will be presented to the County Canvassing Board for a determination as to whether your ballot will be counted.
10. The poll workers possess full authority to maintain order in the polling area.

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Help America Vote Requirement	Status: 2003 HAVA State Plan				Status: As of 8/4/04
Florida's Performance Goals and Measures [Section 254(a)(8)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how Florida will adopt performance goals measures to determine HAVA success				X	Updated
Administrative complaint process [Section 254(a)(9)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Established a state-based administrative complaint process to remedy grievances	X				Meets
Effect of Title I Payments [Section 254(a)(10)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how Title I payments will affect activities of HAVA plan				X	Updated
HAVA State Plan Management [Section 254(a)(11)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how Florida will manage plan and make material changes to plan				X	Updated
HAVA State Plan for Previous Fiscal Year [Section 254(a)(12)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe how this year's plan changed from the previous fiscal year				X	Updated
HAVA State Plan Development and Planning Committee [Section 254(a)(13)]	Meets	Partially Meets	Does Not Meet	Described in Plan	
Describe the committee and procedures used to develop the HAVA plan				X	Updated

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STATE OF FLORIDA

Appendix B

INSTRUCTIONS TO VOTERS

1. Polls open at 7 a.m. and close at 7 p.m.
2. Sample ballots will be posted in the polling room for your information.
3. When you enter the polling room and before being permitted to vote, you are required to present a photo ID with signature. If you do not have the proper ID, you will be allowed to sign an affidavit and vote.
4. If you are a first-time voter who registered by mail and have not already provided identification to the supervisor of elections, you must provide a photo ID with signature. If you do not have the proper ID, you are allowed to vote a provisional ballot.
5. If you need instructions on how to use the voting equipment, ask a poll worker to assist you. After you have been given instructions, the officer assisting you will leave so that you can cast your vote in secret.
6. You are required to occupy the voting booth alone, unless you requested assistance at the time of registration or when you signed in at the polls.
7. When you are finished voting your ballot, be sure to press the VOTE or CAST BALLOT button to cast your vote.
8. After you cast your vote, you are required to leave the polling room and you will not be allowed to re-enter.
9. If your eligibility is questioned or you are a first-time voter who registered by mail and do not have a photo ID, you will be allowed to vote a provisional ballot. Once you have marked this paper ballot, place it in the envelope provided to you and fill out the *Voter's Certificate* on the back of the envelope. Your ballot will be presented to the County Canvassing Board for a determination as to whether your ballot will be counted.
10. The poll workers possess full authority to maintain order in the polling area.

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Appendix C

INSTRUCCIONES PARA LOS VOTANTES

Instrucciones para los votantes

1. Las urnas abren a las 7:00 a.m. y cierran a las 7:00 p.m.
2. Para su información, las boletas de muestra estarán desplegadas en el salón de votaciones.
3. Cuando usted entre al salón de votación y antes de que se le permita votar, a usted se le requerirá presentar una identificación con foto y firma. Si usted no tiene la identificación adecuada, a usted se le permitirá firmar una declaración jurada y votar.
4. Si usted es un votante que vota por primera vez y que se ha registrado por correo y aún no ha provisto ya la identificación al supervisor de elecciones, usted deberá proveer una identificación con foto y firma. Si usted no tiene la identificación adecuada, a usted se le permite votar una boleta provisional.
5. Si usted necesita instrucciones sobre cómo usar el equipo de votación, pídale a un trabajador de las urnas que le ayude. Luego que a usted se le hayan dado instrucciones, el oficial que le ayuda se alejará, para que usted pueda echar su voto en secreto.
6. A usted se le requiere ocupar la caseta de votación solo(a), a menos que usted haya pedido ayuda al momento del registro o cuando usted firmó al llegar a las urnas.
7. Cuando usted termine de marcar su boleta, lleve su boleta y póngala en el tabulador del precinto.
8. Luego que usted echa su voto, a usted se le requerirá abandonar el salón de votación y no se le permitirá volver a entrar.
9. Si su elegibilidad es cuestionada o si usted es un votante que vota por primera vez que se registró por correo y no tiene una identificación con foto, a usted se le permitirá votar con una boleta provisional. Una vez usted haya votado con su boleta provisional, colóquela en el sobre que se le proveyó y llene el *Voter's Certificate* (Certificado del Votante) al dorso del sobre. No coloque su boleta a través del tabulador del precinto. Su boleta será presentada al *County Canvassing Board* (Junta Examinadora del Condado) para una determinación en cuanto a contar su boleta o no.
10. Los trabajadores en las urnas poseen plena autoridad para mantener el orden en el área de votación.

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Appendix D

INSTRUCCIONES PARA LOS VOTANTES

1. Las urnas abren a las 7:00 a.m. y cierran a las 7:00 p.m.
2. Para su información, las boletas de muestra estarán desplegadas en el salón de votaciones.
3. Cuando usted entre al salón de votación y antes de que se le permita votar, a usted se le requerirá presentar una identificación con foto y firma. Si usted no tiene la identificación adecuada, a usted se le permitirá firmar una declaración jurada y votar.
4. Si usted es un votante que vota por primera vez y que se ha registrado por correo y aún no ha provisto ya la identificación al supervisor de elecciones, usted deberá proveer una identificación con foto y firma. Si usted no tiene la identificación adecuada, a usted se le permite votar una boleta provisional.
5. Si usted necesita instrucciones sobre cómo usar el equipo de votación, pídale a un trabajador de las urnas que le ayude. Luego que a usted se le hayan dado instrucciones, el oficial que le ayuda se alejará, para que usted pueda echar su voto en secreto.
6. A usted se le requiere ocupar la casata de votación solo(a), a menos que usted haya pedido ayuda al momento del registro o cuando usted firmó al llegar a las urnas.
7. Cuando usted termina de votar su boleta, asegúrese de oprimir el botón de VOTAR o ECHAR LA BOLETA para echar su voto.
8. Luego que usted eche su voto, a usted se le requerirá abandonar el salón de votación y no se le permitirá volver a entrar.
9. Si su elegibilidad es cuestionada o si usted es un votante que vota por primera vez que se registró por correo y no tiene una identificación con foto, a usted se le permitirá votar con una boleta provisional. Una vez usted haya marcado esta boleta de papel, colóquela en el sobre que se le proveyó y llene el *Voter's Certificate* (Certificado del Votante) al dorso del sobre. Su boleta será presentada al *County Canvassing Board* (Junta Examinadora del Condado) para una determinación en cuanto a contar su boleta o no.
10. Los trabajadores en las urnas poseen plena autoridad para mantener el orden en el área de votación.

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Appendix E

VOTER'S BILL OF RIGHTS

Each registered voter in this state has the right to:

1. Vote and have his or her vote accurately counted.
2. Cast a vote if he or she is in line at the official closing of the polls in that county.
3. Ask for and receive assistance in voting.
4. Receive up to two replacement ballots if he or she makes a mistake prior to the ballot being cast.
5. An explanation if his or her registration is in question.
6. If his or her registration is in question, cast a provisional ballot.
7. Prove his or her identity by signing an affidavit if election officials doubt the voter's identity.
8. Written instructions to use when voting, and, upon request, oral instructions in voting from elections officers.
9. Vote free from coercion or intimidation by elections officers or any other person.
10. Vote on a voting system that is in working condition and that will allow votes to be accurately cast.

You may have other voting rights under state and federal laws. If you believe your voting rights have been violated, please contact Florida Department of State, Division of Elections, 1-877-868-3737

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Appendix F

LA CARTA DE LOS DERECHOS DEL ELECTOR

Todo elector inscrito en este estado tiene el derecho:

1. de votar y de que se cuente con precisión su voto.
2. de que se le permita votar si está en cola para votar cuando estén cerrando oficialmente las urnas en ese condado.
3. de pedir y recibir asistencia para votar.
4. de recibir hasta dos boletas de reemplazo si se equivoca antes de emitir su voto definitivamente.
5. si su inscripción está en duda, de que se le explique el motivo del problema.
6. si su inscripción está en duda, de votar con una boleta provisional.
7. de firmar una declaración jurada para probar su identidad si los funcionarios electorales tienen alguna duda acerca de la identidad del elector.
8. de tener por escrito instrucciones sobre el método de votación para usarlas al votar y, si las pide, de recibir instrucciones verbales por parte de los funcionarios electorales sobre dicho método.
9. de votar sin que lo coaccionen o intimiden los funcionarios electorales ni ninguna otra persona.
10. de votar empleando un sistema que, además de funcionar correctamente, haga posible emitir con precisión los votos.

Usted puede tener otros derechos de la votación bajo el estado y las leyes federales. Si usted cree que sus derechos de la votación se han violado, por favor avise La Sección de Estado de la Florida, la División de Elecciones, 1-877-868-3737.

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Appendix G

STATE OF FLORIDA
DEPARTMENT OF STATE

JEB BUSH
Governor

GLENDA E. HOOD
Secretary of State

November 10, 2003

Ms. Penelope Bonsall, Director
Office of Election Administration
Federal Elections Commission
999 E. Street NW
Washington, D.C. 20463

RE: State of Florida request for waiver pursuant to Section 303(d) of the Help America Vote Act of 2002

Dear Ms. Bonsall:

Section 303(a) of the Help America Vote Act of 2002 requires each state to implement a computerized statewide voter registration list by the January 1, 2004, date specified in Section 303(d)(1)(A) of the same statute. Section 303(d)(1)(B) provides for states to request an extension of the aforementioned deadline until January 1, 2006. The purpose of this correspondence is to certify that, for good cause as outlined below, the State of Florida is unable to meet the January 1, 2004, implementation date called for in Section 303(d)(1)(A), and respectfully requests an extension of the deadline as permitted by law until January 1, 2006.

Florida has a tradition of administering voter registration at the county level jurisdiction. Each of Florida's sixty-seven counties has a constitutionally elected officer known as the supervisor of elections who is responsible for maintaining voter registration lists in their respective county. Each supervisor of elections is also responsible for determining the type of information technology appropriate for supporting voter registration activities in their jurisdiction and the manner in which registration records are maintained. The steps required to: (1) assess county-administered voter registration systems; (2) develop methods for consolidating a variety of voter registration lists with individual nuances into a single computerized statewide system; and (3) provide for future coordination of county voter registration activities with the statewide list will require more time than provided by the January 1, 2004, implementation date.

The Florida Department of State is working diligently to implement a statewide voter registration system that will meet all the requirements of Title III. Some of the steps already taken by the State of Florida in order to develop and implement a statewide voter registration system include: hiring a project director; executing agreements with our state Departments of Highway Safety

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GLENDA E. HOOD
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STATE OF FLORIDA

Motor Vehicles and Law Enforcement that outline data exchange procedures; and creating task groups comprised of county election officials and Department of State personnel in order to address technical and procedural issues relating to the creation of the centralized registration system. Given the steps already taken by the Florida Department of State and the other departments involved, and the scope of the work remaining to be done, I am confident that the State of Florida will be successful in having a statewide computerized voter registration system operational by the January 1, 2006, extended deadline requested herein.

Sincerely,

Glenda E. Hood

Glenda E. Hood
Secretary of State

GEH/ecl/pt

RON THORNBURGH
Secretary of State

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564
www.kssos.org

STATE OF KANSAS

September 15, 2004

U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005

Dear Commissioners:

In accordance with section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with for publication in the *Federal Register*, this letter and the following changes to the Kansas State Plan for the 2004 Fiscal Year. These pages, together with non-substantive changes that we have made, will constitute the state of Kansas' HAVA State Plan for Fiscal Year 2004.

As required by section 254(a)(12) of HAVA, please note that pages 9-11, 14-15, 17-23 and 27 contain material changes from the State Plan filed in 2003.

Please note that non-material changes can be found throughout nearly every element of the Kansas State Plan. After consulting with EAC staff, the state of Kansas has elected not to include those changes for publication in the *Federal Register* as unnecessary under HAVA. Instead, we would direct the EAC and members of the public to the Kansas Secretary of State's website (www.kssos.org) to view the complete Kansas State Plan.

The 2004 Amendments to the Kansas State Plan were developed in accordance with section 255 of HAVA and the requirements for public notice and comment prescribed by section 256 of HAVA.

On behalf of the state of Kansas, I thank the Commission for its assistance. I look forward to our continued collaboration to improve the administration of elections.

Sincerely,

RON THORNBURGH
Secretary of State

Affidavit for all provisional voters attesting to registration, eligibility (Section 302(a)(2))
Approved by the Kansas Legislature as sections 1 and 2 of 2004 SB 479. Requirements payments will not be used; counties will be responsible for costs associated with producing the affidavit.

Written information regarding how to determine the outcome of a provisional ballot (Section 302(a)(5)(A))
Required by legislation in section 2 of 2004 SB 479. The county election official will be responsible for replication costs and training poll workers to distribute the information. In addition, instructional information about provisional ballots will be added to the secretary of state's website. It is not anticipated that requirements payments will be used.

Free access system for publication of provisional vote results (Section 302(a)(5)(B))
Kansas counties are providing information to let provisional voters know whether their vote counted and if not, why. Various methods are being used including toll-free phone information, websites, and e-mail.

1.3: Voting Information Requirements – Section 302
Deadline for compliance: January 1, 2004

Public posting at polling places (Section 302(b)(2))

- **Sample Ballot:** While it has been common practice to post sample ballots at polling places in Kansas, it is required by section 11 of 2004 SB 479. No expenditure of requirements payments will be made to produce sample ballots. County election officials will be responsible for the cost of producing and posting sample ballots in polling places.
- **Date of the election and hours the polling place is open:** Required by section 11 of 2004 SB 479 No expenditures of requirements payments are anticipated. County election officials will be responsible for posting this information at each county's expense.
- **Instructions on how to vote, including a provisional ballot:** This information is included in the Voter's Rights and Responsibilities poster prescribed and designed by the secretary of state and posted at the polling place by county election officials. Requirements payments will be used to produce these posters.
- **Instructions for mail-in registrants who are first time voters in the jurisdiction:** Kansas law requires identification for all first-time voters in the county, whether mail registrants or not. The state has adapted the voter registration application card, the voter's rights and responsibilities poster and county election officials' and pollworkers' training programs. No expenditures of requirements payments are anticipated.
- **General information on voting rights:** This information is included on a poster entitled "Voter's Rights and Responsibilities". All polling places must display this poster in accordance with K.S.A. 25-2706. Requirements payments will be used to produce these posters.

- **General information on federal and state fraud laws:** This information will be included on a poster entitled "Voter's Rights and Responsibilities". All polling places must display this poster in accordance with K.S.A. 25-2706. Title I funding will be used to produce an updated version of the poster.

Provisional ballots for individuals who vote pursuant to a court or other order extending polling place hours; ballots must be separated from other provisional ballots (Section 302(c))
Provisional voting has been part of Kansas election law since 1996. No expenditures of requirements payments are anticipated. Any administrative costs associated with provisional ballots will be borne by the counties.

1.4: Computerized Statewide Voter Registration List Requirements – Section 303(a)
Deadline for compliance: January 1, 2004 / January 1, 2006 (with waiver)
Kansas law (KSA 25-2304(b)) requires the secretary of state to maintain a statewide centralized voter registration database. The current database is only a repository for county voter registration data and does not appear to meet the HAVA requirements. Due to the time needed to implement the new system, the secretary of state applied for and received a waiver of the January 1, 2004, deadline as permitted by HAVA and extended the deadline to January 1, 2006.

The central voter registration subcommittee of the Kansas Election Reform Advisory Council provided recommendations for database design. The secretary of state contracted with a consultant, Jim Minihan of Imerge Consulting, and convened a central voter registration work group to assist with RFP development. The work group included state and local election officials as well as individuals with information technology expertise. A vendor was selected in the summer of 2004.

Implementation of the new database system will begin in summer or early fall 2004. Each county will maintain its current database in 2005 while the new system is tested. Beginning January 1, 2006, the new database will be the sole system used statewide. Requirements payments will be used to partially fund this project.

A tentative timeline for this project is included below:

May – December 2003	RFP development
January 2004	Publish RFP
June 2004	Select vendor
June - July 2004	Contract negotiations
July 2004	Contract execution
Fall 2004	Implementation of system begins
2005	Current system and new system to run simultaneously
January 1, 2006	New system becomes the sole system used in Kansas

1.5: Requirements for Voters Who Register by Mail – Section 303(b)
Deadline for compliance: January 1, 2004

Identification Requirements: Kansas law was changed by 2004 SB 479 to require identification of all first-time voters in the county.

Fail-Safe Voting: Under HAVA, voters who register by mail and cannot meet the identification requirement must be afforded the opportunity to vote a provisional ballot. Current Kansas law allows such individuals to cast provisional ballots; therefore, Kansas is in compliance with the fail-safe voting requirement.

Contents of Mail-In Registration Form: Design of the Kansas voter registration application form was changed by 2004 SB 479 to comply with HAVA. The application form was revised and disseminated after final approval of legislation.

3.2: Election Official Education and Training

In order to ensure that county election officials receive the necessary education and training on election issues, the secretary of state's office developed a uniform, statewide training program. A description of the program is included below.

Curriculum: The annual program will be developed by the secretary of state's office with assistance from Kansas County Clerks and Election Officials Association members and adult education specialists. The secretary of state's office has established partnerships with the Wichita State University Hugo Wall School and Emporia State University. Eight hours of required instruction was provided in 2004 and consisted of the following courses:

COURSE
HAVA overview / impact on CEO
Voter registration/ CVR
Preparing for an election
Advance voting / federal services absentee voting
Voting procedure / provisional ballots
Canvassing / write-ins / voter intent
Voting equipment
Accessibility
Special situations including, but not limited to, alternative languages, accessibility, awareness and sensitivity
Election board workers

Location: The aforementioned courses were provided in coordination with established meetings of the Kansas County Clerks and Election Officials Association (KCCEOA) and the Kansas Association of Counties (KAC) and will be for future training sessions as well. The schedule is as follows:

MONTH	EVENT
March	KCCEOA Regional Meetings
May	KCCEOA Convention
September	KCCEOA Regional Meetings
November	KAC Convention

Make-up sessions may be held at the following times and events:

MONTH	EVENT
May	KCCEOA Convention
November	KAC Convention
As scheduled	Sanborn Institute for County Clerk Certification (annual)
As necessary	Videoconference
Once every four years	Midwest Election Officials Conference

Resources: Participants received a printed training manual, an updated version of the Kansas Election Standards, and tools for training poll workers.

Instructors: The training programs were conducted by the secretary of state and staff and subject matter experts.

Attendance: At least one individual from each county election office attended the program. Attendance was a condition of receiving the benefits of federal funding, and the secretary of state shall have the option of withholding county benefits related to HAVA due to nonparticipation in the training program. The curriculum and number of hours required may change from year to year.

3.3: Poll Worker Training

The secretary of state designed a poll worker training program for county election officials in order to facilitate the crucial link between election administrators and voters. County election officials received instruction on this program during the election official training program and were responsible for conducting training sessions at the local level. Participation in this program is a condition for receipt of county benefits related to HAVA.

Curriculum: The following topics were incorporated into training resources developed by the secretary of state's office in conjunction with adult education specialists.

- HAVA Overview/Impact on election board workers
- Polling place organization and management
- Voting
- Accessibility issues
- Special situations

Resources: The secretary of state provided each county election official with a curriculum to be used in local poll worker training sessions.

Instructors: Training sessions were conducted by county election officials and deputy election officials. Voting equipment vendors or technicians may also have been involved in the training sessions. County election officials may also have included supplemental instructors in the training sessions at their discretion.

- *Attendance:* County election officials must conduct training prior to each primary and general election for supervising judges and election clerks as required by 2004 SB 479.

Section 5: How will Kansas establish a fund for purposes of administering the state's activities, including information on fund management?

5.1: Fund establishment
During the 2002 legislative session, the secretary of state established a Democracy Fund in anticipation of receiving federal funding for HAVA implementation. Title I funds were received in April 2003 and deposited in the Democracy Fund. State accounting and reporting guidelines subsequently changed and as a result, the Democracy Fund had been improperly coded for receipt of federal funds. A new fund, HAVA Federal Fund, was established for title I and title II funds and the money previously received was transferred to the new fund.

The following funds have been established:

1) HAVA Federal – established for receipt and expenditure of federal monies (including grants). Pursuant to state accounting and reporting guidelines, this fund has several accounts (indexes)
2) HAVA Match – established for the receipt and expenditure of matching state funds
3) Democracy – established for the receipt and expenditure of matching county funds

5.2: Fund management
The secretary of state is responsible for fund management. State and federal fund management guidelines are followed. Records of expenditures are maintained by the secretary of state's office. A monthly review of funds will be made.

Section 6: Kansas' proposed budget for HAVA activities based on the state's best estimates of the costs of such activities and the amount of funds to be made available.

The following chart is Kansas' proposed budget for state fiscal years 2004 and 2005. All amounts listed are estimates and subject to change.

HAVA Requirements	Estimated Total Cost	Funding Source					
		Title I $5 million[1]	Title II $21.4 million[2]	State Match $687,397[3]	County Match $439,435[4]	EAID Grant $110,057	VOTE Grant $100,000
Central Voter Registration System	No estimate is included here to ensure that the secretary of state may negotiate a truly competitive price for this system. We do not want vendors to assume we are prepared to pay a predetermined amount for the system.[5]						
Accessible voting equipment	No estimate is included here to ensure that the secretary of state may negotiate a truly competitive price for this system. We do not want vendors to assume we are prepared to pay a predetermined amount for the equipment.[6]						
Administrative costs	$250,000						
Voter education	$100,000						
CEO training	$15,000						
Poll worker training	$15,000						
Free access system	$1000						
Polling place postings	$2000						
Kansas voter registration forms	$20,000						
Federal voter registration forms	$5000						
Polling Place Accessibility	$210,057						

[1] Kansas has received a title I payment of $5 million.
[2] Kansas received the FFY 03 title II requirements payment of approximately $7.6million and is eligible to receive the FFY 04 payment of approximately $13.7 million. Receipt of the FFY 04 payment is contingent upon filing the state plan.
[3] In order to qualify for title II requirements payments, Kansas must provide five percent (5%) of the payment in matching funds. During the 2003 and 2004 Kansas Legislative Sessions, the legislature approved a match of three percent (3%) from the state general fund.
[4] As explained in note three, receipt of title II requirements payments is contingent upon providing state matching funds. During the 2003 and 2004 Kansas legislative sessions, the legislature specified that the remaining two percent (2%) match is to be provided by Kansas counties. Each county pays a proportionate share of the match based on a formula comparing county voting age population to state voting age population.
[5] The actual cost will be negotiated through a Request for Proposal process.
[6] The actual cost will be negotiated through a Request for Proposal process.

Section 7: How will Kansas, in using the requirements payments, maintain the expenditures of the state for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the state for the fiscal year ending prior to November 2000?

In compliance with HAVA Section 254(a)(7), in using requirements payments, Kansas will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of Title III expenditures in State FY 2000. No reductions in state spending have been made since passage of HAVA, and none are anticipated or sought.

Elections & Legislative Matters	Fiscal Year 2000	Fiscal Year 2004
	$ 33,735	$ 62,129

Section 8: How will Kansas adopt performance goals and measures to determine its success and the success of units of local government in carrying out the plan?

Performance goals and measures will be developed by the secretary of state's office for each applicable element of the state plan. Each element will have a tentative timeline for completion which will serve as a tool for assessing performance. The following charts outline tentative performance goals for implementation of HAVA requirements.

Performance Goal	Develop and implement a statewide central voter registration system
Process to develop criteria	The secretary of state's staff appointed a Central Voter Registration Work Group and consultant to help develop a Request for Proposal (RFP) and establish goals for project management
Criteria to measure performance	A set of time-oriented goals for the following events: (1) development and issuance of an RFP (2) selection of a vendor (3) contract negotiations / execution of contract (4) implementation of CVR system
Tentative Timeline	May – December 2003: RFP development January 2004: Publish RFP June - July 2004: Select vendor July 2004: Contract negotiations July 2004: Contract execution
Deadline for compliance	January 1, 2006 (with waiver)

Performance Goal	Implement one voting machine, accessible to individuals with disabilities, in every Kansas polling place
Process to develop criteria	The secretary of state's staff will plan with a work group and consultant to develop a Request for Proposal (RFP) and establish goals for project management
Criteria to measure performance	A set of time-oriented goals for the following events: (1) development and issuance of an RFP (2) selection of a vendor(s) (3) contract negotiations / execution of contract (4) implementation of voting equipment
Tentative Timeline	2004 – 2005: RFP development/issuance and selection of vendor(s) Summer – Fall 2005: Delivery and implementation of accessible voting equipment
Deadline for compliance	January 1, 2006

Performance Goal	Implement second chance voting requirements
Process to develop criteria	The secretary of state's office will work with the Kansas Election Reform Advisory council and county election officials to develop a plan for implementation
Criteria to measure performance	A set of time-oriented goals for development of a voter education program to meet section 301(a)(1) requirements
Tentative timeline	Unknown at this time
Deadline for compliance	January 1, 2006

Performance Goal	Meet audit capacity requirements
Process to develop criteria	The secretary of state's office will work with county election officials to determine how counties with optical scan voting systems will meet the requirements
Criteria to measure performance	A set of time-oriented goals
Tentative timeline	Unknown at this time
Deadline for compliance	January 1, 2006

Performance Goal	Implement uniform definitions of what constitutes a vote for each type of voting system used in Kansas
Process to develop criteria	The secretary of state's office worked with the Election Standards Task Force to develop a proposal
Criteria to measure performance	Implementation of uniform definitions in the Kansas Election Standards
Tentative timeline	Adopted by the Kansas County Clerks' and Election Officials' Association (KCCEOA) May, 2004
Deadline for compliance	January 1, 2006

Performance Goal	Implement affidavit requirement for provisional voters
Process to develop criteria	Drafted legislation
Criteria to measure performance	To codify the requirement in state election law and implement the requirement on the local level
Tentative timeline	2004 SB 479 passed
Deadline for compliance	January 1, 2004

Performance Goal	Develop and provide written information regarding how to determine the outcome of a provisional ballot
Process to develop criteria	Development of a plan for implementation by the secretary of state's office in 2003
Criteria to measure performance	A time-oriented set of goals for the following events: (1) prescribing a document with the appropriate information (2) sending the document to county election officials and providing instructions for use (3) verifying that county election officials have reproduced and distributed the documents
Tentative timeline	Document prescribed and distributed prior to August 2004. Information distributed to provisional voters beginning with the August 2004 primary election.
Deadline for compliance	January 1, 2004

Performance Goal	Develop a free access system for publication of provisional vote results
Process to develop criteria	The secretary of state's office worked with county election officials to develop a plan for implementation
Criteria to measure performance	Disseminated options and recommendations to CEOs in May, 2004
Tentative timeline	Implemented the system during the August 2004 primary election
Deadline for compliance	January 1, 2004

Performance Goal	Implement required public posting at polling places
Process to develop criteria	The secretary of state's office developed a plan for implementation in 2003
Criteria to measure performance	To codify the requirement in state election law and implement the requirement on the local level
Tentative timeline	Passed as part of 2004 SB 479. CEO training was held in May, 2004 Posters were printed and distributed to CEOs in July, 2004. County election officials implemented the requirements in 2004.
Deadline for compliance	January 1, 2004

Performance Goal	Require provisional ballots for individuals who vote pursuant to a court or other order extending polling place hours
Process to develop criteria	The secretary of state's office developed a plan for implementation in 2003
Criteria to measure performance	To codify the requirement in state election law and implement the requirement on the local level
Tentative timeline	Required by 2004 SB 479. CEOs trained in May, 2004. County election officials implemented the requirements in 2004.
Deadline for compliance	January 1, 2004

Performance Goal	Meet the requirements for voters who register by mail
Process to develop criteria	The secretary of state's office developed a plan for implementation in 2003
Criteria to measure performance	To codify the requirement in state election law and implement the requirement on the local level
Tentative timeline	State law requires identification of all first-time voters in the county. CEOs trained in May, 2004 County election officials implemented the requirements in 2004.
Deadline for compliance	January 1, 2004

Performance Goal	Implement voter education, election official education/training, and poll worker training programs
Process to develop criteria	The secretary of state's office developed a plan for implementation with assistance from the Kansas Election Reform Advisory Council in 2003
Criteria to measure performance	A time-oriented set of goals for the following events: (1) convene a work group (2) develop the program (3) carry out the program
Tentative timeline	Implementation of the program in 2004.

Section 10: A description of how Kansas will use the title I payment to carry out proposed activities in this plan.

Kansas has received $5 million in title I payments for improvement of election administration. This funding may be used for the following approved purposes:

(1) Complying with requirements of title III
(2) Improving the administration of elections for federal office
(3) Educating voters concerning voting procedures, voting rights, and voting technology
(4) Training election officials, poll workers, and election volunteers
(5) Developing the state plan
(6) Improving, acquiring, leasing, modifying, or replacing voting systems and technology
(7) Improving the accessibility of polling places
(8) Establishing a free access system for use by voters to obtain voting information

It is expected that Kansas' title I funds will be used for the following, prioritized purposes:

(1) Implementation of a new statewide central voter registration system
(2) Administrative expenses for development of the state plan and the central voter registration system RFP
(3) Education programs
(4) Section 301 requirements (i.e. free access system, polling place postings, voter registration forms)

HAVA Requirements	Funding Source			
	Title I $4.9 million	Title II $21.4 million	State Match $687,397	Local Match $439,435
Central Voter Registration System	X	X	X	X
Accessible voting equipment		X	X	X
Administrative expenses	X	X	X	X
Voter education	X			
CEO training	X			
Poll worker training	X			
Free access system	X			
Polling piece postings	X			
Voter registration forms	X			

HAVA Requirements	EAID Grant $110,057	VOTE Grant $100,000
Polling Place Access	X	X

State of Nevada

Fiscal Year 2004-2005

State Plan

As required by Public Law 107-252
***Help America Vote Act 2002*, Section 253 (b)**

Nevada Secretary of State's Office
101 N. Carson Street, Suite 3
Carson City, NV 89701
June 7, 2004

STATE OF NEVADA FISCAL YEAR 2004-2005 PRELIMINARY STATE PLAN

I. INTRODUCTION

On October 29, 2002, President Bush signed the Help America Vote Act (HAVA or Act) into law. HAVA is a response to the irregularities in voting systems and processes unveiled during the 2000 Presidential Election. HAVA requires each state to develop a comprehensive plan for implementing the mandatory changes to the administration of elections that are called for in the legislation. HAVA will effect virtually every element of the voting process, including requiring a statewide voter registration system, replacing punch card voting machines, improving voter education and poll worker training, requiring provisional ballots, and requiring at least one voting machine available per polling place for voters with disabilities. HAVA will dramatically change the way future elections throughout the nation are conducted.

As required by HAVA, the state of Nevada (State) adopted and submitted to the federal government its State Plan (Plan) for fiscal year (FY) 2003-04 in June 2003. Due to the delayed formation and organization of the Elections Assistance Commission (EAC), publication of that Plan in the *Federal Register* was not completed until May 2004. The following State Plan for the State, developed in accordance with Section 254 of the Act, represents an update to the State's FY 2003-04 plan. Like the FY 2003-04 plan, this State Plan (FY 04-05 Plan) was created under the direction of Secretary of State Dean Heller through a State Plan Advisory Committee (Advisory Committee). Nevada's FY 04-05 Plan establishes a framework for the State to continue progress that has already been made in election reform and to achieve compliance with HAVA.

Because HAVA will have a profound impact on virtually every element of the voting process in our State, we anticipate that this plan will be updated and refined periodically over the coming years to ensure the continued health of our democratic process.

II. THE BACKDROP FOR NEVADA'S STATE PLAN

The Secretary of State is the Chief Officer of Elections for the state of Nevada, and, as such, is responsible for the execution and enforcement of state and federal laws relating to elections. Although HAVA dramatically increases the election administration responsibilities for the State, the efficient function and cooperation of local governments continue to be critical to ensuring that elections are successfully conducted. Considerable time, effort and resources on the state and local level will be necessary for the State to meet HAVA's requirements.

Nevada is one of the fastest growing states in the country. Based on figures obtained from Census 2000, Nevada's population increased by 796,424 persons between 1990 and 2000. In addition, Nevada's largest county, Clark County, continues to add approximately 4,000 new citizens per month. Currently, the State has approximately 1 million registered voters spread throughout its 17 counties and more than 1,500 state,

county and municipal political campaigns come under the jurisdiction of local or state election officials during each election cycle.

Of the 17 counties in the State, seven (7) currently use punch card machines, nine (9) use optical scan machines, and one (1) uses direct record voting machines[1]. Due to requirements outlined in HAVA, the State is taking steps to substantially upgrade systems, redesign processes and provide updated and continual training for election administrators and the citizens of the State. In December 2003, Secretary of State Dean Heller took the first step toward achieving these goals by announcing the decision to purchase Direct Recording Electronic (DRE) voting machines for all Nevada counties. He also announced his mandate to include a voter verifiable paper trail on all newly purchased DRE machines for the 2004 election. As part of this process, all existing machines statewide must add the printer technology by 2006. The Secretary of State also issued a proclamation decertifying all punch-card voting machines in Nevada as of September 1, 2004. Nevada does not currently have a statewide voter registration system in place. Based on the foregoing, meeting the requirements of HAVA and its ambitious timelines can only be achieved with adequate support, resources and funding from both the federal government and the Nevada State Legislature.

In developing Nevada's FY 04-05 Plan, the Advisory Committee used as guidance the goal of developing and implementing a plan that delivers a timely, accurate and accessible voting process for all Nevadans. The strategies for achieving these goals are to: (1) obtain initial federal funding; (2) implement legislation fostering voter participation and compliance with HAVA; (3) conduct an assessment of the condition of the statewide voter registration process given these standards; (4) suggest changes to voting technology and processes to ensure accurate and reliable elections and voter confidence; and (5) develop and implement follow-through accountability activities and feedback mechanisms for complaints.

Nevada's FY 04-05 Plan, as presented herein, is limited to the extent State appropriations are made available, and is based on the assumption that adequate federal funding will be appropriated. While the State intends to fully comply with HAVA, if adequate federal funding is not made available the manner in which the funds are disbursed or dedicated may be altered from the information contained in this FY 04-05 Plan.

III. NEVADA'S STATE PLAN

1. Use of Requirements Payments

Section 254(a)(1) requires a description of how the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2)[2], to carry out other activities to improve the administration of elections. Title III requires the establishment of certain voting system standards, provisional voting, public posting of voting information, a computerized statewide voter registration list, and voter registration application modifications.

[1] See Appendix A for a summary of the counties' current voting systems, effective until September of 2004, when the DRE's will be implemented statewide.

[2] Reference should be to Section 251(b)(2).

A. Voting Systems Standards

Section 301(a) establishes several voting system standards which must be met by January 1, 2006. Under this section, no waiver of the requirements is permitted.

HAVA requires each voting system in the state to: (a) permit voters to verify whom they have voted for and make changes to their vote in a private, secret and independent manner; (b) notify voters if they have overvoted, what happens in instances of an overvote, and provide the opportunity to correct the ballot; (c) ensure that any notification to the voter maintains the privacy, secrecy and independence of the voter's ballot; (d) produce a permanent paper record with manual audit capacity; (e) be accessible for the disabled through the use of at least one (1) DRE voting system placed at each polling place; (f) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965; (g) comply with error rates established by the Federal Elections Commission (FEC) as of the time HAVA was adopted; and (h) have a definition of what constitutes a vote and what will be counted. These requirements have been incorporated into Nevada statutes or regulations.

Most of the federal funding that has been appropriated to date was used to upgrade the voting systems throughout the State and to purchase new systems in order to meet the requirements of Title III. In furtherance of this action, the State is moving forward with implementation of a uniform voting system for polling places throughout the state and a uniform system for absentee voting throughout the state. Specifically, as previously stated, the Secretary of State has entered into a contract to purchase, with HAVA funds, DRE voting systems necessary to create a uniform statewide system. Included in that purchase are optical scan machines to be used for counting all absentee ballots statewide. These new voting systems meet all requirements of Section 301(a). These voting system replacements will be accomplished by September 1, 2004.

To ensure proper training for election administrators and the voting citizens of Nevada, the State will use requirements payments to help educate those individuals about the proper use of the new voting systems. Requirements payments are also expected to be be used for maintaining, modifying and improving all voting systems in the State to ensure compliance with HAVA Section 301(a) standards.

B. Provisional Voting and Voting Information Requirements

Section 302 requires the establishment of provisional voting and the posting of voting information at polling places by January 1, 2004. Under this section, no waiver permitted.

HAVA requires provisional voting procedures in all states to ensure that no voter who appears at the polls and desires to vote is turned away for any reason. The State adopted legislation proposed by the Secretary of State that enacts procedures to allow for provisional voting in federal races throughout the State. The procedures[3] that were adopted meet the requirements of Section 302.

[3] See Nevada Revised Statutes (NRS) Sections 293.3081 through 293.3086, inclusive.

The State anticipates using requirements payments to create the free access system required by HAVA to provide voters who cast provisional ballots the ability to discover whether or not their ballot was counted. The State may also use requirements payments to provide training and outreach concerning a voter's ability to receive and cast a provisional ballot. Finally, if adequate federal funding is available, the State may use requirements payments to assist local governments with funding offsets necessary to prepare and process provisional ballots.

In addition to provisional balloting requirements, Section 302 of HAVA mandates that a sample ballot and other voting information be posted at polling places on Election Day. Each registered voter currently receives a sample ballot in the mail prior to Election Day. In addition, the Secretary of State successfully sought a change to State law to require that all materials required by Section 302 be displayed at each polling place[4]. Nevada's "Voters' Bill of Rights[5]" was also established as part of this process. The law requires that the Voters' Bill of Rights be posted conspicuously at each polling place. The Voters' Bill of Rights is a declaration of the rights of each voter with respect to the voting process. Its premise is to ensure that each and every voter who wishes to exercise the right to vote is provided with the right to do so in an informed and nondiscriminatory manner. The State, in cooperation with county clerks, will design the materials to be posted. The State anticipates using requirements payments to defray the cost of developing, printing and posting this information.

C. Computerized Statewide Voter Registration List and Requirements for Voters Who Register by Mail

Section 303 requires the establishment of a computerized statewide voter registration list, first time voters who register by mail to provide identification when they cast their ballots, and changes to be made to the voter registration application by January 1, 2004. A waiver is permitted to extend compliance with Section 303(a) to January 1, 2006.

Section 303 of HAVA requires that all states establish a statewide computerized registration list of all eligible voters. This "single, uniform, official, centralized, interactive, computerized statewide voter registration list" must be administered at the State level and is considered the official list of legally registered voters in the State. Nevada does not currently have a statewide voter registration list. Currently, voter registration records are created and maintained separately by each local jurisdiction.

The State will be purchasing a compliant voter registration system to be implemented statewide and administered by the Secretary of State. The Secretary of State has formed a committee comprised of local election officials to recommend a vendor for a HAVA compliant statewide voter registration system. The committee is currently finalizing the requirements for the system and reviewing various vendors. In accordance with Section 303(d)(1)(B) of HAVA, the State submitted its certification

[4] See NRS 293.3025.
[5] See NRS 293.2543 through 293.2549, inclusive.

that Nevada could not implement the Statewide Voter Registration List requirements by January 1, 2004, and that it met the requirements for a waiver of the deadline to January 1, 2006. The State cited as reasons for the waiver the fact that it is currently implementing the uniform voting system statewide and, given the fiscal and human resources necessary to successfully conduct the upcoming federal election with these new systems, it would not be prudent to implement the statewide voter registration system in the same election cycle. It is our goal to have all counties on-line and trained by January 1, 2006. The chosen system will comply with Section 303(a) of HAVA and will have the ability to interface with Nevada's Department of Motor Vehicles and other appropriate agencies, as required by HAVA.

The State will expend a large portion of its requirements payments and Title I payments to fund the creation and maintenance of the statewide voter registration system. Specifically, in addition to the basic costs of the system, the State anticipates paying for all hardware and software necessary in connection with implementing the system, as well as required training for county and city officials in the use of the system.

With respect to requirements for voters who register by mail, the State revised its voter registration form in January 2003 and again in 2004 to meet the requirements of Section 303(b).

In 2003, the Secretary of State successfully sought a modification of State law[6] to ensure that the processes associated with voter registration and verification of identification at the time of registration, or at the polls for first-time voters who register by mail are HAVA compliant.

D. Other Activities to Improve the Administration of Elections (Section 251(b)(2))

The State intends to use requirements payments to fund other activities to improve the administration of elections, including, but not limited to: (a) establishing a polling place accessibility program to ensure that all polling places in Nevada are and continue to be in compliance with the Americans with Disabilities Act[7] ("ADA"); (b) providing necessary assistance to persons with limited proficiency in the English language; (c) engaging in a variety of voter education and outreach activities, including public service announcements, voting machine demonstrations, mass mailings and other related media avenues; (d) providing election official and poll worker training initiatives; and (e) establishing poll worker recruitment programs.

The State currently does not have the personnel and technical capacity required to fully achieve HAVA compliance. Ongoing operations and maintenance of the new requirements cannot be supported with the current State and local technical infrastructure and resources. The State anticipates the need for additional technology and elections personnel in the office of the Secretary of State to ensure continued

[6] See NRS293.272 and 293.2725
[7] Public Law 336 of the 101st Congress, enacted July 26, 1990.

compliance with HAVA. The State may use requirements payments to fund these positions.

2. Distribution of Requirements Payments and Eligibility for Distribution

Section 254(a)(2) of the act requires a description of how the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in Section 254(a)(1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under Section 254(a)(8).

The Office of the Secretary of State will centrally manage activities funded by requirements payments. The Secretary of State will be accountable for all expenditures, funding levels and program controls and outcomes. The Secretary of State, in conjunction with local election officials, will determine the appropriate level of support for local activities.

The criteria to be used for determining eligibility include, but are not limited to: (a) the priority of the project to which the distribution is intended to be applied, as it relates to complying with HAVA; (b) the extent to which the recipient is in compliance with Title III of HAVA and all other state and federal election laws; (c) the recipient must maintain its current level of funding for its elections budget outside of any HAVA funds received; (d) the recipient must cooperate with the State in maintaining the statewide voter registration list and must timely implement list purging activities and reporting as required by the Secretary of State; (e) the need for the payment to ensure continued compliance with state and federal elections laws; (f) the availability to the recipient of other funding sources, including other HAVA related grants; (g) the recipient must acknowledge that it will be required to reimburse the State for all federal funds received if it does not meet the deadlines for compliance in HAVA; and (h) the recipient must develop a comprehensive accounting plan in accordance with federal criteria for separately identifying and tracking any federal funds received. The criteria for receipt of requirements payments will be agreed to in writing in advance by the Secretary of State and the unit or entity receiving the payment.

The Secretary of State will monitor the performance of each activity funded by requirements payments on a case-by-case basis. The methods to be used by the State to monitor the performance of the payment recipients include: (a) requiring the recipient to prepare and submit comprehensive monthly reports to the Secretary of State detailing the expenditures and their relation to complying with Title III of HAVA; (b) implementing financial controls that establish financial reporting methods; and (c) developing performance indicators on a case-by-case basis for all activities funded.

3. Voter Education, Election Official and Poll Worker Training

Section 254(a)(3) of the Act requires a description of how the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

A. Voter Education

With voter participation and turnout declining nationally over the last twenty years, and with an increasing number of historically disenfranchised groups growing more skeptical about the power of their vote, the Secretary of State's office is making a concerted effort to expand Nevada's voter outreach and education efforts.

Clearly, citizens need to better understand the power of each and every vote. Education is the key to improving Nevada's voter participation rate. Besides doing a better job of teaching our citizens about the critical component voting plays in the success of a democracy, with the advent of new technologies—specifically, DRE voting machines—the educational process should include a well-developed plan to assist and train citizens on how to use new equipment.

By law, each registered voter in Nevada receives a sample ballot in the mail prior to each election. The Secretary of State's office has produced and published several informative brochures designed to better educate Nevada's citizens about the voter registration process, the significance of every single vote, and about the requirements of HAVA. The agency's website (http://secretaryofstate.biz) contains a wealth of information useful to individuals and groups seeking to advance voter participation and citizen knowledge of the elections process.

The Secretary of State's office issues many media advisories and news releases throughout the year specifically designed to inform prospective voters about the elections process, along with conducting public forums relating to statewide ballot questions, and recording public service announcements regarding voting equipment and other related issues.

The 2003 Legislature moved the Advisory Committee on Participatory Democracy (ACPD) under the auspices of the Secretary of State's office, and established the goals of 75 percent voter registration and 70 percent voter turnout by those registered voters in Nevada by 2008. The 10-member ACPD was appointed by the Secretary and began the ambitious task of improving voter participation in Nevada with its inaugural meeting on March 31, 2004. The ACPD has plans to create an informational website and to work with existing groups, organizations, and individuals to foster and nurture greater voter participation.

One such undertaking is the *Easy Voter Project*, a non-partisan, bi-lingual voter education website and booklet that will help many Nevada citizens better comprehend the voting process. The *Easy Voter Project* has proven to be a successful program, which has been in place in California since 1994. According to a 1996 survey, adult school and community college student voter turnout in California increased to more than 70 percent among students who were exposed to the *Easy Voter Project*. The project publishes an informative *Easy Voter Guide* and maintains a website that provides information on political parties, candidates and ballots measures, along with easy-to-follow instructions on how to register and vote.

Another voter outreach project the Secretary of State's office has been working closely with is the *New Voters Project*. Sponsored by the Pew Charitable Trusts and with strong bi-partisan support from a number of civic organizations, the *New Voters Project* is a non-partisan effort that is using a strategy that encompasses the recruitment of 18-24 year olds on college campuses, during large public events, partnerships with local businesses and door-to-door canvassing. Nevada is fortunate to have been selected as one of six target states—Colorado, Iowa, New Mexico, Oregon and Wisconsin being the other five—in which the *New Voters Project* is focusing its attention.

There are several other voter education and outreach projects the agency has partnered with, including *National Student/Parent Mock Election* and *Smackdown Your Vote*.

B. Election Official and Poll Worker Training

Adequate training for election officials and poll workers is critical to any election being conducted successfully. It becomes even more crucial when election reform occurs. Currently, training programs in the State are predominantly localized and, in some cases, informal. The State does not have personnel available to take on the sole responsibility for providing training. Nevertheless, the Secretary of State will work with local election officials to produce training standards to be implemented statewide for training election officials and poll workers. This process was incorporated as part of the contract with the vendor for the new statewide voting system. Implementation of election official and poll worker training plans is a significant focus of the contract. All poll workers will be required to adhere to these standards.

4. Voting System Guidelines and Processes

Section 254(a)(4) requires a description of how the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

As stated above, Section 301 requires each voting system in the state to: (a) permit voters to verify whom they have voted for and make changes to their vote in a private, secret and independent manner; (b) notify voters if they have overvoted, explain what happens in instances of an overvote, and provide the opportunity to correct the ballot; (c) ensure that any notification to the voter maintains the privacy, secrecy and independence of the voter's ballot; (d) produce a permanent paper record with manual audit capacity; (e) be accessible for the disabled through the use of at least one (1) DRE voting system placed at each polling place; (f) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965; (g) comply with error rates in effect by the FEC at the time HAVA was adopted; and (h) have a definition of what constitutes a vote and what will be counted.

Existing Nevada law now mirrors the voting system guidelines and processes set forth in HAVA. In addition, the Secretary of State is responsible for certifying voting systems for use in the State. The Secretary of State, in accordance with state law, cannot certify any voting system in the State unless it meets or exceeds the standards for voting systems established by the FEC. The Secretary of State will create new guidelines and processes as necessary to ensure all voting systems in the State continue to remain in compliance with Section 301.

5. Establishment of Election Fund

Section 254(a)(5) requires a description of how the State will establish a fund described in Section 254(b) for purposes of administering the State's activities under this part, including information on fund management.

(b) Requirements for Election Fund—

(1) Election Fund Described.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.

(B) The requirements payment made to the State under this part.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

The State created a special election fund in the state treasury that provides the Secretary of State with the authority to deposit into this fund all federal HAVA dollars and state matching fund appropriations This fund is fully compliant with Section 254(b) of HAVA. The Secretary of State is working with the State's Budget Division and the State Controller's office to implement and enforce all fiscal controls and policies required by both state and federal law.

6. Nevada's Proposed HAVA Budget

Section 254(a)(6) requires a description of the State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on-

(A) the costs of the activities required to be carried out to meet the requirements of Title III

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

To assist states with meeting the new mandates imposed by HAVA, Congress authorized a total of $650 million in Title I payments and $3 billion in Title II requirements payments to be distributed over the next three years. More than half of the funding was to be distributed in FY 2003. While less than one-third of that sum was actually appropriated for FY 2003, Congress made up the difference in funding and provided full funding in FY 04. To date, FY 2005 funding is unknown, and the President is only recommending $40 million for FY 05, rather than the $600 million that is authorized by HAVA. Based on the foregoing, the State has created its HAVA budget assuming the following levels of funding:

Federal Fiscal Year	Federal Appropriations	Nevada's Share	5% Match
Title I Early Payments	$650 million	$5 million	n/a
2003	$833 million	$5.7 million	$304,313
2004	$1.5 billion	$10.3 million	$546,062
2005	$40 million	$265,000	$15,000
Total	$3.02 billion	$21.2 million	$865,375

Because the actual level of funding that will be authorized through fiscal year 2005 is currently unknown, the State's proposed HAVA budget will be revised over time as actual federal funding becomes known. The State's budget through FY 2005 follows, based on our best estimates of the costs of such activities and the amount of funding as discussed herein:

Title III Requirements:

Voting System Purchases/Upgrades:
--$9.27 million to replace all punch card and optical scan voting systems in the State with new DRE touch screen systems that include voter verifiable paper audit trail printers, and to provide for optical scan absentee systems and tabulation compatibility.
--$4 to $6 million to provide additional touch screen systems for Clark County and to retrofit current systems with voter verifiable paper audit trail printers.
--To be funded with Title I early payments, Title II requirements payments and State matching funds.

Establishing and Maintaining a Statewide Voter Registration List:
--$3 to $4 million base cost, plus ongoing maintenance costs of approximately $100,000 per year.
--To be funded with Title I early payments, Title II requirements payments and State matching funds.

Provisional Voting and Voting Information Requirements:
--$150,000 to create the free-access system, provide necessary training and outreach, and develop voting information.
--To be funded with Title II requirements payments and State matching funds.

Other Activities:

Ongoing assessment of polling place accessibility and ADA compliance:
--Amount to be determined based upon adequate funding.

Voter education and outreach activities:
--$38,000 for *Easy Voter Project.*
--Additional funding to be determined based on adequate funding.

Election official and poll worker training initiatives:
--Amount to be determined based upon adequate funding.

Additional technology and elections personnel in the office of the Secretary of State:
--Amount to be determined based upon adequate funding.

7. Maintenance of Effort

Section 254(a)(7) requires a description of how the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the state for the fiscal year ending prior to November 2000.

Consistent with the maintenance of effort requirement contained in HAVA, in using any requirements payments, the State will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of such expenditures maintained by the State for its fiscal year that ended prior to November 2000. The fiscal year that ended prior to November 2000 was fiscal year 2000, which began July 1, 1999, and ended on June 30, 2000. The total expenditures attributable to the Secretary of State's Elections Division for FY 2000 were $151,207. The total expenditures attributable to the Elections Division increased in FYs 2001, 2002, 2003 and 2004 and are anticipated to increase in FYs 05 and 06.

The Secretary of State's proposed budget for FYs 2005 and 2006 requests funding for the Elections Division of approximately $294,000 in FY 2005 and $307,000 in FY 06. The State Legislature has the ultimate power to approve these funding levels and has been apprised of the maintenance of effort requirements contained in HAVA. In the event the additional funding request is denied, the projected state funded expenses for FYs 2005 and 2006 will still exceed $250,000.

8. Performance Goals and Measures

Section 254(a)(8) requires a description of how the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The Secretary of State, in collaboration with local election officials, will establish performance goals and will institute a process to measure progress toward achieving these goals. This process will provide local election officials with structure and continued measurable targets for accomplishment. In addition, each local election official will be required to report the progress of such local jurisdiction in meeting the performance goals and measures to the Secretary of State within 60 days following every general election held in the State.

Performance Goals

The State's primary goal is to achieve election reform and compliance with HAVA through the successful implementation of the programs outlined in the State Plan. Following is a

description of the timetable for meeting each element of the Plan and the title of the official responsible for ensuring each such element is met:

Element	State/County Official	Timetable
Voting Systems	State Elections Deputy County Election Official	By September 2004
Voter Registration	State Elections Deputy County Election Official	By January 1, 2006
Provisional Voting	State Elections Deputy County Election Official	By January 1, 2004
Additional Personnel	State Elections Deputy	By January 1, 2006
Polling Place Accessibility	State Elections Deputy County Election Official	Ongoing
Voter Education/Outreach	State Elections Deputy County Election Official	Ongoing
Poll Worker Training	State Elections Deputy County Election Official	Ongoing
Complaint Procedures	Deputy Attorney General	Adopted/Ongoing

Performance Measures

The State will use the following criteria to measure performance:
--voter turnout statistics
--functionality of voting systems
--accuracy of the data contained in the statewide voter registration list
--voter satisfaction with equipment (accomplished through surveys)
--complaints against poll workers
--complaints received versus complaints resolved
--ADA compliance

These criteria were developed through the State Planning Process.

9. State-Based Administrative Complaint Procedure

Section 254(a)(9) requires a description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402. This state-based administrative complaint procedure must be in effect prior to certification of the State Plan, but no later than January 1, 2004; no waiver of the procedure is permitted.

The Advisory Committee has developed and adopted a procedure for complaints that meets HAVA requirements[8]. The Secretary of State adopted regulations to place these procedures into the State Administrative Code prior to submission of the FY 03-04 State Plan.

In summary, the procedure provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of HAVA, including a violation that has occurred, is occurring, or is anticipated to occur. Any person who believes a violation of any provision of Title II has occurred may file a complaint with the Secretary of State. The complaint must be written, signed, sworn to and notarized. At the request of the complainant, the Secretary of State will conduct a hearing on the record that will be conducted in accordance with HAVA requirements. The Secretary of State will provide the appropriate remedy and will provide a final determination within the timeframes specified in HAVA. The procedure provides for alternative dispute resolution if the Secretary of State does not make a timely final determination. Finally, the procedure requires the Secretary of State to make reasonable accommodations to assist persons in need of special assistance for utilizing the complaint procedure.

10. Effect of Title I Payments

If the State received payment under Title I, Section 254(a)(10) requires a description of how such payment will affect the activities proposed by the State to be carried out under the plan, including the amount of funds available for such activities.

On April 30, 2003, the State received $5 million in Title I payments. The State has expended a portion of these funds for the voting system upgrades described in this State Plan. In addition, the State has expended these funds for ancillary devices, equipment and services associated with the voting systems contract and for travel and training activities necessary for implementing the new voting systems and the statewide voter registration system. Finally, the State has contracted to expend a portion of these funds for voter outreach activities, including involvement in the *Easy Voter Project* described in this plan. The effect this funding will have on the activities proposed by the State in this plan has been previously discussed throughout this plan. Section 6 of this Plan specifically sets forth the State's intended additional uses for these funds.

11. Ongoing Management of the State Plan

Section 254(a)(11) requires a description of how the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The State intends to use the State Plan as the foundation for its goals in achieving election reform and compliance with HAVA. To achieve these goals, the Secretary of State will appoint an

[8] See Appendix B for copy of Administrative Complaint Procedure.

internal committee in his office to be overseen by the Deputy Secretary for Elections. This committee will be responsible for conducting ongoing management of the State Plan. To carry out this function, the committee will be required to hold monthly meetings and to hold at least three (3) meetings each fiscal year with local election officials. The Deputy Secretary for Elections, or a designee, will be required to report to the State Advisory Committee the activities involved with the ongoing management of the Plan. The Secretary of State will hold an annual meeting of the State Advisory Committee to review and update the State Plan, as necessary. The Secretary of State may also convene the State Advisory Committee at other times during the year as deemed advisable.

12. Changes to the State Plan from the Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, Section 254(a)(12) requires a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Due to the delayed formation of the EAC, the State's FY 03-04 State Plan's publication in the *Federal Register* was not completed until May 2004. Because of this holdup in publication, the State did not fully implement all of its FY 2003-04 plan. This FY 2004-05 State Plan incorporates the same basic theme as the FY 03-04 plan, and generally reports upon the procedures implemented by the State in carrying out the previous plan, such as upgrades to voting systems throughout the State and specific voter education and outreach efforts undertaken by the State. The other key changes between the last plan and this plan center around federal funding changes and maintenance of efforts updates..

13. Committee Description and Development of State Plan

Section 254(a)(13) requires a description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The State's Advisory Committee consists of thirteen (13) members including the Secretary of State, local election officials from the two largest counties in the State and a variety of other election stakeholders[9]. The Secretary of State selected the committee membership and either he or his Chief Deputy acted as Chairman for each meeting held.

Members of the State Advisory Committee and their qualifications are as follows:

John Bliss, Esq., Chief Privacy Officer, SRD (Appointee of Senate Majority Leader, William Raggio
LaVonne Brooks, Executive Director, High Sierra Industries
Dan Burk, Washoe County Registrar of Voters
Jan Gilbert, Northern Nevada Coordinator for Progressive Leadership Alliance of Nevada (PLAN)
Dean Heller, Secretary of State
Linda Law, Policy Analyst & Legislative Liaison for the Governor (Appointee of Governor Kenny Guinn)

[9] See Appendix C for Advisory Committee biographies and party affiliation.

Larry Lomax, Clark County Registrar of Voters
Barbara Reed, Douglas County Clerk
Tony F. Sanchez, III, President, Latin Chamber of Commerce; Partner, Jones Vargas Law Firm
Dr. Richard Siegel, President, ACLU of Nevada
Monica Simmons, Henderson City Clerk
Vicky Thimmesch Oldenburg, Senior Deputy Attorney General (Appointee of Attorney General Brian Sandoval)
Scott Wasserman, Chief Deputy Legislative Counsel (Appointee of Assembly Speaker Richard Perkins)

Advisory Committee Staff and their qualifications are as follows:

Renee L. Parker, Esq., Chief Deputy Secretary of State
Ronda L. Moore, Esq., Deputy Secretary of State for Elections
Lindy Johnson, Committee Secretary, Administrative Assistant in the office of the Secretary of State

To develop this FY 04-05 State Plan, the State Advisory Committee met on May 27th and again on July 30, 2004[10]. The Committee began working from a proposed draft plan submitted by the Secretary of State that incorporated updates to the FY 2003-04 Plan and reported on the progress of implementation. Committee meetings were publicly held and noticed in accordance with Nevada's Open Meeting Law[11].

The FY 04-05 State Plan was made available for public inspection and comment for a 32-day period prior to submission of the plan to the Committee. The Secretary of State published the draft plan and notice of the comment period on June 7, 2004, in his offices, on his website, in the Nevada State Library, at all main county libraries throughout the State, all city and county clerk's offices throughout the State, and at various other public agencies throughout the State. The notice made it clear that the Secretary of State would accept public comment in the form of e-mails, letters, faxes, etc. until July 9, 2004. However, no public input was received during the comment period. Accordingly, the Committee adopted the final version of the draft plan at its meeting on July 30, 2004.

[10] See Appendix D for corresponding meeting agendas.
[11] Chapter 241 of the Nevada Revised Statutes.

APPENDIX A – VOTING SYSTEMS/STATE OF NEVADA

COUNTY	VOTING SYSTEM	TABULATION SYSTEM	VOTER REGISTRATION SYSTEM	[illegible]
CARSON	PUNCH CARD 218 Units 228 VOTOMATIC BRC / ES&S Year Purchased: 1995 Last Modified: 2000	[illegible]	ES&S Oracle In-House Server	[illegible]
[illegible]	PUNCH CARD 76 Units SEQUOIA PACIFIC DATA VOTE Year Purchased: 1978 Last Modified: 2000	[illegible]	IBM AS400 with ADS software	[illegible]
[illegible]	DIRECT RECORDING EQUIPMENT 2186 UNITS SEQUOIA PACIFIC AVC ADVANTAGE Year Purchased: 1994 Last Modified: 2000	[illegible]	VOTEC ELECTION MANAGEMENT & COMPLIANCE SYSTEM	[illegible]
[illegible]	PUNCH CARD 200 Units 228 VOTOMATIC BRC / ES&S Year Purchased: 1972 Last Modified: 1997	[illegible]	ES&S Oracle In-House Server	[illegible]
[illegible]	OPTICAL SCAN 2 Units AIS 15 Series Model 150 Year Purchased: 1997 (No Modifications)	[illegible]	COUNTY MAINFRAME AS-400	[illegible]

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COUNTY	VOTING SYSTEM	TABULATION SYSTEM	VOTER REGISTRATION SYSTEM	[illegible]
[illegible]	OPTICAL SCAN 1 Unit AIS 15 Series Model 150 Year Purchased: 1996 (No Modifications)	[illegible]	COUNTY MAINFRAME AS-400	[illegible]
[illegible]	PUNCH CARD 69 Units SEQUOIA PACIFIC DATA VOTE Year Purchased: 1986 Last Modified: 1996	[illegible]	IBM AS-400 with ADS software	[illegible]
[illegible]	OPTICAL SCAN 1 Unit AIS 15 Series Model 150 Year Purchased: 1996 (No Modifications)	[illegible]	IBM AS400 with ADS software	[illegible]
[illegible]	PUNCH CARD 25 Units 228 VOTOMATIC BRC / ES&S Year Purchased: pre-1986 (No Modifications)	[illegible]	IBM AS400 with ADS software	[illegible]
[illegible]	PUNCH CARD 163 Units 228 VOTOMATIC BRC / ES&S Year Purchased: 1985 Last Modified: 1999	[illegible]	IBM AS400 with ADS software	[illegible]
[illegible]	OPTICAL SCAN 1 Unit AIS Series Model 150 Year Purchased: 1993 Last Modified: 1995	[illegible]	IBM AS400 with ADS software	[illegible]

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COUNTY	VOTING SYSTEM	TABULATION SYSTEM	VOTER REGISTRATION SYSTEM	SIGNATURE VERIFICATION
NYE	OPTICAL SCAN 2 Units AIS Series Model 150 Year Purchased: 1996 (No Modifications)		IBM AS400 with ADS software	
[illegible] SPRING	OPTICAL SCAN 1 Unit AIS Series Model 150 Year Purchased: 1995 (No Modifications)		IBM AS400 with ADS software	
[illegible] STOREY	PUNCH CARD 16 Units 228 VOTOMATIC BRC / ES&S Year Purchased: 1997 (No Modifications)		BRC PERSONAL COMPUTER BALLOT TABULATION (PC/BT)	
WASHOE	OPTICAL SCAN 143 Units GES ACCU-VOTE ES 2000 Year Purchased: 1995 Last Modified: 2000		DIMS	
WHITE PINE	OPTICAL SCAN 1 Unit AIS Series Model 150 Year Purchased: 1995		IBM AS400 with ADS software	

ADOPTED REGULATION OF THE

SECRETARY OF STATE

LCB File No. R077-03

Effective December 4, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: §§1-14, NRS 293.124.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. As used in sections 2 to 14, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.

Sec. 3. "Complainant" means a person who files a complaint with the Secretary of State pursuant to section 5 of this regulation.

Sec. 4. "Respondent" means a state or local election official against whom a complaint is filed pursuant to section 5 of this regulation.

Sec. 5. 1. A person who believes that a violation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur may file a complaint with the Office of the Secretary of State.

2. A complaint filed pursuant to subsection 1 must:

(a) Be in writing, notarized and signed and sworn by the complainant. If the Secretary of State prescribes a form for the complaint, the complaint must be filed on that form.

(b) Provide the name of each respondent and a concise statement of the facts of the alleged violation of 42 U.S.C. §§ 15481 to 15502, inclusive.

(c) Be filed in the Office of the Secretary of State in Carson City:

(1) Not later than 60 days after the occurrence of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur; or

(2) Not later than 60 days after the complainant knew or, with the exercise of reasonable diligence, should have known of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur, whichever is later.

3. The complainant shall mail or deliver a copy of the complaint to each respondent not later than the date on which the complaint was filed..

Sec. 6. 1. The Secretary of State or his designee will review each complaint filed pursuant to section 5 of this regulation to determine whether the complaint:

(a) States a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, and

(b) Complies with the requirements of section 5 of this regulation.

2. If a complaint fails to state a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, or does not comply with the requirements of section 5 of this regulation, the complaint will be dismissed without further action and notice of the dismissal will be provided to the complainant.

3. Except as otherwise provided in subsection 4, a complainant whose complaint has been dismissed pursuant to this section may refile the complaint within the time set forth in paragraph (c) of subsection (2) of section 5 of this regulation.

4. A complainant whose complaint has been dismissed for failure to state a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, may refile the complaint only one time.

Sec. 7. 1. The Secretary of State may consolidate complaints filed pursuant to section 5 of this regulation if the complaints relate to the same action or event or raise a common question of law or fact.

2. The Secretary of State will notify all interested parties if two or more complaints have been consolidated.

3. The Secretary of State will compile and maintain an official record in connection with each complaint filed pursuant to section 5 of this regulation.

Sec. 8. 1. A complainant may request in a complaint filed pursuant to section 5 of this regulation that the Secretary of State hold a hearing on the complaint.

2. If a complainant requests a hearing pursuant to subsection 1, the Secretary of State or his designee will conduct a hearing on a complaint, unless the complaint is dismissed pursuant to section 6 of this regulation. The hearing will be held not sooner than 10 days but not later than 30 days after a request for a hearing has been made pursuant to subsection 1.

3. The Secretary of State will provide notice of the date, time and place of the hearing at least 10 business days before the hearing:

(a) By mailing a copy of the notice to the complainant, each respondent and any interested person who has requested in writing to be advised of the hearing;

(b) By posting a copy of the notice in a prominent place at the Office of the Secretary of State that is available to the general public; and

(c) By posting a copy of the notice on the website of the Secretary of State.

4. A hearing held pursuant to this section is not a contested case for the purposes of chapter 233B of NRS.

Sec. 9. *1. The Secretary of State or his designee will act as the hearing officer for a hearing held pursuant to section 8 of this regulation. If the complaint alleges a violation by the Secretary of State, an independent professionally qualified person will be appointed to act as the hearing officer.*

2. The complainant, any respondent and any interested member of the public may appear at the hearing, in person or by teleconference, and testify or present relevant evidence in connection with the complaint. All testimony to be considered in the hearing will be taken under oath. The hearing officer may limit the testimony of witnesses, if necessary, to ensure that all interested persons may present their views. The hearing officer may recess the hearing and reconvene the hearing at a later date, time and place, which must be announced publicly at the hearing.

3. A complainant, respondent or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

4. Cross-examination will be permitted only at the discretion of the hearing officer, but a person may testify or present evidence at the hearing to contradict any other testimony or evidence presented at the hearing. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence presented subsequently, that person is

entitled to be heard again only at the discretion of the hearing officer, who may authorize the person to provide an oral or written response, or both.

5. The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If a board or party obtains a transcript of a hearing, the board or party shall file a copy of the transcript as part of the record and any other interested party may examine the copy of the transcript on record.

6. Any party to the proceeding may file a written brief or memorandum with the hearing officer not later than 5 business days after the conclusion of the hearing. The party shall serve a copy of any such written brief or memorandum on all other parties not later than the time the written brief or memorandum is filed with the hearing officer. No responsive or reply memorandum to such a brief or memorandum will be accepted without the specific authorization of the hearing officer.

7. At the conclusion of the hearing and after any brief or memorandum has been filed pursuant to subsection 6, the hearing officer will determine whether, by a preponderance of the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur.

Sec. 10. *If a complainant has not requested a hearing on a complaint filed pursuant to section 5 of this regulation, the Secretary of State or his designee will review the complaint and any accompanying record and determine whether, by a preponderance of the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to*

occur. If the Secretary of State is a respondent in the complaint, the Secretary of State will appoint an independent professionally qualified person to act as his designee pursuant to this section.

Sec. 11. *1. If the Secretary of State or his designee, whether acting as a hearing officer pursuant to section 9 of this regulation or reviewing a complaint pursuant to section 10 of this regulation, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur, the Secretary of State or his designee will provide the appropriate remedy, including, without limitation, an order to a respondent commanding the respondent to take specified action or prohibiting the respondent from taking specified action, with respect to a past or future election. Such a remedy will not include an award of money damages or attorney's fees.*

2. If the Secretary of State or his designee, whether acting as a hearing officer pursuant to section 9 of this regulation or reviewing a complaint pursuant to section 10 of this regulation, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has not occurred, is not occurring or is not about to occur, the Secretary of State or his designee will dismiss the complaint.

3. The Secretary of State or his designee will issue a final determination on a complaint made pursuant to subsection 1 or 2 in writing. The final determination will include an explanation of the reasons for the determination and, if applicable, the remedy selected.

4. Except as otherwise provided in section 12 of this regulation, a final determination of the Secretary of State or his designee on a complaint will be issued within 90 days after the

complaint is filed, unless the complainant consents in writing to an extension. The final determination will be:

(a) Mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

Sec. 12. *1. If the Secretary of State or his designee does not render a final determination on a complaint filed pursuant to section 5 of this regulation within 90 days after the complaint is filed, or within any extension period to which the complainant has consented, the Secretary of State will, on or before the fifth business day after the final determination was due to be issued, initiate alternate dispute resolution procedures by:*

(a) Retaining an independent professionally qualified person to act as the arbitrator, if the complainant consents in writing to his appointment as the arbitrator at the time of his appointment.

(b) Designating in writing to the complainant the name of an arbitrator to serve on an arbitration panel to resolve the complaint. If proceedings for alternative dispute resolution are initiated pursuant to this paragraph, not later than 3 business days after the complainant receives such a designation from the Secretary of State, the complainant shall designate in writing to the Secretary of State the name of a second arbitrator. Not later than 3 business days after such a designation by the complainant, the two arbitrators so designated shall select a third arbitrator to complete the panel.

APPENDIX C

ADVISORY COMMITTEE BIOGRAPHIES AND PARTY AFFILIATIONS

NAME	TITLE	PARTY	BIOGRAPHICAL INFORMATION
Brooks, LaVonne	Executive Director, High Sierra Industries (HSI)	Democrat	*Bachelors and Masters in Organizational Management and Development. First Hispanic female appointed to serve as a City of Reno Planning Commissioner and appointed to serve as Vice Chair on the Governor's Task Force for Provider Rates in 2001 & 2002. Prior to joining HIS, LaVonne worked for an international consulting firm for 2 years and spent 14 years with a computer manufacturing company. She then owned her own training and development company specializing in improving performance through computer upgrades.*
Burk, Dan	Registrar of Voters, Washoe County	Nonpartisan	*B.A. in Public Administration, University of Northern Texas (1970). M.A. in History, University of Northern Colorado (1977). Worked over 20 years in all aspects of election procedures in Oregon, from Director of Records and Elections, Liaison Officer in the Archive Division to membership on the committee for the implementation of the ADA (Americans with Disabilities Act) regarding Oregon's standards for handicapped access to polling locations.*
Gilbert, Jan	Northern Nevada Coordinator PLAN	Democrat	*B.A. Economics from UCLA. She co-founded the Progressive Leadership Alliance of Nevada (PLAN) and the Nevada Empowered Women's Project, a non-profit organization representing low-income women. Prior to working on economic and environmental justice issues at the state legislature for 19 years, she began advocacy work for the League of Women Voters. She has received several Humanitarian Awards including the Women's Role Model Award from the Attorney General and the Hannah Humanitarian Award from the Committee to Aid Abused Women. She also served on the Department of Human Resources Block Grant Commission for 7 years and was Chairman for two of those years.*
Guinn, Kenny C.	Governor	Republican	*Undergraduate degree in Physical Education from Fresno State University, doctorate in Education from Utah State University. In 1964 he began working for the Clark County School District and shortly was named Superintendent of Schools for Clark County. He served as Superintendent until 1978 and then began applying his management skills in business for Nevada Savings and Loan in Las Vegas, which later became PriMerit Bank. He soon was appointed Chairman of the Board of Directors of the Las Vegas-based bank and was also recruited to the energy business as the President of Southwest Gas Corporation becoming the Chairman of the Board of Directors of that utility in 1993. In 1994, Guinn was recruited by the University of Nevada Board of Regents to serve as interim president of the University of Nevada-Las Vegas. He was elected Governor of Nevada in 1998.*

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2. The arbitrator or arbitration panel may review the record compiled in connection with he complaint, including, without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence unless the arbitrator or arbitration panel requests that the parties present additional briefs or memoranda.

3. The arbitrator, or arbitration panel by a majority vote, shall determine the appropriate resolution of the complaint.

4. The arbitrator or arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to section 11 of this regulation. This period for issuing a written resolution will not be extended.

5. The final resolution of the arbitrator or arbitration panel will be:

(a) Mailed to the complainant, each respondent and any other person who requested in writing to be advised of the final resolution;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

Sec. 13. A final determination of the Secretary of State or his designee pursuant to section 9, 10 or 11 of this regulation or the final resolution of an arbitrator or arbitration panel pursuant to section 12 of this regulation is not subject to appeal in any state or federal court.

Sec. 14. The Secretary of State will make reasonable accommodations to assist persons in using the procedures set forth in sections 2 to 14, inclusive, of this regulation.

—8—

Adopted Regulation R077-03

NAME	TITLE / ORGANIZATION	PARTY AFFILIATION	BIOGRAPHY
Appointee of Governor: *Linda Law*	Policy Analyst & Legislative Liaison for the Governor	Appointee:	*Linda Law has been involved with the Nevada State Legislature since 1977, including being part of the legislative staff for three sessions, serving with the Legislative Counsel Bureau, Research Division for seven years; and lobbying various issues during three sessions. Linda owned a small-business and computer consulting service for 10 years, holds a private pilot's license, and formerly held real estate and manufactured housing sales licenses. Linda received a degree in Business and Finance from Western Nevada Community College and has completed additional courses in accounting, statistics, and computer applications.*
Heller, Dean	Secretary of State	Republican	*B.A in Business Administration, specializing in finance and securities analysis from USC in 1985. Assemblyman in the Nevada Legislature from 1990-1994. First elected Secretary of State in 1994 and re-elected in 1998 and 2002. He serves on several boards including the Board of Examiners, State Prison Board, and the Tahoe Regional Planning Agency.*
Lomax, Larry	Registrar of Voters, Clark County	Nonpartisan	*B.A. in English Literature, Stanford University (1967) and Master of Business Administration from University of North Dakota (1977). He was a Distinguished Graduate From the Air Force's Officer Training School and as a pilot flew over 4,000 hours in a 30-year career. He served on the Joint Staff in Washington D.C. and had the opportunity to work with legislators and staff members on a wide range of issues. He began his career as Assistant Registrar for Registrations in January of 1998 overseeing the training of 7,000 election board officers, processing of petitions, and election night logistics and was appointed Registrar of Voters with full responsibility for the County's Election Department in March of 1999.*
Perkins, Richard	Assembly Speaker	Democrat	*University of Nevada, Las Vegas, B.A., Criminal Justice, B.A., Political Science. Deputy Police Chief. Speaker of the House. Nevada Assembly 1993-2003.*
Appointee of Speaker: *Scott Wasserman*	Chief Deputy Legislative Counsel	Appointee: Nonpartisan	*B.A. University of Connecticut (1981) and J.D. University of Pacific, McGeorge School of Law (1985). Chief Deputy Legislative Counsel for the Nevada Legislature. Counsel to the Senate Committee on Government Affairs having jurisdiction over election laws in the Nevada Senate. Past two sessions served as the Committee counsel to the Assembly Committee on Elections, Procedures and Ethics, and Legal Adviser to the Committee on Reapportionment matters since 1987.*

NAME	TITLE / ORGANIZATION	PARTY AFFILIATION	BIOGRAPHY
Raggio, William	Senator	Republican	*Louisiana Tech. University of Oklahoma. University of Nevada, Reno, B.A., University of California, Berkeley, Boalt Hall School of Law. Senator. Attorney at Law.*
Appointee of Senator: *John Bliss, Esq.*	Chief Privacy Officer, SRD	Appointee: Republican	***Mr. Bliss has more than 20 years of experience in the legal, legislative and political arenas, much of it in the areas of banking, securities and intellectual property law. Before joining SRD, he was a partner in the Washington, D.C. law firm of Higgins, McGovern & Smith, which specializes in government affairs representation of corporate and trade association clients before international, federal, state and local legislative and regulatory bodies. Concurrently, he was also president and CEO of CDO Solutions, LLC, a consulting firm providing technology-enhanced strategies for protecting brand equity, reducing corporate liability, and cutting losses from counterfeiting, diversion, theft and fraud. Earlier, Mr. Bliss served for five years as president of the International AntiCounterfeiting Coalition, Inc., a 180-member trade association dedicated to combating counterfeiting and piracy of U.S. products worldwide. Mr. Bliss started his professional career as a legislative aide to U.S. Senator Arlen Specter (R-PA), and later served as minority chief counsel for the United States Senate Judiciary Committee's Subcommittees on The Constitution, Technology and the Law, and Juvenile Justice. During the same period, he was also chief counsel to Senator Hank Brown (R-CO) and Senate minority staff director for the Congressional Biotechnology Caucus. John Bliss earned a bachelor's degree in history at the University of California, San Diego, and his J.D. at Georgetown University Law Center in Washington, D.C.***
Reed, Barbara	County Clerk, Douglas County	Republican	*Barbara was first elected Clerk-Treasurer in 1986 but has worked in the Douglas County Clerk-Treasurer's office since November of 1973. Her key interest and commitment is the election process and the advancements currently being taken to allow voters easy accessibility to vote.*
Sanchez, Tony F. III	Attorney, Jones Vargas President, Latin Chamber of Commerce	Democrat	*B.A. UNLV (1988), Arizona State University College of Law (J.D. 1991). Served as Assistant Legislative Counsel to U.S. Senator Richard H. Bryan (1992-1995), Assistant General Counsel for the NV Public Utilities Commission (1995-1998) and Executive Assistant to Governor Bob Miller (1998-1999). President, Latin Chamber of Commerce 2002 and 2003; Trustee, Las Vegas Chamber of Commerce (2001-Present); Clark County Early Advisory Board 2001 and Vice President, Latino Bar Association 2000-01. Partner, Jones Vargas Law Firm with emphasis in Legislative and Government Relations, Utility And Transportation Law, Administrative Law, Planning and Zoning and Civil Litigation.*
Sandoval, Brian	Attorney General	Republican	*Graduated from the University of Nevada and the Ohio State University College of Law. He served two terms in the Nevada Legislature before receiving an appointment to the Nevada Gaming Commission in 1998. One year later, he was named by Governor Guinn as Chairman of the Commission. Sandoval also spent three years as the Nevada at-large member of the Tahoe Regional Planning Agency Governing Board. He is a member of the Nevada State Board of Pardons, Prisons, Examiners, Transportation, Domestic Violence and Private Investigators and on the Boards of Trustees for Children's Cabinet of Reno, KNBP Channel 5, St. Jude's Ranch and the Washoe County Nevada Law Library. He was sworn in as Nevada's Attorney General on January 6, 2003.*

APPENDIX C

ADVISORY COMMITTEE BIOGRAPHIES AND PARTY AFFILIATIONS

NAME	TITLE/ ORGANIZATION	PARTY AFFILIATION	BIOGRAPHY
Brooks, LaVonne	Executive Director, High Sierra Industries (HSI)	Democrat	*Bachelars and Masters in Organizational Management and Development. First Hispanic female appointed ta serve as a City af Reno Planning Commissianer and appointed to serve as Vice Chair on the Governor's Task Force for Provider Rates in 2001 & 2002. Priar ta joining HIS, LaVanne worked for an international consulting firm for 2 years and spent 14 years with a computer manufacturing company. She then owned her awn training and development campany specializing in improving perfarmance through computer upgrades.*
Burk, Dan	Registrar of Voters, Washoe County	Nonpartisan	*B.A. in Public Administration, University of Narthern Texas (1970). M.A. in History, University of Northern Colarado (1977). Worked over 20 years in all aspects of electian procedures in Oregan, fram Director af Recards and Elections, Liaison Officer in the Archive Division to membership an the committee far the implementation of the ADA (Americans with Disabilities Act) regarding Oregon's standards far handicapped access ta polling locations.*
Gilbert, Jan	Northern Nevada Coordinator PLAN	Democrat	*B.A. Ecanamics from UCLA. She co-founded the Progressive Leadership Alliance of Nevada (PLAN) and the Nevada Empowered Women's Project, a non-profit organization representing low-income women. Priar ta working on ecanamic and environmental justice issues at the state legislature far 19 years, she began advocacy work for the League of Women Vaters. She has received several Humanitarian Awards including the Women's Rale Model Award from the Attorney General and the Hannah Humanitarian Award from the Cammittee to Aid Abused Wamen. She also served on the Department af Human Resources Block Grant Commissian far 7 years and was Chairman for two of thase years.*
Guinn, Kenny C.	Governor	Republican	*Undergraduate degree in Physical Education fram Fresna State University, doctorate in Education fram Utah State University. In 1964 he began working for the Clark County School District and shortly was named Superintendent of Schools far Clark Caunty. He served as Superintendent until 1978 and then began applying his management skills in business for Nevada Savings and Loan in Las Vegas, which later became PriMerit Bank. He soon was appointed Chairman af the Board of Directors af the Las Vegas-based bank and was also recruited to the energy business as the President of Southwest Gas Carporation becoming the Chairman of the Board of Directors of that utility in 1993. In 1994, Guinn was recruited by the University of Nevada Board of Regents to serve as interim president of the University of Nevada-Las Vegas. He was elected Governor af Nevada in 1998.*

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2. The arbitrator or arbitration panel may review the record compiled in connection with he complaint, including, without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any dditional testimony or evidence unless the arbitrator or arbitration panel requests that the arties present additional briefs or memoranda.

3. The arbitrator, or arbitration panel by a majority vote, shall determine the appropriate esolution of the complaint.

4. The arbitrator or arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to section 11 of this regulation. This period for issuing a written resolution will not be extended.

5. The final resolution of the arbitrator or arbitration panel will be:

(a) Mailed to the complainant, each respondent and any other person who requested in writing to be advised of the final resolution;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

Sec. 13. *A final determination of the Secretary of State or his designee pursuant to section 9, 10 or 11 of this regulation or the final resolution of an arbitrator or arbitration panel pursuant to section 12 of this regulation is not subject to appeal in any state or federal court.*

Sec. 14. *The Secretary of State will make reasonable accommodations to assist persons in using the procedures set forth in sections 2 to 14, inclusive, of this regulation.*

NAME	TITLE - ORGANIZATION	PARTY AFFILIATION	BIOGRAPHY
Appointee of Governor: *Linda Law*	Policy Analyst & Legislative Liaison for the Governor	Appointee:	*Linda Law has been involved with the Nevada State Legislature since 1977, including being part of the legislative staff for three sessions, serving with the Legislative Counsel Bureau, Research Division for seven years, and lobbying various issues during three sessions. Linda owned a small-business and computer consulting service for 10 years, holds a private pilot's license, and formerly held real estate and manufactured housing sales licenses. Linda received a degree in Business and Finance from Western Nevada Community College and has completed additional courses in accounting, statistics, and computer applications.*
Heller, Dean	Secretary of State	Republican	*B.A. in Business Administration, specializing in finance and securities analysis from USC in 1985. Assemblyman in the Nevada Legislature from 1990-1994. First elected Secretary of State in 1994 and re-elected in 1998 and 2002. He serves on several boards including the Board of Examiners, State Prison Board, and the Tahoe Regional Planning Agency.*
Lomax, Larry	Registrar of Voters, Clark County	Nonpartisan	*B.A. in English Literature, Stanford University (1967) and Master of Business Administration from University of North Dakota (1977). He was a Distinguished Graduate From the Air Force's Officer Training School and as a pilot flew over 4,000 hours in a 30-year career. He served on the Joint Staff in Washington D.C. and had the opportunity to work with legislators and staff members on a wide range of issues. He began his career as Assistant Registrar for Registrations in January of 1998 overseeing the training of 7,000 election board officers, processing of petitions, and election night logistics and was appointed Registrar of Voters with full responsibility for the County's Election Department in March of 1999.*
Perkins, Richard	Assembly Speaker	Democrat	*University of Nevada, Las Vegas, B.A., Criminal Justice. B.A., Political Science. Deputy Police Chief. Speaker of the House. Nevada Assembly 1993-2003.*
Appointee of Speaker: *Scott Wasserman*	Chief Deputy Legislative Counsel	Appointee: Nonpartisan	*B.A. University of Connecticut (1981) and J.D. University of Pacific, McGeorge School of Law (1985). Chief Deputy Legislative Counsel for the Nevada Legislature. Counsel to the Senate Committee on Government Affairs having jurisdiction over election laws in the Nevada Senate. Past two sessions served as the Committee counsel to the Assembly Committee on Elections, Procedures and Ethics, and Legal Adviser to the Committee on Reapportionment matters since 1987.*

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NAME	TITLE - ORGANIZATION	PARTY AFFILIATION	BIOGRAPHY
Raggio, William	Senator	Republican	*Louisiana Tech. University of Oklahoma. University of Nevada, Reno, B.A.; University of California, Berkeley, Boalt Hall School of Law. Senator. Attorney at Law.*
Appointee of Senator: *John Bliss, Esq.*	Chief Privacy Officer, SRD	Appointee: Republican	***Mr. Bliss has more than 20 years of experience in the legal, legislative and political arenas, much of it in the areas of banking, securities and intellectual property law. Before joining SRD, he was a partner in the Washington, D.C. law firm of Higgins, McGovern & Smith, which specializes in government affairs representation of corporate and trade association clients before international, federal, state and local legislative and regulatory bodies. Concurrently, he was also president and CEO of CDO Solutions, LLC, a consulting firm providing technology-enhanced strategies for protecting brand equity, reducing corporate liability, and cutting losses from counterfeiting, diversion, theft and fraud. Earlier, Mr. Bliss served for five years as president of the International AntiCounterfeiting Coalition, Inc., a 180-member trade association dedicated to combating counterfeiting and piracy of U.S. products worldwide. Mr. Bliss started his professional career as a legislative aide to U.S. Senator Arlen Specter (R-PA), and later served as minority chief counsel for the United States Senate Judiciary Committee's Subcommittees on The Constitution, Technology and the Law, and Juvenile Justice. During the same period, he was also chief counsel to Senator Hank Brown (R-CO) and Senate minority staff director for the Congressional Biotechnology Caucus. John Bliss earned a bachelor's degree in history at the University of California, San Diego, and his J.D. at Georgetown University Law Center in Washington, D.C.***
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Sanchez, Tony F. III	Attorney, Jones Vargas President, Latin Chamber of Commerce	Democrat	*B.A. UNLV (1988), Arizona State University College of Law (J.D. 1991). Served as Assistant Legislative Counsel to U.S. Senator Richard H. Bryan (1992-1995), Assistant General Counsel for the NV Public Utilities Commission (1995-1998) and Executive Assistant to Governor Bob Miller (1998-1999). President, Latin Chamber of Commerce 2002 and 2003; Trustee, Las Vegas Chamber of Commerce (2001-Present); Clark County Early Advisory Board 2001 and Vice President, Latino Bar Association 2000-01. Partner, Jones Vargas Law Firm with emphasis in Legislative and Government Relations, Utility And Transportation Law, Administrative Law, Planning and Zoning and Civil Litigation.*
Sandoval, Brian	Attorney General	Republican	*Graduated from the University of Nevada and the Ohio State University College of Law. He served two terms in the Nevada Legislature before receiving an appointment to the Nevada Gaming Commission in 1998. One year later, he was named by Governor Guinn as Chairman of the Commission. Sandoval also spent three years as the Nevada at-large member of the Tahoe Regional Planning Agency Governing Board. He is a member of the Nevada State Board of Pardons, Prisons, Examiners, Transportation, Domestic Violence and Private Investigators and on the Boards of Trustees for Children's Cabinet of Reno, KNBP Channel 5, St. Jude's Ranch and the Washoe County Nevada Law Library. He was sworn in as Nevada's Attorney General on January 6, 2003.*

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HELP AMERICA VOTE ACT
Advisory Committee

Thursday, May 27, 2004 10:30 a.m.
Legislative Building — Grant Sawyer Building (via video-conference)
401 South Carson Street — 555 East Washington Street
Carson City, NV — Las Vegas, NV
Room 2134 — Room 4406

AGENDA

I. **Introduction and Welcome**
Dean Heller, Secretary of State
Renee Parker, Chief Deputy Secretary of State

II. **Update on Status of HAVA Compliance and State/ Federal Funding Issues**
A. Committee Discussion

III. **Review and Approve Proposed HAVA State Plan as Revised for FY 04**
A. Committee Discussion/Proposed Amendments
B. Committee Recommendation re: revisions to FY 04 HAVA State Plan
- Action to be taken.

IV. **Comments of Committee Members**

V. **Public Comment**

VI. **Adjournment**

Notice of this meeting has been posted at the following locations:
The Capitol Building, 101 North Carson Street, Carson City, NV
Grant Sawyer State Office Building, 555 East Washington Street, Las Vegas, NV
The State Legislative Building, 401 South Carson Street, Carson City, NV
The State Library and Archives, 100 North Stewart Street, Carson City, NV

Notice of this meeting was posted on the following website: http://secretaryofstate.biz

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. Please notify the Election's Division at the Secretary of State's office by calling (775) 684-5705.

Appointee of Attorney General *Vicky Thimmesch Oldenburg, Esq.*	Senior Deputy Attorney General	Appointee: Nonpartisan	*Vicky joined Brian Sandoval's administration in 2004. She previously served as the Senior Legal & Policy Analyst to Governor Kenny Guinn since April 2001. She earned her J.D. degree and* ***Certificate in Environmental and Natural Resources Law from Lewis and Clark College in 1992. Vicky is a member of the Cornelius Honor Society, and received the American Jurisprudence award for her achievement in the 1991-1992 Environmental Law Natural Resources Attorney for the City of Reno. She subsequently became an associate at the Nevada law firm of McDonald, Carano, Wilson, McCune, Bergin, Frankovich & Hicks, focusing on issues relative to the proposed high-level nuclear waste repository at Yucca Mountain and was the Governor's liaison to the Nevada Department of Conservation and Natural Resources, and the Nevada Department of Business & Industry.***

NAME	TITLE/ ORGANIZATION	
Siegel, Dr. Richard	President, ACLU of Nevada	*Political Scientist at the University of Nevada, Reno since 1965. His academic specialties are foreign policy and international human rights. He served on the National Board of Directors of the American Civil Liberties Union from 1975-1988 and currently is President of the ACLU of Nevada. He is also active with the Nevada Faculty Alliance, the Nevada Committee on Foreign Relations, and the Progressive Leadership Alliance of Nevada.*
Simmons, Monica	City Clerk, City of Henderson	*Appointed City Clerk for the City of Henderson in 1998, her responsibilities include administration of municipal elections. Monica began her tenure with the City of Henderson City Attorney's Office in 1979 serving through her appointment as City Clerk. Having completed Seattle University's Northwest Academy in 2002, she was accepted into the post-certification Master Municipal Clerk Academy. She received her business accreditation from Southern Utah University in 1977 and is currently completing a degree in Public Administration. She serves as a member of the Clark County Election Department Accuracy & Certification Board and Early Voting Board. She chairs the City of Henderson Latino Advisory Board and remains active in the Election Center, IIMC, Nevada Municipal Clerks Association, and League of Cities. She maintains her legal administrator accreditation and associate membership with the American Bar Association.*

AGENDA

HELP AMERICA VOTE ACT
Advisory Committee

Date: Friday, July 30, 2004
Time: 9:00 a.m.
Location: Via Telephone Conference
In person attendance at:
Secretary of State's Office
101 N. Carson Street, Suite 3
Carson City, NV 89701

I. Introduction and Welcome
Ronda Moore, Deputy Secretary for Elections

II. Review and Approve Minutes of May 27, 2004 HAVA Advisory Committee Meeting
Discussion/Action to Approve Minutes
- **Action to be taken.**

III. Review and Approve FY 04 – 05 HAVA State Plan
A. Consideration of Public Comments Received
B. Discussion/Action to Adopt HAVA State Plan for federal FY 04-05
- **Action to be taken.**

IV. Comments of Committee Members

V. Public Comment

VI. Adjournment

Notice of this meeting has been posted at the following locations:
The Capitol Building, 101 North Carson Street, Carson City, NV
Grant Sawyer State Office Building, 555 East Washington Street, Las Vegas, NV
The State Legislative Building, 401 South Carson Street, Carson City, NV
The State Library and Archives, 100 North Stewart Street, Carson City, NV

Notice of this meeting was posted on the following website: http://secretaryofstate.biz

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. Please notify the Election's Division at the Secretary of State's office by calling (775) 684-5705.

Commonwealth of Pennsylvania

State Plan

AS AMENDED

As Required by Public Law 107-252,
The Help America Vote Act of 2002

August 13, 2004

Edward G. Rendell, Governor

Pedro A. Cortés, Secretary of the Commonwealth

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
302 North Office Building
Harrisburg, PA 17120

PEDRO A. CORTÉS
Secretary of the Commonwealth

Telephone: (717) 787-6727
Fax: (717) 787-1734
Website: www.dos.state.pa.us

August 13, 2004

Dear Members of the Commission:

In accordance with section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with the Election Assistance Commission (EAC), for publication in the *Federal Register*, this letter and the following new pages that will comprise Elements 6, 10 and 12 of the State Plan of Commonwealth of Pennsylvania for the 2005 Fiscal Year. These new pages, together with non-substantive changes that we have made, will constitute the Commonwealth of Pennsylvania's HAVA State Plan for Fiscal Year 2005.

As required by section 254(a)(12) of HAVA, Element 12, as amended, describes the material changes that Pennsylvania has made to the State Plan filed in 2003. Specifically, Element 12 contains descriptions of the amended versions of Elements 6 and 10 and lists the progress that the Commonwealth has made with regard to the State Plan that the Commonwealth filed with the Federal Election Commission on July 31, 2003.

Please note that non-material changes to the Pennsylvania State Plan can be found throughout every element of the Pennsylvania State Plan. After consulting with EAC staff, the Commonwealth has elected not to include those changes for publication in the *Federal Register* as unnecessary under HAVA. Instead, we would direct the EAC and members of the public to the Pennsylvania Department of State's HAVA website (www.hava.state.pa.us) to view and copy the complete Pennsylvania State Plan as the Commonwealth has amended it.

The 2004 Amendments to the State Plan of Commonwealth of Pennsylvania were developed in accordance with section 255 of HAVA and the requirements for public notice and comment prescribed by section 256 of HAVA.

On behalf of the Commonwealth of Pennsylvania, I thank the Commission for its assistance. I look forward to our continued collaboration to improve the administration of elections in Pennsylvania.

Very truly yours,

Pedro A. Cortés

Pedro A. Cortés

STATE PLAN ELEMENT 6

The State's proposed budget for activities under Part II of HAVA, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

HAVA Section 254(a)(6) (42 U.S.C. § 15404(a)(6))

2004 -- All previous information contained in this Chapter is deleted and superceded by the following:

Section 254(a)(6) of HAVA requires the Commonwealth to describe in its State Plan a budget for its proposed activities and anticipated expenditures for those activities.

The reform effort that HAVA represents is extensive and far-reaching. But its success is dependent on Federal funding. Pennsylvania's State Plan presumes full funding according to the timetable contained in section 257(a) of HAVA. While Congress has funded the program for Federal Fiscal Year (FFY) 2003 and 2004 at a level authorized by HAVA, it is not clear whether they will do so for FFY 2005. It is essential that Congress and the President adhere to the funding timetable and the funding amounts authorized by HAVA. If full funding is not forthcoming according to the schedule established by HAVA, the success of this plan will be jeopardized.

The General Services Administration has released funds authorized by Title I of HAVA that, combined under sections 101 and 102, amount to $34,240,120.00. In addition, Pennsylvania has received funds from the EAC known as Title II requirements payments in the amount of $100,578,829.00. The Commonwealth received $35,992,863.00 in Title II requirements payments for FFY 2003, and $64,585,966.00 for FFY 2004. If fully funded for FFY 2005, Pennsylvania should receive approximately an additional $25,000,000.00. With the estimated FFY 2005 payment, Pennsylvania's total estimated Title II receipts will be $125,578,000.00. This estimate is approximately $3,000,000.00 less than originally predicted by the Congressional Research Service.

Consistent with section 253(b)(5) of HAVA, the funds appropriated by the General Assembly and expended by the Commonwealth for the SURE system enacted in January 2002 satisfy the 5% State match required by HAVA. The 5% match requirement is calculated as 5% of the combined State and Federal expenditure for HAVA activities. This calculation requires a multiplier of 0.0526 of the actual and projected Federal funds and is estimated to be $8,445,606.00 – well under the amount already appropriated by the Commonwealth.

Commonwealth of Pennsylvania
State Plan

Distribution of Federal Funds

The Commonwealth plans to distribute Federal dollars using a 72/28 split of Federal monies. Counties would receive 72% of the funding; the Commonwealth government would receive 28%.

Section 101 Funds: Section 101 funds will be split between the counties and the Commonwealth. Twenty-six percent (26%) will be distributed to the counties and 74% for the State government. See Element 10 for more information.

Section 102 Funds: Qualifying counties would receive 100% of the Federal funds provided under section 102 of HAVA. These funds would be distributed to the 26 counties using lever voting machines in 6,143 precincts at the November 2000 election and to the 11 counties using punch card systems (1,030 precincts) to purchase HAVA compliant DREs or other HAVA compliant systems. Funds received: $22,916,952.00.

Title II Funds: Of the Federal funds received as requirements payments under Title II of HAVA, 70.8% would be set aside for the counties; and 29.2% would be reserved for the Commonwealth government.

County Grant Funds: Title II monies will be distributed via county grants and will be targeted for three major functions: (1) polling place accessibility; (2) voting system procurement; and (3) other Title III requirements.

Funds for polling place accessibility will be distributed on an as needed basis upon application by a county.

Regarding voting system procurement, the Commonwealth has structured its funding programs to encourage county authorities to purchase the same type of a single HAVA compliant precinct count electronic voting system that can be used by all voters, including individuals with disabilities. The Commonwealth will make Title II Federal funds available to counties that purchase a single HAVA compliant precinct count electronic voting system, and will provide up to 100% of the cost of purchasing such systems, but no more than $8,000.00 per precinct. This reimbursement also applies to counties that have incurred costs on or after January 1, 2001, to replace punch card or lever voting systems in qualifying precincts. If a county purchasing the HAVA compliant system has received or will receive Title I funds provided by section 102 of HAVA, the amount of the Title II reimbursement for voting system purchases would be reduced by the dollar amount received under section 102. Counties that purchase a single HAVA compliant precinct count electronic voting system may use up to 10% of the total dollars received for voting system procurement for other Title III requirements provided that all such expenditures must be substantiated. Counties that choose not to purchase a single HAVA compliant precinct count electronic voting system would receive up to 50% of the cost of purchasing a new voting system, but not more than $4,000.00 per precinct. If a county does not purchase the system for individuals with disabilities as it does for all voters, and has received Title I funds under section 102 of HAVA, the amount of the Title II reimbursement for the voting system purchase would be reduced by the dollar amount received under section 102. The Commonwealth encourages the procurement of a single HAVA complaint precinct count

electronic voting system for all voters because it would be the most efficient use of Federal, State and local funds.

To assist those six counties that were using DREs in the November 2000 General Election (Dauphin, Berks, Greene, Beaver, Montgomery, and Potter) in upgrading their DREs to comply with the requirements of HAVA, the Commonwealth will provide 100% reimbursement for such upgrades but no more than $3,000.00 per precinct available to such counties. In addition to the six counties that used a DRE voting system in November 2000, two counties – Mercer and Philadelphia – have since implemented a DRE voting system and, therefore, qualify for the reimbursement under section 102. Although Mercer and Philadelphia Counties qualify for reimbursement under section 102 of HAVA, they will be eligible to receive Federal funds in the amount specified for other DRE counties for upgrading their current DRE systems to meet HAVA standards. All money not used by the counties for the procurement of voting systems will be combined with the funds to be used for other Title III requirements and distributed accordingly. See Element I for additional information on voting systems.

The remaining portion of the county Title II monies appropriated for FFY 2003 and FFY 2004 will be apportioned to each county based on the counties proportion of the Commonwealth's voting age population provided that no county will receive less than $20,000. Counties whose proportionate share would fall under the minimum would not qualify for additional funds under Title II for funds already appropriated to the Commonwealth but will qualify for additional Title II dollars further appropriated by Congress using the voting age population formula. This portion of the funds can be used to fulfill Title III requirements, including the purchase of voting systems, voter education, poll worker training, and polling place accessibility.

The available funds for voting system procurement and other Title III requirements will be distributed to counties based on the filing of a County Plan and Agreement.

Funds to be Used by the Commonwealth Government: The Commonwealth would receive 29.2% of the Title II monies (requirements payments). These monies would be put into a separate account and used to implement HAVA requirements, including the statewide voter registration database, voter education programs, poll-worker training and administrative expenses.

The chart on page 43 lists activities and costs of HAVA to be implemented in Pennsylvania using Title II monies for each activity outlined in this plan. The data provided in the chart reflects Federal dollars actually received as of the date of this State Plan update.

A. ACTIVITY	B. ALLOTMENTS OF DOLLARS APPROPRIATED 2003/2004	C. PER CENT OF TITLE II DOLLARS	D. PURPOSE
COUNTY			
County Grant Fund: Voting Systems	$53,179,205.94	N/A 52.87%	For the purchase of new voting equipment.
Polling Place Accessibility	$2,344,140.00	2.33%	To bring polling places standards up to meet the Federal law.
County Grant Fund for Other Title II Requirements	$15,720,414.06	15.63%	To be used for Title III requirements of HAVA in compliance thereof.
COMMONWEALTH			
Voter Registration Database	$13,127,185.00	13.05%	Development of statewide voter registration list
Voter Education/Voter Outreach	$5,339,207.00	5.31%	To educate voters re: election procedure, increase voter participation, and make available additional voter registration applications
Poll Worker Training	$1,953,450.00	1.94%	To train all poll workers in the uniform procedures to be used at the polling places on Election Day.
Election Officer Training	$ 312,552.00	.31%	Train State and county officials in all Federal and State procedures related to elections
Alternative Language Accessibility	$2,734,830.00	2.72%	To make election materials and information available to jurisdictions having alternative language minorities
Administrative Expenses/Implementation Costs	$3,125,520.00	3.11%	For Commonwealth personnel to administer HAVA and other costs for implementation
Provisional Voter Hotline/Website	$ 195,345.00	.19%	To establish the HAVA required Website and toll free line
Miscellaneous/State Plan Expenses	$ 2,546,979.00	2.53%	For grants to independent groups ($500,000); unforeseen costs in implementing HAVA; and development of the State Plan

The efficient allocation and expenditure of Title I and Title II funds is vitally important to the overall success of providing both the counties and the Commonwealth with the maximum resources available both to implement the requirements of HAVA and to continue to improve the administration of elections for Commonwealth voters.

STATE PLAN ELEMENT 10 *If the State received any payment under Title I of HAVA, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.*

HAVA Section 254(a)(10) (42 U.S.C. § 15404(a)(10)).

2004 -- All previous information contained in this Chapter is deleted and superceded by the following:

Section 254(a)(10) of HAVA requires the Commonwealth to describe in its State Plan how funds that it has received under sections 101 or 102 of HAVA (relating to payments to States for activities to improve administration of elections and replacement of punch card and lever voting machines) will affect the activities that the Commonwealth plans to carry out under the State Plan. Section 254(a)(10) also requires the Commonwealth to state in its State Plan the amount of funds available for its proposed activities.

Pennsylvania received $34,240,120.00 in Title I funding – $11,323,168.00 under to Section 101 and $22,916,952.00 under section 102. Because no voting systems have yet been deemed to be HAVA compliant in Pennsylvania, there have been no dollars distributed to the counties under section 102. However, using section 101 dollars, Pennsylvania continues to make progress in implementing other HAVA requirements, including voter education, polling place accessibility, alternative language accessibility, provisional balloting, voter identification, and the statewide voter registration database. In particular, Pennsylvania has made progress in implementing a statewide voter registration database known as the Statewide Uniform Registry of Electors, or SURE. To date, 56 of 67 counties have been connected to the SURE system.

The chart below represents the expenditures made from Section 101 funds as of the close of State Fiscal Year 2003-2004.

Section 101 Funding	Actual Expenditures
Polling Place Accessibility	$ 0.00
County Grant Fund	$ 0.00
Statewide Voter Registration Database	$6,349,679.09
Voter Education	$ 39,706.44
Poll worker Training	$ 0.00
County Election Official Training	$ 5,049.00
Alternative Language Assistance	$ 0.00
Provisional Voter Hotline/Website	$ 0.00
Administrative Expenses/Complaint Line	$ 335,882.47
Miscellaneous/State Plan Expenses	$ 94,207.65
TOTAL:	$6,824,524.65

There is $4,498,643.35 remaining in section 101 funds, $3,000,000.00 of which is earmarked for counties. Of this, $1,000,000.00 is earmarked for Polling Place Accessibility and $2,000,000.00 is to be made available to the County Grant Fund. The balance of the section 101 money will be used to fund the requirements of Title II as indicated in the State Plan filed August 1, 2003 and advertised in the *Federal Register* on March 24, 2004.

The chart of expenditures appearing above differs somewhat from allotments contained on page 37 of the State Plan filed on August 1, 2003. The original allotments were established using Section 101 funds in order to provide State and county governments the means to begin implementing HAVA. It was planned that Title II funding would be used to increase the amount of dollars available to meet Title III requirements. However, when Title II dollars were not forthcoming in a timely manner, commitments came due and had to be paid from existing Federal dollars (Section 101 funds). The fact that more dollars were spent for a requirement than originally allotted will not affect the total dollars that the State Plan originally allocated for each requirement from both Section 101 and Title II funds, except for reductions caused by reduced Title II appropriations compared to what was projected.

STATE PLAN ELEMENT 12

In the case of a State with a State plan in effect under Subtitle D (relating to election assistance) of Title II of HAVA during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for the previous fiscal year.

HAVA Section 254(a)(12) (42 U.S.C. § 15404(a)(12)).

2004 -- All previous information contained in this Chapter is deleted and superceded by the following:

Though the State Plan was not advertised in the *Federal Register* until March 24, 2004, the Department of State has used it as the blueprint for HAVA implementation since it was originally filed with the FEC on August 1, 2003. What follows describes the Commonwealth's progress made since the adoption of the Pennsylvania State Plan in 2003, and describes three material changes to the Commonwealth's plans regarding the implementation of HAVA. Other non-material changes include grammatical corrections and verb tense modifications and a minor edit included in Element 2 to clarify that a county should list their contribution on their county agreement and that no match is required.

Prior to releasing a full and complete version of the State Plan containing the 2004 amendments, the Department held an advertised public hearing on Friday, July 16, 2004 in Harrisburg. Lynette A. Foreman and representatives of Project Vote, the League of Women Voters of Pennsylvania, the Development Disabilities Council, and Arc of Pennsylvania testified at the hearing to offer feedback and recommendations about the Commonwealth's progress to date, the Commonwealth's planned actions, or proposed amendments to the State Plan.

Non-material changes are not described in this chapter since HAVA requires a State to notify the EAC about only material changes. All revised language, however, will be included in future versions of this State Plan.

This chapter was drafted by the Pennsylvania Department of State's HAVA staff. The amended language of this chapter will be sent to the EAC as an update required by section 254(a)(12) of HAVA.

The three material changes to the State Plan are:

1. The funding formula as it related to the disbursement and use of Federal funding received under Title I and Title II of HAVA has been clarified. The new information can be found in State Plan Element 6 and State Plan Element 10.

2. The recommendation for reimbursement of county boards of elections for the replacement or upgrade procurement of voting systems. This information can be found in State Plan Element 6.

3. Updates of the Commonwealth's actions and progress over the past year can be found in most State Plan Elements listed as "Commonwealth's Progress." These sections include information about programs and projects that are currently being implemented or planned in relation to Special Elections, the April 27, 2004 General Primary or the November 2, 2004 General Election. These updates are listed below in the order they appear in the amended State Plan.

Commonwealth's Progress:

Pennsylvania's Voting Systems and Actions Planned by the Commonwealth to Comply with Section 301 of HAVA:

- The Commonwealth requested a waiver authorized by section 102(a)(3)(B) of HAVA[121] to postpone replacement of lever machines and punch card systems. The waiver request was sent to the U.S. General Services Administration in December of 2003, and the General Services Administration approved the Department's request by letter dated February 25, 2004. The effect of the waiver is to postpone the required replacement of the voting systems no later than the Federal elections held after January 1, 2006, instead of by January 1, 2004. The waiver was necessary because the Commonwealth has been waiting for a determination by the EAC or other authority regarding the requirements for a HAVA compliant voting system. In addition, each HAVA compliant voting system will have to be reviewed and examined to determine compliance with Pennsylvania law. The Commonwealth plans to work aggressively to expedite the purchase of the new voting systems by the counties before January 1, 2006, but did not believe that it would be physically possible or prudent for counties to procure new voting systems for over 9,000 precincts, train elections officials to operate them and expect voters to use them properly at the November 2, 2004 General Election.

Accessibility of Voting Systems for Electors with Disabilities:

- In an effort to improve polling place accessibility, the Secretary of the Commonwealth formed the Polling Place Accessibility Advisory Group composed of advocacy groups for individuals with disabilities and various county representatives to review and revise the Commonwealth's accessibility guidelines and develop procedures to assist counties in increasing the number of accessible polling places in each county. Please see http:www.hava.state.pa.us for Pennsylvania's guidelines for polling place accessibility.

- The Commonwealth asked counties to conduct a survey of all polling places in the Commonwealth to determine their accessibility under the guidelines issued by the Department of State under the Voter Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee, *et seq.*). When it became available, the Department provided the ADA Checklist for Polling Places issued by the U.S. Department of Justice's Civil Rights Division to the counties. The Department is currently reviewing the surveys. Upon the completion of the survey review, the Commonwealth plans to make Federal funds (specifically funds provided by the Department of Health and Human Services under Title II of HAVA) available to counties to increase the accessibility of polling places.

Alternative Language Accessibility:

- In an effort to improve alternative language accessibility, the Secretary of the Commonwealth formed the Alternative Language Accessibility Advisory Group composed of advocacy groups for individuals who speak alternative languages as a primary language and various county representatives to review the status of alternative language accessibility across the Commonwealth and provide information and advice on increasing the number of polling places accessible to individuals who speak alternative languages as a primary language. To date, the Advisory Group has met four times and has approved various voter education initiatives including development of the PA Votes! website.

- All materials designed for use by voters regarding HAVA Title III Complaints, provisional voting and voter identification have been translated into Spanish and provided to the 67 county boards of elections.

- The Alternative Language Accessibility Advisory Group held combined meetings with the Voter Education Advisory Group to discuss methods to educate alternative language communities about the new election-related requirements and the electoral process in general.

- The Department procured maps of each county detailing U.S. Census Bureau data in order to assist the Department's identification of counties with significant Spanish-speaking populations for the purpose of coordinating State and county efforts to produce and properly distribute bilingual election-related materials including ballots.

Provisional Voting in Pennsylvania:

- In an effort to create standardized statewide procedures for provisional balloting, the Secretary of the Commonwealth, in consultation with representatives of the county boards of elections and advocacy groups, prescribed the format of the provisional ballot for all voting systems and prescribed the procedures to be followed in processing and tabulating such ballots. The procedures adopted by the Secretary of the Commonwealth include a required notice containing instructions on how to cast a provisional ballot. Instructions must be posted in accordance with the applicable provisions of HAVA.

- During the April 27, 2004 General Primary, 2,480 provisional ballots were cast in Pennsylvania. Of those, 37% of the provisional ballots were counted, 33% were partially counted, and 30% were not counted for various reasons.

- All materials provided to individuals who vote by provisional ballot have been provided to the county boards of elections in English and Spanish in a format that allows both languages to appear on the same form.

- The Commonwealth continues to explore methods to provide voter registration mail applications to individuals who vote by provisional ballot in order to allow those

individuals to update their voter registration status, if necessary. Due to the amount of information required to be placed on provisional voting materials by legislative mandate, the Commonwealth was unable to print a voter registration mail application on provisional ballot materials, but it will be providing county boards of elections with the capability to generate a form letter and label automatically for the purpose of mailing a voter registration mail application to provisional voters to invite those individuals to register to vote or to update their voter registrations.

Voting Information Requirements:

- The Commonwealth, through the Department of State and in consultation with county representatives and community stakeholders, prescribed the contents of a bilingual notice for posting at each polling place that details the acceptable forms of identification required of voters who appear to vote in an election district for the first time, provisional voting information, and information regarding HAVA Title III complaints. The Department worked cooperatively with counties and stakeholders to develop the format of the notice, and to facilitate re-production and posting at each polling place for elections occurring after January 1, 2004. The information contained on the posting was provided to counties in two formats: (1) A format similar to the current cards of instructions and penalties to be printed by the county boards of elections; and (2) a large voter-friendly poster which the Commonwealth plans to provide through the November 2, 2004 General Election. Both formats must to be posted in every polling place for any election held after January 1, 2004.

- The Commonwealth printed 15,000 voter-friendly posters, and provided at least one poster for every election district, and at least one additional poster to be posted in elections districts where county boards of elections provide election-related materials printed in Spanish.

- The Commonwealth reproduced 250,000 copies of the posting described above in flier form and provided them to State legislators, county boards of elections, municipalities, libraries and State agencies that provide voter registration services.

Computerized Statewide Voter Registration List:

- Act No. 2002-3 authorizes the establishment of a central uniform registry that is HAVA compliant. (*See Appendix C.*) However, because SURE could not be fully operational by the date specified by section 303(d)(1)(B) of HAVA – January 1, 2004 – the Commonwealth invoked the waiver authorized by HAVA to extend the deadline for full implementation until January 1, 2006. The Commonwealth plans to use part of its requirements payments to pay for the costs of the SURE system. By the April 27, 2004 General Primary, 56 counties were using the SURE System as their official record of voter registration. Pennsylvania's 11 remaining counties will be fully connected to the SURE System as soon as possible, but no later than the January 1, 2006 deadline imposed by HAVA.

Requirements for Voters Who Register by Mail:

- The Department of State has prescribed the content of two notices that will be posted at each polling place detailing the acceptable forms of identification required of voters who appear to vote in an election district for the first time. The Department worked cooperatively with counties and other stakeholders to develop the format of the notice and facilitate production.

- The Department is also continuing to work with the counties and stakeholders to educate voters regarding the voter identification requirements imposed upon first-time voters by Act 150 and the rights of such voters to cast a provisional ballot in the event that they are unable to produce identification required by sections 1210(a) or 1210(a.1) of the Election Code.

Voter Education:

- The Commonwealth, through the Department of State and in consultation with county representatives and community stakeholders, prescribed the contents of a bilingual notice for posting at each polling place that details the acceptable forms of identification required of voters who appear to vote in an election district for the first time, provisional voting information, and information regarding HAVA Title III Complaints. The Department worked cooperatively with counties and other stakeholders to develop the format of the notice, and to facilitate re-production and posting at each polling place for elections occurring after January 1, 2004. The information contained on the posting was provided to counties in two formats: (1) A format similar to the current cards of instructions and penalties to be printed by the county boards of elections; and (2) a large voter-friendly poster that the Commonwealth plans to provide through the November 2, 2004 General Election. Both formats were to be posted in every polling place for any election held after January 1, 2004.

- The Commonwealth printed 15,000 voter-friendly posters and provided at least one poster for every election district, with at least one additional poster to be posted in elections districts where county boards of elections provide election-related materials printed in Spanish for the April 27, 2004 General Primary.

- The Commonwealth reproduced 250,000 copies of the posting described above in the form of a flier and provided them to State legislators, county boards of elections, municipalities, libraries and State agencies who provide voter registration services.

- The Commonwealth launched the *PA Votes!* website on April 12, 2004, at www.pavotes.state.pa.us. *PA Votes!* is geared toward the voting public in general. The website includes information regarding voter registration, county specific voting instructions, Election Day information, alternative language interpretive services, and information regarding HAVA and SURE.

- Department staff recorded radio sound bites in English and Spanish for use as public service announcements to educate listeners about voter identification requirements,

overvotes, provisional voting, and HAVA Title III complaints for the Special Elections held in January and March of 2004 for State legislative offices, as well as for the April 27, 2004 General Primary.

- As part of a combined voter education and voter outreach effort, the Department developed additional public service announcements for print and television media outlets to educate voters and encourage voter participation. PSAs were produced in alternative English and Spanish to further encourage voter participation by citizens whose primary language is not English.

- The Department also developed and produced a new *Pennsylvania Voter Guide,* which provides comprehensive information about registering and voting in Pennsylvania. The *Pennsylvania Voter Guide* was printed in English and Spanish and distributed to the Department, county boards of elections, and state agencies that participate in voter registration.

- As part of the Department's voter outreach program, the Secretary produced additional HAVA compliant voter registration applications and distributed them to all registration agencies, the 67 county registration offices and civic organizations interested in voter registration.

- The Commonwealth provided voter education materials in alternative languages in those jurisdictions falling under section 203 of the Voting Rights Act, as well as those jurisdictions with responsibilities to adhere to the requirements of other provisions of the Act, including sections 2, 4(e) and 208; and it made available alternative language voter education materials to all other jurisdictions irrespective of their coverage under section 203 and to groups that request them.

- The Commonwealth provided voter registration mail applications to all senior high school students graduating from high school during the spring of 2004.

Education for State/County Officers:

- Department staff attended the Eastern and Western County Election Personnel Associations in February and March of 2004, respectively, to discuss provisional voting, voter identification, HAVA Title III complaints, and poll worker training in preparation for the April 27, 2004 General Primary.

- In addition, the Department conducted county training sessions July 13, 2004 through July 23, 2004 in five regional meetings across Pennsylvania to address the needs of the November 2, 2004 General Election. Representatives from sixty-two of Pennsylvania's sixty-seven counties attended the training sessions.

Education of District Election Officials:

- The Commonwealth, through the Department of State, developed, implemented and conducted an extensive program to educate district election officials (*i.e.*, poll workers)

regarding the changes to Federal and State election laws. All counties were given the opportunity to have Department of State personnel conduct these trainings. Of the 67 counties, 13 requested Department assistance with their district election official training. The Department participated in the training of the 13 counties that requested assistance by providing staff to conduct the training programs. The training involved an extensive Power Point presentation and a printout of the presentation for poll workers to use on Election Day.

SOUTH CAROLINA
HELP AMERICA VOTE ACT OF 2002
STATE PLAN

August 16, 2004

SOUTH CAROLINA
HELP AMERICA VOTE ACT OF 2002
STATE PLAN

August 16, 2004

S.C. State Election Commission
P.O. Box 5987
Columbia, SC 29250

Marci Andino, Executive Director

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

August 19, 2004

Mr. Brian Hancock, Election Research Specialist
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

Dear Mr. Hancock:

This letter certifies that, through consultation and coordination with Ms. Marci Andino, Executive Director of the State Election Commission, the attached 2004 South Carolina State Plan is in compliance with the applicable laws and requirements of the Help America Vote Act of 2002.

Sincerely,

Mark Sanford

Attachment

Contents

Executive Summary by the Executive Director

I am pleased to offer the South Carolina 2004 State Plan for implementing the Help America Vote Act of 2002 (HAVA). This State Plan, developed with the valuable help of the HAVA State Plan Task Force and updated by the HAVA State Plan Advisory Team, establishes a framework for achieving compliance with HAVA.

The new federal law requires each state to develop a long-range State Plan for HAVA implementation and provides funding to assist the state in implementation. The South Carolina State Plan provides a description of current election procedures, outlines how South Carolina will meet the new requirements mandated by HAVA, and outlines changes South Carolina has made since release of the 2003 State Plan to bring the State into compliance with HAVA. The State Plan will be updated and refined as necessary over time, to reflect election law changes and future plans.

The State Plan reflects strategic objectives of great importance to every voter in South Carolina: implementation of a statewide uniform electronic voting system, support for disabled voters in every precinct in the State, enhancements to election administration, and training for voters, poll workers, and election officials. Building on current capabilities, the goal is to offer a higher level of service with increased ease of use, convenience, and consistency in every precinct across the State.

The South Carolina State Plan will be accomplished over the next two years, utilizing approximately $48.5 Million in funding. It will draw on the combined efforts of state and county organizations and affect every voter in South Carolina. The long-term impact of HAVA will be felt throughout the State for many elections to come.

The State Election Commission (SEC) recognizes the value of HAVA to South Carolina and is committed to successful implementation of all elements of the State Plan. With this State Plan, the SEC has taken an important step toward *Helping America Vote* and ensuring that every citizen has the opportunity to vote and have their vote counted.

Marci Andino
Executive Director
South Carolina State Election Commission

Introduction

The South Carolina State Election Commission is tasked with the responsibility of overseeing the voter registration and election processes in the State. The SEC has multiple responsibilities:

- Maintaining the State's computerized statewide voter registration system, which is used to validate registered voters during elections and which also serves as a source for selection of jurors in the state
- Providing voter registration and election materials
- Printing the lists of registered voters for all elections held in the state
- Printing or providing funding for ballots for all federal offices, statewide offices and constitutional amendments voted on in South Carolina
- Producing databases and machine ballots for elections in the State conducted using electronic voting systems supported by the State Election Commission
- Providing oversight, including assistance and advisory services to county and municipal election officials for elections in South Carolina
- Training voter registration and election officials
- Serving as the State Board of Canvassers after elections to certify election returns, to declare candidates elected, and to hear protests/appeals that may arise

The South Carolina State Election Commission continually looks for ways to improve the election process and to maintain its integrity. Highlighting the ongoing process are recent major SEC initiatives, including 1) the 1999 Statewide Election Summit, and 2) the 2001 Governor's Task Force on Elections. Important priorities identified through these statewide initiatives include:

- Rewrite the current statewide voter registration system
- Establish a statewide uniform voting system

South Carolina has already secured state funds and is in the process of rewriting the voter registration system. The statewide uniform voting system and related improvements are the top priority to be met through the HAVA State Plan. As a result of these combined efforts, South Carolina's vision of a high-capability, comprehensive statewide voting program will be realized.

State Plan

The South Carolina State Plan is organized as specified by HAVA and includes the following components, each of which is addressed within this document.

HAVA Component	HAVA Description	Cross-Reference to HAVA HR3295
Meeting Title III Requirements and Other Activities	How the State will use the requirements payment to meet the requirements of title III, and if applicable under Section 251 (a)(2), to carry out other activities to improve the administration of elections.	Section 254 (a) (1)
Payment Distribution and Monitoring	How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of (A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and (B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph(8).	Section 254 (a) (2)
Provision for Education and Training	How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.	Section 254 (a) (3)
Voting System Guidelines and Processes	How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.	Section 254 (a) (4)
Fund for Administering State Activities	How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.	Section 254 (a) (5)
Proposed State Budget	The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on (A) the costs of the activities required to be carried out to meet the requirements of title III; (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and (C) the portion of the requirements payment which will be used to carry out other activities.	Section 254 (a) (6)
Maintenance of Prior Year Expenditures	How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.	Section 254 (a) (7)
Performance Goals and Measures	How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.	Section 254 (a) (8)
Administrative Complaint Procedures	A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.	Section 254 (a) (9)
Use of Title I Payment	If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for	Section 254 (a) (10)

HAVA Component	HAVA Description	Cross-Reference to HAVA HR3295
	such activities.	
Ongoing Management of Plan	How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the law unless the change (A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan; (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and (C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).	Section 254 (a) (11)
Previous Year Plan	In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.	Section 254 (a) (12)
Committee	A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.	Section 254 (a) (13)

1. Meeting Title III Requirements and Other Activities

How the State of South Carolina will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

1.1 Current Status

Voter Registration System

South Carolina has had a statewide voter registration system in place since 1968. The capability of this system was expanded in 1992 to connect all counties via interactive access to the voter registration system. The system is currently being re-written using web based technology.

Training

Two types of certification for County Voter Registration Boards and Election Commissions are offered: 1) Voter Registration or Election Commission Members and Directors, and 2) Voter Registration or Election Commission Staff.

By law, South Carolina counties provide training for Poll Managers. The State Election Commission supports this training with a comprehensive manual, updated every year based on changes in the law.

The State Training Coordinator trains municipalities on how to conduct municipal elections.

South Carolina Election Systems in Use

South Carolina currently uses seven different types of voting equipment in its 46 counties. There are 24 counties with five different direct recording electronic (DRE) machines; 10 counties utilizing punch cards and 12 counties on a mark sense optical scan system. Additionally, there are a number of dissimilar absentee voting systems in use. Punch card voting systems will be replaced with electronic voting equipment by November 2004.

Election System	County
Danaher Controls 1242 DRE	Allendale, Bamberg, Barnwell, Berkeley, Charleston, Dorchester, Edgefield, Fairfield, Hampton, Horry, Marion, Spartanburg
MicroVote MV-464 DRE	Darlington, Dillon, Marlboro, Richland
MicroVote Infinity DRE	Chester, Colleton, Jasper, Pickens
Unilect Patriot DRE	Georgetown, Lancaster, Newberry
ES&S Votronic DRE	Greenwood
ES&S Optical Scan System	Abbeville, Calhoun, Chesterfield, Clarendon, Laurens, Lee, McCormick, Orangeburg, Saluda, Union, Williamsburg
Diebold Optical Scan	Beaufort
Punch Card	Aiken, Anderson, Cherokee, Florence, Greenville, Kershaw, Lexington, Oconee, Sumter, York

South Carolina Election Systems by County

County	Voting System	Absentee System	# Machines	# Precincts	# Reg. Voters as of April 2003
Abbeville	Optical Scan	Optical Scan	2	15	15,725
Aiken	Punch Card	Optical Scan	462	73	84,777
Allendale	DRE	Optical Scan	15	9	6,586
Anderson	Punch Card	Punch Card	650	76	95,844
Bamberg	DRE	Optical Scan	32	14	10,127
Barnwell	DRE	Paper Ballot	44	16	12,300
Beaufort	Optical Scan	Optical Scan	92	78	75,486
Berkeley	DRE	Optical Scan	181	51	77,529
Calhoun	Optical Scan	Optical Scan	2	13	10,189
Charleston	DRE	Optical Scan	541	174	196,370
Cherokee	Punch Card	Punch Card	200	34	30,963
Chester	ORE	MicroVote	80	23	20,576
Chesterfield	Optical Scan	Optical Scan	1	30	23,326
Clarendon	Optical Scan	Optical Scan	60	26	20,847
Colleton	DRE	Optical Scan	52	33	21,067
Darlington	ORE	Optical Scan	121	34	39,386
Dillon	DRE	Optical Scan	42	21	19,170
Dorchester	ORE	Optical Scan	152	37	61,267
Edgefield	DRE	MicroVote	32	12	15,211
Fairfield	DRE	Optical Scan	30	23	14,385
Florence	Punch Card	Punch Card	410	64	75,569
Georgetown	DRE	Unilect	156	35	35,724
Greenville	Punch Card	Punch Card	1323	136	233,723

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County	Voting System	Absentee System	# Machines	# Precincts	# Reg Voters as of April 2004
Greenwood	DRE	Optical Scan	160	34	37,006
Hampton	DRE	Optical Scan	36	19	14,027
Horry	DRE	Optical Scan	242	109	130,803
Jasper	DRE	Optical Scan	46	15	12,303
Kershaw	Punch Card	Punch Card	230	31	35,603
Lancaster	DRE	Unitect	130	28	34,486
Laurens	Optical Scan	Optical Scan	34	35	36,847
Lee	Optical Scan	Optical Scan	2	25	13,405
Lexington	Punch Card	Punch Card	800	69	137,923
Marion	DRE	Optical Scan	60	18	22,904
Marlboro	DRE	Optical Scan	41	16	18,971
McCormick	Optical Scan	Optical Scan	1	11	6,812
Newberry	DRE	Unitect	95	31	20,835
Oconee	Punch Card	Punch Card	200	30	39,240
Orangeburg	Optical Scan	Optical Scan	60	54	60,296
Pickens	DRE	Optical Scan	250	53	60,455
Richland	DRE	Optical Scan	765	111	200,855
Saluda	Optical Scan	Optical Scan	1	19	11,393
Spartanburg	DRE	Punch Card	245	88	147,860
Sumter	Punch Card	Punch Card	450	53	62,011
Union	Optical Scan	Optical Scan	1	28	10,272
Williamsburg	Optical Scan	Optical Scan	1	34	23,351
York	Punch Card	Punch Card	689	57	98,897

1.2 Voting System Options Considered

The Help America Vote Act of 2002 defines a voting system as follows:

1. "the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used (A) to define ballots; (B) to cast and count votes; (C) to report or display election results; and (D) to maintain and produce any audit trail information; and"

2. "the practices and associated documentation used – (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors and defects; (D) to determine specific system changes to be made to a system after the initial qualification of the system; and (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots)."

In addressing the requirements of HAVA, the voting system standards team considered three options in order to meet the mandates. The three options were presented to the entire HAVA State Plan task force for consideration:

- Option 1: Upgrade existing systems to meet or exceed HAVA requirements

  As indicated above, the myriad systems currently in use in South Carolina create problems in the area of voter education, programming, candidate uniformity on ballots, election night reporting of results to the state, etc. This option would not solve the current shortcomings of the numerous systems.

- Option 2: Electronic voting systems in all counties

  This option would require each county to go to a federal and state approved DRE system of their choosing. Although this option would achieve the goals under the HAVA Act, the state would continue to have a variety in the types of equipment it uses.

- Option 3: Statewide uniform electronic voting system

  This option would provide a uniform system of voting for every county in the state. This option would standardize the election process including voter education in the state, poll worker training, uniformity of Federal and State offices in ballot and machine programming, etc.

Having considered the various options to comply with HAVA Title III requirements relating to voting system equipment and based on facts and the pros and cons of the three options, the entire task force decided on a statewide uniform electronic voting system to best meet the needs of HAVA and the State of South Carolina (Option 3).

The following approach will be taken to select a statewide system:

- A consultant experienced in conducting needs assessments and writing Requests for Proposal (RFP) will be contracted.

- A committee consisting of the State Election Commission, county election commissions and boards of registration, and other stakeholders such as organizations for the disabled, will be assembled to work with consultant to determine the specifications for a statewide system.

- State procurement codes and bidding process will be followed for the issuance of the RFP.

- An evaluation committee will be assembled for meetings to evaluate vendor responses to the RFP. The membership of the committee will be made up of state and county election officials.

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1. Meeting Title III Requirements and Other Activities

How the State of South Caroline will use the requirements peyment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

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The State Training Coordinator trains municipalities on how to conduct municipal elections.

South Carolina Election Systems in Use

South Carolina currently uses seven different types of voting equipment in its 46 counties. There are 24 counties with five different direct recording electronic (DRE) machines; 10 counties utilizing punch cards and 12 counties on a mark sense optical scan system. Additionally, there are a number of dissimilar absentee voting systems in use. Punch card voting systems will be replaced with electronic voting equipment by November 2004.

Election System	County
Danaher Controls 1242 DRE	Allendale, Bamberg, Barnwell, Berkeley, Charleston, Dorchester, Edgefield, Fairfield, Hampton, Horry, Marion, Spartanburg
MicroVote MV-464 DRE	Darlington, Dillon, Marlboro, Richland
MicroVote Infinity DRE	Chester, Colleton, Jasper, Pickens
Unilect Patriot DRE	Georgetown, Lancaster, Newberry
ES&S Votronic ORE	Greenwood
ES&S Optical Scan System	Abbeville, Calhoun, Chesterfield, Clarendon, Laurens, Lee, McCormick, Orangeburg, Saluda, Union, Williamsburg
Diebold Optical Scan	Beaufort
Punch Card	Aiken Anderson, Cherokee, Florence, Greenville, Kershaw, Lexington, Oconee, Sumter, York

South Carolina Election Systems by County

County	Voting System	Absentee System	# Machines	# Precincts	# Reg. Voters as of April 2003
Abbeville	Optical Scan	Optical Scan	2	15	15,725
Aiken	Punch Card	Optical Scan	462	73	84,777
Allendale	DRE	Optical Scan	15	9	6,586
Anderson	Punch Card	Punch Card	650	76	95,844
Bamberg	DRE	Optical Scan	32	14	10,127
Barnwell	DRE	Paper Ballot	44	16	12,300
Beaufort	Optical Scan	Optical Scan	92	78	75,486
Berkeley	DRE	Optical Scan	181	51	77,529
Calhoun	Optical Scan	Optical Scan	2	13	10,189
Charleston	DRE	Optical Scan	541	174	195,370
Cherokee	Punch Card	Punch Card	200	34	30,963
Chester	ORE	MicroVote	80	23	20,576
Chesterfield	Optical Scan	Optical Scan	1	30	23,326
Clarendon	Optical Scan	Optical Scan	60	26	20,847
Colleton	DRE	Optical Scan	52	33	21,067
Darlington	ORE	Optical Scan	121	34	39,386
Dillon	DRE	Optical Scan	42	21	19,170
Dorchester	ORE	Optical Scan	152	37	61,267
Edgefield	DRE	MicroVote	32	12	15,211
Fairfield	DRE	Optical Scan	30	23	14,385
Florence	Punch Card	Punch Card	410	64	75,569
Georgetown	DRE	Unilect	156	35	35,724
Greenville	Punch Card	Punch Card	1323	136	233,723

County	Voting System	Absentee System	# Machines	# Precincts	# Reg. Voters as of April 2003
Greenwood	DRE	Optical Scan	160	34	37,006
Hampton	DRE	Optical Scan	36	19	14,027
Horry	DRE	Optical Scan	242	109	130,603
Jasper	DRE	Optical Scan	46	15	12,303
Kershaw	Punch Card	Punch Card	230	31	35,803
Lancaster	DRE	Unilect	130	28	34,486
Laurens	Optical Scan	Optical Scan	34	35	36,847
Lee	Optical Scan	Optical Scan	2	25	13,405
Lexington	Punch Card	Punch Card	800	69	137,923
Marion	DRE	Optical Scan	60	18	22,904
Marlboro	DRE	Optical Scan	41	16	18,971
McCormick	Optical Scan	Optical Scan	1	11	6,812
Newberry	DRE	Unilect	95	31	20,835
Oconee	Punch Card	Punch Card	200	30	39,240
Orangeburg	Optical Scan	Optical Scan	60	54	80,296
Pickens	DRE	Optical Scan	250	53	60,455
Richland	DRE	Optical Scan	765	111	200,855
Saluda	Optical Scan	Optical Scan	1	19	11,393
Spartanburg	DRE	Punch Card	245	88	147,860
Sumter	Punch Card	Punch Card	450	53	62,011
Union	Optical Scan	Optical Scan	1	28	10,272
Williamsburg	Optical Scan	Optical Scan	1	34	23,351
York	Punch Card	Punch Card	689	57	98,897

1.2 Voting System Options Considered

The Help America Vote Act of 2002 defines a voting system as follows:

1. "the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used (A) to define ballots; (B) to cast and count votes; (C) to report or display election results; and (D) to maintain and produce any audit trail information; and"

2. "the practices and associated documentation used – (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors and defects; (D) to determine specific system changes to be made to a system after the initial

qualification of the system; and (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots)."

In addressing the requirements of HAVA, the voting system standards team considered three options in order to meet the mandates. The three options were presented to the entire HAVA State Plan task force for consideration:

- Option 1: Upgrade existing systems to meet or exceed HAVA requirements

  As indicated above, the myriad systems currently in use in South Carolina create problems in the area of voter education, programming, candidate uniformity on ballots, election night reporting of results to the state, etc. This option would not solve the current shortcomings of the numerous systems.

- Option 2: Electronic voting systems in all counties

  This option would require each county to go to a federal and state approved DRE system of their choosing. Although this option would achieve the goals under the HAVA Act, the state would continue to have a variety in the types of equipment it uses.

- Option 3: Statewide uniform electronic voting system

  This option would provide a uniform system of voting for every county in the state. This option would standardize the election process including voter education in the state, poll worker training, uniformity of Federal and State offices in ballot and machine programming, etc.

Having considered the various options to comply with HAVA Title III requirements relating to voting system equipment and based on facts and the pros and cons of the three options, the entire task force decided on a statewide uniform electronic voting system to best meet the needs of HAVA and the State of South Carolina (Option 3).

The following approach will be taken to select a statewide system:

- A consultant experienced in conducting needs assessments and writing Requests for Proposal (RFP) will be contracted.

- A committee consisting of the State Election Commission, county election commissions and boards of registration, and other stakeholders such as organizations for the disabled, will be assembled to work with consultant to determine the specifications for a statewide system.

- State procurement codes and bidding process will be followed for the issuance of the RFP.

- An evaluation committee will be assembled for meetings to evaluate vendor responses to the RFP. The membership of the committee will be made up of state and county election officials.

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1.3 Voting System Standards

Title III requirements for uniform and non-discriminatory election technology and administration are specified in HAVA section 301. The chart below takes each of the Voting Systems Standards and describes South Carolina's plan to meet the requirement.

Section 301: Voting System Standards:	S.C. Status			
(a) REQUIREMENTS – Each voting system used in an election for Federal office shall meet the following requirements:				
(1) IN GENERAL –				
(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall –				
(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;		Yes	Yes	South Carolina will fully meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a Statewide system will require a review screen for each voter to verify their selections before casting their ballot.
(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and		Yes	Yes	South Carolina will fully meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require the system to allow each voter to make changes based on the information presented on a review screen.
(iii) If the voter selects votes for more than 1 candidate for a single office – (I) notify the voter that the voter has selected more than 1 candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and, (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.		Yes	Yes	South Carolina will fully meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system not allow a voter to choose more than one candidate for a single office.

Section 301: Voting System Standards:	S.C. Status			
(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by –				
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and		Yes	Yes	South Carolina partially meets this requirement. When a statewide uniform electronic voting system is implemented instructions specific to that voting system will be developed. These instructions will be given to each voter in written form. In addition, absentee ballots will be accompanied by written instructions that address this requirement.
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).		Yes	Yes	South Carolina partially meets this requirement. When a statewide uniform electronic voting system is implemented instructions specific to that voting system will be developed. These instructions will be given to each voter in written form. In addition, absentee ballots will be accompanied by written instructions that address this requirement.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.		Yes	Yes	Instructions mentioned in B(ii) will be posted inside the polling place and inside the voting booth.
(2) AUDIT CAPACITY –				
(A) IN GENERAL – The voting system shall produce a record with an audit capacity for such system.		Yes	Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require the system to produce such an audit capacity.
(B) MANUAL AUDIT CAPACITY –				
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.		Yes	Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system produce an image of each vote cast; however, these votes will not be associated with any particular voter.

Section 301: Voting System Standards	S.C. Status: Meets Requirement	Will Meet Requirement by Primary	State Currently Implemented	Implementation
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.		Yes	Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented.
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. County election officials shall be instructed to retain and secure the paper record in the event that a recount to be conducted with such record is ordered.
(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES – The voting system shall –				
(A) be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system be accessible to as many disabilities as possible, including the blind and visually impaired. If a county in this State chooses not to participate in the statewide uniform electronic voting system, the county will receive funding to purchase 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place by January 1, 2006.
(B) satisfy the requirement of subparagraph (A) through the use of at least 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will request at least one voting unit per precinct to be equipped for individuals with disabilities as outlined above. If a county in this State chooses not to participate in the statewide uniform electronic voting system, the county will receive funding to purchase 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place by January 1, 2006.
(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting system standards for disability access				Does not apply at this time
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY – The voting	Yes		Yes	South Carolina currently meets this requirement. While South

Section 301: Voting System Standards	S.C. Status: Meets Requirement	Will Meet Requirement by Primary	State Currently Implemented	Implementation
system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).				Carolina is not required, based on the 2000 census and the Voting Rights Act of 1965, to provide alternative language to any jurisdiction in the State, the RFP for a statewide system will require this feature in the event that the State chooses to provide this feature to its voters.
(5) Error Rates – The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system chosen be State Certified which includes certification by an Independent Testing Authority (ITA) as having met or exceeded federal voting system standards as required by the S.C. 1976 Code of Laws.
(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE – Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The State will define a legal vote in a uniform manner for the type of system chosen as the statewide system. In addition, the State will define a legal vote as it pertains to absentee ballots.

1.4 Provisional Voting & Voting Information Requirements

The chart below takes each of the Provisional Voting and Voting Information requirements and describes South Carolina's plan to meet the requirement.

1.3 Voting System Standards

Title III requirements for uniform and non-discriminatory election technology and administration are specified in HAVA section 301. The chart below takes each of the Voting Systems Standards and describes South Carolina's plan to meet the requirement.

Section 301: Voting System Standards	S.C. Status: Meets Requirement	Meets Requirement Partially	New Capability to be Implemented	Implementation
(a) REQUIREMENTS – Each voting system used in an election for Federal office shall meet the following requirements				
(1) IN GENERAL –				
(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall –				
(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted,		Yes	Yes	South Carolina will fully meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a Statewide system will require a review screen for each voter to verify their selections before casting their ballot.
(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error), and		Yes	Yes	South Carolina will fully meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require the system to allow each voter to make changes based on the information presented on a review screen.
(iii) if the voter selects votes for more than 1 candidate for a single office – (I) notify the voter that the voter has selected more than 1 candidate for a single office on the ballot, (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and, (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted		Yes	Yes	South Carolina will fully meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system not allow a voter to choose more than one candidate for a single office.

Section 301: Voting System Standards	S.C. Status: Meets Requirement	Meets Requirement Partially	New Capability to be Implemented	Implementation
(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by –				
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office, and		Yes	Yes	South Carolina partially meets this requirement. When a statewide uniform electronic voting system is implemented instructions specific to that voting system will be developed. These instructions will be given to each voter in written form. In addition, absentee ballots will be accompanied by written instructions that address this requirement.
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).		Yes	Yes	South Carolina partially meets this requirement. When a statewide uniform electronic voting system is implemented instructions specific to that voting system will be developed. These instructions will be given to each voter in written form. In addition, absentee ballots will be accompanied by written instructions that address this requirement.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.		Yes	Yes	instructions mentioned in B(ii) will be posted inside the polling place and inside the voting booth.
(2) AUDIT CAPACITY –				
(A) IN GENERAL – The voting system shall produce a record with an audit capacity for such system		Yes	Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require the system to produce such an audit capacity.
(B) MANUAL AUDIT CAPACITY –				
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.		Yes	Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system produce an image of each vote cast; however, these votes will not be associated with any particular voter.

Section 301: Voting System Standards	S.C. Status: Meets Requirement	Meets Requirement Partially	New Capability to be Implemented	Implementation
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.		Yes	Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented.
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. County election officials shall be instructed to retain and secure the paper record in the event that a recount to be conducted with such record is ordered.
(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES – The voting system shall –				
(A) be accessible for individuals with disabilities, including non visual accessibility for the blind and visually impaired, in manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system be accessible to as many disabilities as possible, including the blind and visually impaired. If a county in this State chooses not to participate in the statewide uniform electronic voting system, the county will receive funding to purchase 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place by January 1, 2006.
(B) satisfy the requirement of subparagraph (A) through the use of at least 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place, and			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will request at least one voting unit per precinct to be equipped for individuals with disabilities as outlined above. If a county in this State chooses not to participate in the statewide uniform electronic voting system, the county will receive funding to purchase 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place by January 1, 2006.
(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting system standards for disability access				Does not apply at this time
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY – The voting	Yes		Yes	South Carolina currently meets this requirement. While South

Section 301: Voting System Standards	S.C. Status: Meets Requirement	Meets Requirement Partially	New Capability to be Implemented	Implementation
system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).				Carolina is not required, based on the 2000 census and the Voting Rights Act of 1965, to provide alternative language to any jurisdiction in the State, the RFP for a statewide system will require this feature in the event that the State chooses to provide this feature to its voters.
(5) Error Rates - The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The RFP for a statewide system will require that the system chosen be State Certified which includes certification by an Independent Testing Authority (ITA) as having met or exceeded federal voting system standards as required by the S.C. 1976 Code of Laws.
(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE – Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.			Yes	South Carolina will meet this requirement when a statewide uniform electronic voting system is implemented. The State will define a legal vote in a uniform manner for the type of system chosen as the statewide system. In addition, the State will define a legal vote as it pertains to absentee ballots.

1.4 Provisional Voting & Voting Information Requirements

The chart below takes each of the Provisional Voting and Voting Information requirements and describes South Carolina's plan to meet the requirement.

Section 302: Provisional Voting and Voting Information Requirements	S.C. Status			
	Meets Requirement	Requirement Not Met	Not Applicable to this State	
(a) PROVISIONAL VOTING REQUIREMENTS – If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual shall be permitted to cast a provisional ballot as follows:				
(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.	Yes			South Carolina currently meets this requirement. South Carolina legislation requires that voters who have moved and neglected to change their address will have the opportunity to vote using the Failsafe procedure. Also, legislation is in place to accommodate voters who are challenged.
(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is (a) registered voter in the jurisdiction in which the individual desires to vote; and (b) eligible to vote in that election.	Yes			South Carolina currently meets this requirement. Each voter signs an oath with this language before receiving a ballot.
(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).	Yes			South Carolina currently meets this requirement. The voter's ballot is placed in a provisional ballot envelope which contains various information about the voter.
(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.	Yes			South Carolina currently meets this requirement. Information contained on the provisional ballot envelope used by local election officials to determine the validity of the voter is reported at a certification hearing within three days after the election. If the vote is determined to be valid it is counted at the certification hearing.

Section 302: Provisional Voting and Voting Information Requirements	S.C. Status			
	Meets Requirement	Requirement Not Met	Not Applicable to this State	
(5) (A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.	Yes			When a voter casts a provisional ballot, that ballot will be placed in a provisional ballot envelope. Written instructions will be given to the voter on determining whether their vote was counted in the election.
(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.	Yes			A website application allows the voter to determine whether their vote was counted or, if their vote was not counted, the reason it was not counted. A toll-free telephone number was installed at the State Election Commission for voters to call and determine if their vote was counted and, if their vote was not county, the reason it was not counted. This number is 1-877-726-6646
(b) VOTING INFORMATION REQUIREMENTS –				
(1) PUBLIC POSTING ON ELECTION DAY – The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.				See (2) below for public posting of specific voting information.
(2) VOTING INFORMATION DEFINED – In this section, the term "voting information" means –				
(A) a sample version of the ballot that will be used for that election;	Yes			South Carolina currently meets this requirement. Poll managers at each polling place are required to display a sample ballot of each ballot in the respective election.
(B) information regarding the date of the election and the hours during which polling places will be open;	Yes			South Carolina currently meets this requirement. This information is currently listed on a Voter's Rights and Responsibilities poster which is displayed at each polling location.
(C) instructions for how to vote, including how to cast a vote and how to cast a provisional ballot;	Yes			South Carolina meets this requirement. Instructions for all voting systems currently in use are provided at the polling locations. A poster of the voter's *bill of rights* is displayed. Provisional ballot instructions are included in this *bill*

Section 302: Provisional Voting and Voting Information Requirements	S.C. Status: Meets Requirement	Will Meet Requirement by Deadline	Will Not Meet Requirement by Deadline	Implementation
				of rights.
(D) instructions for mail-in registrants and first-time voters under section 303(b);	Yes			South Carolina currently meets this requirement by providing written instructions to these voters.
(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and	Yes			South Carolina currently meets this requirement by posting a Voter Rights and Responsibilities poster at every polling location.
(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.	Yes			This information has been added to our current Voter Rights and Responsibilities poster.
(c) VOTERS WHO VOTE AFTER THE POLLS CLOSE – Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.			Yes	South Carolina will establish a procedure for provisional ballots cast by voters in accordance with a court order extending the time established for closing the polls.

1.5 Computerized Statewide Voter Registration List & Voters Who Register by Mail

The chart below takes each of the requirements for the Computerized Statewide Voter Registration List and for Voters Who Register by Mail and describes South Carolina's plan to meet the requirement.

[illegible]	S.C. Status: [illegible]			[illegible]
(a) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS				
(1) IMPLEMENTATION –				
(A) IN GENERAL – Each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:	Yes			South Carolina currently meets this requirement. A statewide voter registration system has been used in the State since 1998. SC currently maintains a single, uniform, official, centralized, interactive computerized statewide voter registration system at the state level. All 46 counties are connected to the statewide voter registration system. Additions and changes made by the county offices and State office to the voter registration file are interactive.
(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.	Yes			South Carolina currently meets this requirement. The statewide voter registration system is housed at the State data center in Columbia and maintained by the State Election Commission. The State Election Commission provides an official list of registered voters for each election held in South Carolina.
(ii) The computerized list contains the name and registration information of every legally registered voter in the State.	Yes			South Carolina currently meets this requirement. Computerized list contains name, address, SS#, date of birth, precinct, and election districts for every legally registered voter in South Carolina.
(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.	Yes			South Carolina currently meets this requirement. The system assigns each voter a unique registration number at the time they register to vote.
(iv) The computerized list shall be coordinated with other agency databases with the State.	Yes			South Carolina currently meets this requirement. DMV, DSS, and other state agency databases are coordinated through Motor Voter processes. The counties access a file received on a weekly basis from these agencies to approve applications made through NVRA.

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status: Meets Requirement	Meets Requirement Partially	New Capability to be Implemented	Implementation
(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.	Yes			South Carolina currently meets this requirement. All local and state election officials have access to this file. Each local election official is assigned a USERID and password that must be used to access the official file of registered voters. Voters can also inquire via the SEC website to look at their own record to check status, address, election districts, and polling place by keying in their name and date of birth.
(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.	Yes			South Carolina currently meets this requirement. Local election officials have access to database constantly to enter new voter registrations or updates to voter's record on a real time basis.
(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).	Yes			South Carolina currently meets this requirement. Local voter registration officials have access to the official file on a continuous basis. Technical support is provided through staff at the State Election Commission and a Help Desk.
(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.	Yes			South Carolina currently meets this requirement. The State Election Commission currently prints and sends the official list of registered voters to the county for use in all elections that are held in the State.
(B) EXCEPTION – The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.				Does not apply. South Carolina requires potential voters to register to vote.
(2) COMPUTERIZED LIST MAINTENANCE –				
(A) IN GENERAL – The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:				

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status: Meets Requirement	Meets Requirement Partially	New Capability to be Implemented	Implementation
(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).	Yes			South Carolina currently meets this requirement. The State Election Commission is the only one authorized to remove names from the official list of registered voters.
(ii) For purposes of removing names of ineligible voters from the official list of eligible voters –				
(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status, and	Yes			South Carolina currently meets this requirement. Felony records are removed by the State upon notification from courts of felony convictions on a monthly basis.
(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death	Yes			South Carolina currently meets this requirement. Deaths are removed by the State upon notification from DHEC on a monthly basis.
(iii) Notwithstanding the preceding provisions of this paragraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.	Yes			South Carolina currently meets this requirement. In accordance with the NVRA of 1993, a confirmation card policy is in effect and appropriate voters are removed as required.
(B) CONDUCT – The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that –				
(i) the name of each registered voter appears in the computerized list;	Yes			South Carolina currently meets this requirement.
(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and	Yes			South Carolina currently meets this requirement. Name, SS#, and date of birth verified on each voter before name removed from voter registration file.

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status: Fr. Meets Requirement	Meets Requirement Partially	New Capability - Is to be implemented	Implementation
(iii) duplicate names are eliminated from the computerized list.	Yes			South Carolina currently meets this requirement. State Election Commission performs quarterly comparison using SS# and date of birth. A report is generated listing all duplicate records. This report is distributed to County Registration Boards for confirmation before names are actually deleted by State Election Commission.
(3) TECHNOLOGICAL SECURITY OF COMPUTERIZED LIST – The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.	Yes			South Carolina currently meets this requirement. Old System: This IDMS mainframe system is secured by RACF. It is deployed over a SNA network or by EZ3270 TCP/IP emulator over the internet. The transmission of data is encrypted. New System: The users of this web application will be authenticated by an LDAP server. Each user will be assigned a unique USERID and password. The application is deployed over a secured internet connection using HTTPS.
(4) MINIMUM STANDARD FOR ACCURACY OF STATE VOTER REGISTRATION RECORDS – The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:	Yes			South Carolina currently meets this requirement.
(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.	Yes			South Carolina currently meets this requirement. South Carolina has a confirmation mailing procedure consistent with the National Voter Registration Act of 1993.
(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.	Yes			South Carolina currently meets this requirement. Name, SS#, and date of birth are compared on each voter before removal.

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status: Fr. Meets Requirement	Meets Requirement Partially	New Capability - Is to be implemented	Implementation
(5) VERIFICATION OF VOTER REGISTRATION INFORMATION –				
(A) REQUIRING PROVISION OF CERTAIN INFORMATION BY APPLICANTS –				
(I) IN GENERAL – Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes –				
(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or	Yes			SC law requires full Social Security Number and does not accept the driver's license number as a valid alternative.
(II) in the case of any other applicant (other than an applicant to whom clause (II) applies), the last 4 digits of the applicant's social security number.	Yes			South Carolina currently meets this requirement. SC requires full Social Security Number.
(II) SPECIAL RULE FOR APPLICANTS WITHOUT DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER – If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the lists assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.	Yes			SC law requires full Social Security Number. Our voter registration system, assigns a voter registration number to each applicant that is unique to each voter.
(III) DETERMINATION OF VALIDITY OF NUMBERS PROVIDED – The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.	Yes			South Carolina currently meets this requirement.

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status: Meets Requirements	S.C. Status: Needs Implementation Action	S.C. Status: Not Currently Addressed	Comments
(B) REQUIREMENTS FOR STATE OFFICIALS –				
(I) SHARING INFORMATION IN DATABASES – The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration..	Yes			Not applicable in South Carolina because the entire social security number is required by State law, and thus the State falls under (D) Special Rule for Certain States.
(II) AGREEMENTS WITH COMMISSIONER OF SOCIAL SECURITY – The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).				Not applicable in South Carolina because the entire social security number is required by State law, and thus the State falls under (D) Special Rule for Certain States.
(C) ACCESS TO FEDERAL INFORMATION –				South Carolina requires the full social security number by State law.
(D) SPECIAL RULE FOR CERTAIN STATES – In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974, the provisions of this paragraph shall be optional.				South Carolina requires the full social security number by State law.
(b) REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL –				
(1) IN GENERAL – Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if –				
(A) the individual registered to vote in a jurisdiction by mail; and	Yes			South Carolina currently meets this requirement.

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status: Meets Requirements	S.C. Status: Needs Implementation Action	S.C. Status: Not Currently Addressed	Comments
(B)(I) the individual has not previously voted in an election for federal office in the State; or	Yes			South Carolina currently meets this requirement.
(II) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).	Yes			South Carolina currently meets this requirement.
(2) REQUIREMENTS –				
(A) IN GENERAL – An individual meets the requirements of this paragraph if the individual –				
(i) in the case of an individual who votes in person –				
(I) presents to the appropriate State or local election official a current and valid photo identification; or	Yes			South Carolina currently meets this requirement. Each voter is required to present one form of ID when voting in person: valid SC driver's license with current address, or photo ID issued by DMV with current address, or as shown below, a voter registration certificate.
(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or	Yes			South Carolina law permits the presentation of one specific government document – the voter registration certificate - to identify the voter.
(ii) in the case of an individual who votes by mail, submits with the ballot –				
(I) a copy of a current and valid photo identification; or	Yes			South Carolina currently meets this requirement.
(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.	Yes			South Carolina law permits the presentation of one specific government document – the voter registration certificate - to identify the voter.
(B) FAIL-SAFE VOTING –				
(I) IN PERSON – An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under	Yes			South Carolina currently meets this requirement. SC provides provisional ballots at each precinct.

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status			
	Meets Requirement	Meets Requirement Partially	Plan Capability to be Implemented	Implementation
section 302(a).				
(ii) BY MAIL – An individual who desires to vote by mail, but who does not meet the requirements of subparagraph (A)(ii), may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a).	Yes			South Carolina currently meets this requirement. SC provides provisional ballots for this purpose. The ballots are placed in a provisional envelope and kept separate from other absentee ballots until they are counted.
(3) INAPPLICABILITY – Paragraph (1) shall not apply in the case of a person –				
(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 and submits as part of such registration either	Yes			South Carolina currently meets this requirement.
(i) a copy of a current and valid photo identification; or	Yes			South Carolina currently meets this requirement.
(ii) a copy of a current utility bill, bank statement, government check, pay check, or government document that shows the name and address of the voter;	Yes			South Carolina currently meets this requirement.
(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either –	Yes			South Carolina currently meets this requirement.
(I) a driver's license number; or	Yes			SC law requires full Social Security Number and does not accept the driver's license number as a valid alternative.
(II) at least the last 4 digits of the individual's social security number; and	Yes			South Carolina currently meets this requirement. SC requires applicant's complete SS# on all applications.
(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or	Yes			South Carolina currently meets this requirement.

Section 303: Computerized Statewide Voter Registration List and Voters Who Register by Mail	S.C. Status			
	Meets Requirement	Meets Requirement Partially	Plan Capability to be Implemented	Implementation
(C) who is –				
(I) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C 1973ff-1 et seq.);	Yes			South Carolina tracks this exemption on applicant's electronic record by identifying applicant as UOCAVA.
(ii) provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or	Yes			South Carolina tracks this exemption on applicant's electronic record.
(iii) entitled to vote otherwise than in person under any other Federal law.	Yes			South Carolina tracks this exemption on applicant's electronic record.
(4) CONTENTS OF MAIL-IN REGISTRATON FORM –				
(A) IN GENERAL – The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:				
(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.	Yes			This question appears on all voter registration applications used in South Carolina.
(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.	Yes			This question appears on all voter registration applications used in South Carolina.
(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form".	Yes			This statement appears on all voter registration applications used in South Carolina.
(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.	Yes			This statement appears on all voter registration applications used in South Carolina.

2. Payment Distribution and Monitoring

How the State of South Carolina will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in "1. Meeting Title III Requirements and Other Activities," including a description of the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under "8. Performance Goals and Measures."

Eligibility of Local Units to Receive the Payment

The State Election Commission will centrally manage the initiatives funded through HAVA. The SEC will be responsible for accounting for all expenditures, funding levels, program controls, and outcomes.

The SEC will implement HAVA by providing equipment, supplies, services, and training programs and materials to the counties. All counties in South Carolina will be beneficiaries of the improvements funded by HAVA:

- As part of the statewide uniform voting system, counties will receive one voting unit for every 200 registered voters.

  Counties who used vote recorders during November 2000 and have since replaced them with HAVA Section 301 compliant electronic voting systems are eligible for reimbursement[1] of the voting system costs if:

  1. The county adopts the statewide voting system and,
  2. Excess funds designated for the implementation of a statewide voting system are available after implementation of all phases referenced in section 6. *Proposed State Budget*

- If a county in this State chooses not to participate in the statewide uniform electronic voting system, the county will receive funding to purchase 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place by January 1, 2006.

[1] Reimbursement will be made following the county's resale of previously purchased voting machines. The State will reimburse the difference between the original purchase price and the fair market value received upon sale of voting machines. This reimbursement will not exceed 50% of the original purchase price of the mechines.

Section 303: Computerized Statewide Voter Registration List Requirements and Voters Who Register by Mail	S.C. Status			Implementation
	Meets Requirement	Meets Requirement Partially	Not Fully Capable of Being Implemented	
(B) INCOMPLETE FORMS – If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).	Yes			Standard procedure is that all county offices will notify voters that their application was incomplete and give them a period of time to submit missing information.
(c) PERMITTED USE OF LAST 4 DIGITS OF SOCIAL SECURITY NUMBERS – The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5U.S.C. 522a note).				
(d) EFFECTIVE DATE –				

- Education programs will be developed by the SEC for county election commissions and boards of registration end staff.
- Training programs and materials will be developed by the SEC and distributed to county election commissions to conduct consistent Poll Maneger training.
- Voter education programs and materiels will be developed by the SEC and distributed to county election commissions and boards of registration.

Performance Measures for Local Units

Funds will be centrelly managed. The SEC will monitor the performance of each initietive that is funded by requirements payments in the following areas:

- **Financial Controls:** Working with the State Budget Office, State Treasurer, and State Comptroller General, SEC will develop and use standard financial reporting for ell initiatives funded by HAVA. SEC will be prepared for periodic federal audits.
- **Compliance with Standards:** SEC will develop end use standard program management reporting for all initiatives that are funded by HAVA. The State Auditor's Office will also conduct e statewide single audit to ensure that the SEC complies with all Federal laws, regulations and program compliance requirements.
- **Program Results:** SEC will develop key performance indicators for each initiative funded by HAVA. See *Component 8: Performance Goals and Measures* for specific goals and measures.

3. Provision for Education and Training

How the State of South Carolina will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

3.1 Training for Election Officials

As mandeted by South Carolina law, the SEC currently administers a statewide election official training and certification program. This program provides professional development courses related to the voter registration and election community to all members end staff of the County Voter Registration Boards and Election Commissions.

To receive certification, a voter registration or election official or staff member must complete required components, including core components and electives, within 18 months of their appointment or date of hire. Following initial certification, each official must take et least one training course each year to remain certified.

Two types of certification are offered:

- Voter Registration or Election Commission Members and Directors

  This certification requires completion of three core courses (Duties of Voter Registration Board, Duties of Election Commission, Budgeting/Reimbursement of Election Expenses), two voter registration/election electives, and two addltional electives.

- Voter Registration or Election Commission Staff

  This certification requires completion of two core courses (Absentee Registration/Balloting, Office Procedures), two voter registration/election electives, end one additional elective.

Various components are offered each quarter throughout the year. Components are held in Columbia, regionally and in conjunction with an annual conference for voter registration and election officials.

County Election Commissioners and Board of Voter Registration members must attend poll manager training and receive poll manager certification within 18 months of their appointment. County Election Commissioners are required to monitor polling places all day on Election Day.

3.2 Training for Poll Managers

Note: since South Carolina law defines "Poll Workers" as "Poll Managers," this section refers to Poll Managers, instead of Poll Workers.

As mandated by South Carolina law, training for Poll Managers is a county responsibility. In accordance with South Carolina state law, all managers are required to attend refresher training/briefings within 30 days of an election. County election commissions will be encouraged to conduct these sessions on different days and times to make them more accessible.

Every Poll Manager will be certified using a standardized training and testing program. This training and testing program will be developed by the SEC and various county election officials. Recertification will be required prior to each statewide primary or general election.

The following topics will receive special focus in the standardized training and testing program:

- Basic state and federal laws and processes governing elections
- Operating the voting system
- Intensive training on provisional ballots
- Sensitivity training for processing for all voters with emphasis on those who need special assistance (Illiteracy, Non-English speakers / readers)
- The rights of people with disabilities, the required accessibility of polling places to people with disabilities, and how to facilitate people with different disabilities
- Procedures to verify that the voter is in the correct precinct and to direct the voter to correct precinct, if needed

Testing will be "open book" to reflect the reality that poll managers are permitted to search provided handbooks for information needed to address situations at the polls.

Certification training will be conducted year round at different times of day and on different days of the week. The state's technical colleges and public television system may also be used to present training sessions. Training materials developed by the state will include a demonstration video, presentation material, and a Poll Manager handbook. Materials will be available through the SEC website. Certified managers will receive both a certificate and a badge.

Persons with disabilities will be encouraged to become poll managers.

3.3 Training for Voters

Expanded voter training will be part of the implementation of the HAVA State Plan. The SEC will produce voter training material, and the counties will coordinate implementation of voter training.

When a statewide uniform electronic voting system is implemented, it will be important to get visibility and generate voter interest. A brochure and a video will be developed to promote the voting system as simple to operate, to encourage the voter to participate on Election Day, and to provide instructions on updating voter registration information. The brochure should be printed in sufficient quantities to use as handouts at voter registration offices, drivers license offices, and other government facilities. Also, the brochure and the video should be published on the website.

On an on-going basis, a concerted effort should be made to educate voters about referenda before they go into the voting booth.

Special effort will be made to reach voters with disabilities and let them know how much easier it will be to vote with the new system and improvements in the polling places. It is critical that voter information, including publications and brochures, be made available through communication vehicles that are accessible and frequently used by people with disabilities, for example:

- A well-designed fully accessible website
- E-Mail to distribution lists provided by selected disability groups (statewide cross-disability organizations can help identify disability groups)
- Non-profit organizations and other non-governmental organizations
- State agencies that work with the disability community

South Carolina County Election Commissions are encouraged to participate in mock elections and other voter education programs such as conducting elections in schools. Mock elections are a way to educate students and their families and to recruit and train high school students as Poll Managers.

County Election Commissions will be encouraged to demonstrate the voting system at public locations prior to an election. These demonstrations are opportunities to register voters, update voter registration information, and recruit Poll Managers.

3.4 Other Interested Citizens

Candidates, their workers, and poll watchers will be encouraged to take the certification training. Candidates will receive a "Candidate's Guide to Elections" and the Poll Manager handbook, both of which will be developed by the SEC. This will provide them with more information on Election Day processes and prevent misunderstandings between Poll Managers and poll watchers.

4. Voting System Guidelines and Processes

How the State of South Carolina will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

As outlined in *Component 1: Meeting Title III Requirements and Other Activities*, South Carolina has decided to implement a statewide uniform electronic voting system and processes.

The voting system chosen through the RFP process involved State and County Election Commission officials, consultants, and other State agency personnel as needed. The RFP ensures that the system selected meets South Carolina election laws and all requirements outlined in section 301 of HAVA.

The SEC will define and document uniform voting processes and update the relevant training material. As required by law, before any changes are made to processes that affect the voters, the proposed process will be presented for review and approval by the Justice Department under the Voting Rights Act of 1965.

5. Fund for Administering State Activities

How the State of South Carolina will establish a fund for purposes of administering the State's activities, including information on fund management.

Working with the Budget and Control Board, the South Carolina Election Commission established a new program where the funds are kept separate from all other programs within the agency. The program contains both federal funds and general funds. The federal fund portion will be used to maintain federal funds and the general fund portion will be used to maintain funds which are reserved under the 5% match required by HAVA.

The South Carolina Election Commission and the State Budget Office will work with the State Comptroller and the State Treasurer to follow and enforce all mandated fiscal controls and policies.

6. Proposed State Budget

The State of South Carolina's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including (A) specific information on the costs of the activities required to be carried out to meet the requirements of Title III; (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and (C) the portion of the requirements payment which will be used to carry out other activities.

The implementation of HAVA in South Carolina will take place over four calendar years, as follows:

Year	Implementation
2003	• Voter registration System • Election administration • Voter education and poll worker training
2004	• Voting system purchases (10 ounch-card counties) • Election Administration • Voter education and poll worker training • Automate voter history
2005	• Voting system purchases (12 optical-scan counties) • Election Administration • Voter education and poll worker training • Scanning/signature verification systems
2006	• Voting system purchases (24 DRE counties) • Election Administration • Voter education and poll worker training

The implementation of this plan is contingent upon receipt of the associated federal funding. Implementation items may be combined if associated funds are received. Counties may implement ahead of their scheduled year if funds are available.

The total proposed funding[2] will come from the following sources:

	Total Federal Funding as Proposed	South Carolina Share as Proposed	South Carolina Matching Funds
Early payments	$650 M	$6.9 M	Not applicable
2003	$650 M ($525 M to States)	$11,602,190	$ 560,109.50
2004	$1.3 B ($1.1 B to States)	$ 20,819,090	$ 1,040,954.50
2005	$1.1 B ($900 M to States)	$ 7,128,720	$ 356,436
Total Funding	$3.9 B	$46.45 M	$1,977,500

Total available funding for South Carolina is approximately $48,550,000. This money will be used to carry out the requirements of Title III as follows:

HAVA Requirements	Total Cost	Section 101 Funds	Section 102 Funds	Section 252 & 257 Funds	State Match
Statewide Voting System in Punch-Card Counties	$13.4 M		$2,167,518	$ 9.53 M	$ .43 M
Statewide Voting System in Optical-Scan Counties	$ 4.8 M			$4.56 M	$ .24 M
Statewide Voting System in DRE Counties	$18.4 M			$17.48 M	$ .92 M
Education	$ 3.5 M	$ .25 M		$ 3.05 M	$ .2 M
Statewide Voter Registration System	$ 3.0 M	$ 3.0 M			
Voter Registration and Outreach Programs	$ 3.5 M	$ .2 M		$ 3.1 M	$ .2 M
State Plan Creation and HAVA Management	$ 1.95 M	$ 1 M		$ .86 M	$ .09 M
Total	$ 46.55 M	$ 4,652,412	$ 2,167,518	$ 38.58 M	$ 1,977,500

[2] Fund amounts are annotated with "M" or "B" to indicate million or billion dollar amounts.

7. Maintenance of Prior Year Expenditures

How the State of South Carolina, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

Consistent with HAVA §254(a)(7), in using any requirements payment, South Carolina will maintain expenditure of the State for activities funded by the payment at a level equal or greater than the level of such expenditures in State Fiscal Year 2000.

The SEC has taken several reductions to the base budget since 2000. To absorb those reductions, operating expenses have been cut drastically by condensing office space, leaving vacant positions unfilled, and a reduction in force plan was implemented which eliminated one full time employee.

During the 2003 legislative session, the South Carolina General Assembly did not provide any funds for the 2004 Statewide Primaries. However, all HAVA funds will be maintained completely separate and no HAVA funds will be used to offset either the general fund or primary election fund shortfalls.

The State budget represents only a small portion of the statewide aggregate operating budget expenditures needed to sustain elections in a given fiscal year, since by South Carolina law the great majority of election administration resources are provided at the county level.

South Carolina's 46 local election office budgets typically support year-round core staff and operating expenses for continuous functions such as voter registration, information services, and IT support. In addition, county registration boards and election commissions provide the significant increase in funding associated with each specific election – for Poll Managers, temporary office staff, ballot production, mass mailings, election-day support (including personnel, equipment, and supplies), etc. In some cases, key election support resources provided at the county level may not even be included within election office budgets, but are provided through other county agencies and donations.

It is therefore important to note that the projected HAVA budget set forth in *Chapter 6: Proposed State Budget* is based on the critical budget assumption that the State will mandate that this foundation of county-funded election operations be maintained at existing levels. Without this foundation in place, the short-term infusion of funds HAVA provides would not be sufficient to maintain new State election environment in the long term.

8. Performance Goals and Measures

How the State of South Carolina will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The State Election Commission along with members of the South Carolina Association of Registration and Election Officials (SCARE) will establish performance goals and measure progress of achieving these goals. A list of preliminary Plan goals is provided below. An advisory team, including County Election officials, was appointed to oversee plan management and compliance with HAVA. This advisory team will review the goals of the plan on an on-going basis and make any changes necessary.

An important goal of the advisory team is to ensure a smooth transition for the local election commissions into a statewide uniform electronic voting system while complying with HAVA requirements. The SEC will determine the goals, measurements, and related timeframes in accordance with requirements outlined in HAVA.

The following is a list of plan elements, preliminary plan goals under consideration, the SEC division in charge of ensuring the element is met, and the timeframe for meeting such element of the plan.

Plan Element	Preliminary Plan Goals Under Consideration	Division	HAVA Timeframe
Voting System (§301)	▪ Uniform electronic system implemented statewide ▪ Statewide voting system will accommodate as many disabled voters as possible ▪ Counties not participating in statewide voting system will receive 1 DRE unit for each precinct in the county ▪ Voter can verify / change ballot before casting ▪ Voter is informed or prevented from casting votes for multiple candidates for single office ▪ Disabled voters have accessibility to polling place ▪ Manual audit capability ▪ Uniform definition of what constitutes a vote	Voter Services Training and Public Information	1/1/06
Provisional Voting (§302)	▪ Voter can ascertain whether a provisional vote was counted and obtain an explanation if the vote was not counted ▪ Additional voting instructions posted for provisional voting and for prohibitions on fraud	Voter Services Training and Public Information	1/1/04

Plan Element	Preliminary Plan Goals Under Consideration	Division	HAVA Timeframe
Voter Registration (§303a &303b)	▪ Procedures established to track receipt of identification at registration ▪ Mail voter registration form revised to add mandated questions and procedures revised to notify voters of incomplete forms ▪ Voter documentation exemptions tracked for uniformed and overseas citizens, elderly and handicapped ▪ Implement image scanning and retention of the voter registration application, including the voter signature	Voter Services	(303a) 1/1/06 (303b) 1/1/04
Education (§254a3)	▪ Poll Manager training developed ▪ Poll Manager certification process implemented ▪ Poll Manager pre-election refresher training implemented ▪ Election officials included in Poll Manager training and certification ▪ Voter awareness and education plan implemented ▪ Disabled voter awareness and education plan implemented	Training and Public Information	11/1/04
Budget/Funding	▪ Legislated program established to isolate and manage federal and state funds ▪ Procedures established to track budget and actual expenditures	Administrative Services	6/1/04
Complaint Procedures (§402)	▪ Complaint process in place statewide ▪ Timely complaint resolution	Voter Services	1/1/04
Absentee Ballots for UOCAVA Voters (§704)	▪ Modify procedure to allow UOCAVA absentee voters to receive absentee ballots through the next 2 regularly scheduled general elections for Federal office.	Voter Services	1/1/04

Performance measures

There are areas that the management team will measure to collect data and report on performance. These include:

- **Schedule:** Are goals being met, timelines followed, or at least progression towards meeting goal/timelines?
- **Ability:** Are the right people hired to oversee the state management plan to make sure plan goals are met? Are there enough financial resources to maintain those hired?

- **Effectiveness:** Is the project meeting all expectations in regards to customer satisfaction (County Election Commissions, boards of voter registration, and voters)?

Other plan elements will be added as needed. The SEC will monitor collected data for reporting purposes. This data will be distributed to local county election boards as well as to the SEC to monitor progress of ensuring all goals of HAVA are achieved.

9. Administrative Complaint Procedures

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

South Carolina implemented an administrative complaint procedure that complies with HAVA. This procedure has been posted to the SEC website.

Any person who believes a violation of HAVA Title III has occurred, is occurring or is about to occur may file a complaint. Complaints must be:

- in writing (use of complaint form is preferred)
- notarized
- submitted to the State Election Commission

Title III includes:

- Voting system standards
  - Requirements, audit capacity, accessibiiity, alternate languages, error rates, definition of what constitutes a vote
- Provisional voting
- Voting Information
  - Public posting on election day
- Computerized statewide voter registration list
  - List maintenance, security, verification of voter registration information
- Registration by mail
  - Identification requirements, age and citizenship questions

State-Based Administrative Complaint Procedure

The Executive Director, or designee, will review all complaints to determine if a violation of HAVA Title III has occurred. If multiple complaints are filed for the same violation, they may be reviewed together.

If a violation has not occurred, the Executive Director may dismiss the complaint. If a violation has occurred; the Executive Director, or designee, will attempt to resolve the complaint and provide a remedy.

The state election director will release the findings for all complaints received. Findings will be mailed to complainant and any county involved. If the complainant is not pleased with the decision of the Executive Director, he/she my request an administrative hearing.

Alternate Dispute Resolution

If the Executive Director is unable to resolve the complaint within 90 days, the complaint shall be resolved within 60 days by the State Election Commission.

10. Use of Title I Payment

If the State of South Carolina received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

As shown in *Component 6: Proposed State Budget*, the HAVA Title I monies are an integral part of the overall funding for development and execution of the State Plan to improve administration of elections, and as such, will be used to comply with the requirements under Title III. The South Carolina Title I payment of $6,900,000 (May, 2003) represents approximately 14% of the total HAVA initiative and 38% of the 2003 budget.

The Title I monies provided initial funding to start the process. Activities initiated in 2003 include:

- Develop the State Plan
- Establish criteria for a statewide uniform electronic voting system
- Issue a Request for Proposal (RFP) for a statewide uniform electronic voting system
- Upgrade the voter registration system
- Modify supporting processes for voter registration
- Establish administrative complaint procedures
- Develop voter education and poll worker training
- Improve election administration
- Training of State Election Commission and County Election Commission Officials

Any monies remaining from the Title I payment will be applied toward purchase of the new voting system selected through the RFP process. All monies will be maintained by the SEC and no funds will be distributed directly to the counties unless approved by the HAVA Advisory Team.

11. Ongoing Management of Plan

How the State of South Carolina will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the law unless the change (A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan; (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and (C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The Executive Director of the S.C. State Election Commission is responsible for coordination of the State's responsibilities under this Act, and therefore ultimately responsible for the ongoing management of the State Plan.

The State Plan will serve as the roadmap for HAVA implementation. As stated in *Component 8: Performance Goals and Measures*, the State Election Commission will establish a State Plan advisory team to manage and oversee the statewide plan. This State Plan advisory team will audit performance goals and measures and publish any material changes. The team will meet on a regular basis with a frequency to be set by the team.

No material changes will be made unless the change is published in the Federal Register in accordance with HAVA §255, is subject to public notice in accordance with HAVA §256, and takes effect after the expiration of the 30 day period which begins on the date the change is published in the Federal Register in accordance with HAVA §255.

12. Previous Year Plan

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Following a summary of changes to the 2003 State Plan:

1. Meeting Title III Requirements and Other Activities

Following state procurement code, a Request for Purchase (RFP) for a statewide uniform voting system was developed using input gathered from county election officials. The RFP was released on October 10, 2003 and six proposals were received by the February 9, 2004 deadline. These proposals were evaluated by a team of seven election officials from county offices and one state election official. An Intent to award was issued to Election Systems & Software (ES&S) on April 12, 2004. An administrative review by the State Chief Procurement Officer (CPO) of the issues raised by three protestants was held on May 13-14, 2004. On May 26, 2004 the CPO declared the highest ranking offeror non-responsive and ordered re-solicitation of the contract. On June 7, 2004 appeals related to this decision were filed with the CPO. Appeals were heard on June 23 – 24, 2004 and the CPO's decision of May 26, 2004 was upheld. Concurrent with the appeal hearings, a re-solicitation RFP for the statewide voting system was issued on June 9, 2004 with proposals due on July 9, 2004.

Section 302 – Provisional Voting and Voting Information Requirements

Utilizing the current statewide voter registration system through a link from the State Election Commission website, voters who cast a provisional ballot are now able to access their ballot information and determine if their vote was counted and, if not, why it was not counted. Voters who do not have Internet access can call a toll-free phone number to determine the status of their provisional ballot. In addition to this procedure, a process was also put into place to allow absentee voters to determine the status of their request for absentee ballot.

Section 303 – Computerized Statewide Voter Registration List and Voters who Register by Mail

- Upon consultation with the U.S. Department of Justice, it was determined that South Carolina is not required to enter into an agreement with the department of Motor Vehicles to verify social security numbers of voters since the State requires the entire SSN for voter registration.
- A procedure for accepting identification for voters who register by mail was implemented and necessary fields were added to the statewide voter registration system to track these voters. This information will be printed on the voter registration list for poll managers to verify the identification prior to allowing a voter to cast a ballot. Voters who fail to provide this ID at the polls may vote a provisional ballot and receive notification to provide ID prior to the challenged ballot hearing .
- Data fields were added to the statewide voter registration system to track UOCAVA voters and their reasons for voting under this provision.
- Questions about citizenship and age were added to the voter registration by mail application. These questions were formerly on the application in the form of statements.
- A postcard was developed for county election offices to send to voters who submitted incomplete voter registration by-mail applications.

2. Payment Distribution and Monitoring

- An account was established through the State Comptroller General's Office for receipt and disbursement of HAVA funds. After some local confusion and research of HAVA, the SEC was able to prove to the Comptroller General and State Treasurer offices that the SEC was entitled to the interest on these funds. Once this was accomplisned, the account was credited interest from April 2003 – January 2004.
- Separate sub-accounts were established to ensure that HAVA funds were distributed according to *Section 6 – Proposed State Budget* of this document

3. Provision for Education and Training

3.1 Training for Election Officials

Eight classes were held for the statewide election official Training and Certification Program. Approximately 400 people (combined) were in attendance. This training is an on-going program.

3.2 Training for Poll Managers

- An "Open book" test was distributed to all counties for use with poll manager training. This test will be revised when a statewide voting system is implemented.
- Due to new HAVA proof of ID requirements, additional training is being emphasized on the provisional balloting procedure

- Due to the HAVA emphasis on voting accessibility for voters, training programs have been designed to stress such features as assistance to voters, curbside voting, and sensitivity training.
- The poll manager handbook was revised and restructured to enhance training and usability
- New poll manager certificates were provided to all county election commissions. These certificates may be used for certification of poll managers.

3.3 Training for Voters

- A Request For Purchase (RFP) was developed to hire a public relations company to assist with voter education of the new statewide uniform voting system and other HAVA issues. The public relations company chosen will promote these issues through the 2006 General Election.
- Partnerships have been formed with advocacy groups such as Protection and Advocacy for People with Disabilities and the S.C. Association for the Deaf to determine needs of disability groups in the State and work together on meeting those needs.
- A website is being prepared for voters to access HAVA specific information. A domain name has been purchased, the design has been approved, content is being developed, and the site will be Bobby compliant.
- In an effort to assist voters who are visually impaired, the font size has been increased on two documents used at the polls on election day and additional documents will be increased in size before the General Election.
- A poster with information on casting a provisional ballot, assistance to disabled voters, federal and State laws that apply to election day, and election official contact information for voters will be available at the polls on election day.
- With the HAVA Election Assistance for Individuals with Disabilities grant, the State Election Commission is working with 29 county election commissions to update/renovate polling places throughout the State. These renovations will provide better accessibility to polling locations by adding wheelchair ramps, curb cuts for access to sidewalks, handrails, paved parking, handicapped parking signs, restroom renovations, and threshold access.

4. Voting System Guidelines and Processes

- Guidelines and processes will be developed when the Statewide Uniform Voting System is selected.

5. Fund for Administering State Activities

- Seperate eccounts were established to distinguish between federal funds and general funds.
- $6,819,929 Title I incentive monies were received and placed into a n interest bearing eccount
- $921,064 was encumbered in Primary election carry-forward funds which we anticipate needing for the required 5% state match.
- A consultant was hired to assist the SEC with the process of spending federal funds. The SEC has never received federal funding the past and it is our desire to ensure thet the funds are distributed and processed according to federal regulations.

6. Proposed State Budget

- Proposed funding spreadsheets were revised to reflect actual amounts received from the Federal Government.

7. Maintenance of Prior Year Expenditures

No activity under this component.

8. Performance Goals and Measures

Performance goals were established and are monitored weekly by SEC staff. A status of State Plan implementation progress is posted on the SEC Website.

9. Administrative Complaint Procedures

An administretive complaint procedure was developed and distributed to all county election officials in addition to being added to the SEC website.

10. Use of Title I Payment

A portion of the Title I payment of $6,900,000 was used to conduct meetings on development of the State Plan, develop and issue the RFP for a statewide voting system, upgrade the current statewide voter registration system to accommodate UOCAVA issues and voter registration by-mail ID requirements, establish an administrative complaint procedure, revise and revamp the poll manager handbook and related training materials, provide training on HAVA to state and county election officials,

and retain consultants to assist with various tasks associated with carrying out the State Plan.

11. Ongoing Management of Plan

An advisory team of 10 people was appointed to oversee changes to the plan. This team met several times to discuss revisions to the State Plan.

13. Committee

A description of the committee which participated in the development of the South Carolina State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The HAVA State Plan task force provided broad representation across the state, and included representatives from state organizations, county organizations, legislators, and interested stakeholders.

Name	Organization
Adell Adams	Richland County Election Commission
David Alexander	Office of Research and Statistics
Marci Andino	State Election Commission
Susan Barden	S.C. State Senate Judiciary Committee
Russell Barrett	Florence County Election Commission
Garry Baum	State Election Commission
Conway Belangia	Greenville County Registration/Elections
James Blake	Marion County Voter Registration/Elections
Bobby Bowers	Office of Research and Statistics
Lesly Bowers	Protection and Advocacy for People with Disabilities
Marilyn Bowers	Pickens County Voter Registration/Elections
Tommie Brice	Calhoun County Voter Registration/Elections
Brett Bursey	S.C. Progressive Network
Hoyt Campbell	Darlington County Registration/Elections
Pete Cantrell	Protection and Advocacy for People with Disabilities
Mike Cinnamon	Richland County Election Commission
Eliza Claxton	NAACP
John Darby	Governor's Office
Rusty DePass	State Republican Party
Benjamin Duncan II	Governor's Office
Lelia Ferguson	Protection and Advocacy for People with Disabilities
Agnes Garvin	Beaufort County Voter Registration/Elections
Cheryl Goodwin	State Election Commission
Adlena Graham	NAACP
Wayne Hale	State Election Commission
Jim Harrison	S.C. House of Representatives
Betsy Hartman	Office of State CIO

Name	Organization
Rita Henderson	Laurens County Voter Registration/Elections
Lynn Hill	Lee County Voter Registration/Elections
Pat Jefferson	Sumter County Voter Registration/Elections
Ruth Jordan	NAACP
L.Z. Keitt	NAACP
Carol Khare	State Democratic Party
Carolyn Lacque	Charleston County Election Commission
Hannah Majewski	State Election Commission
Larry Martin	S.C. State Senate
Mariah C. Miller	NAACP
Thomas L. Moore	S.C. State Senate
Cindy Peel	State Election Commission
Cathy Pelletier	Disability Action Center, Columbia
Edith Redden	Williamsburg County Voter Registration/Elections
Janet Reynolds	State Election Commission
James H. Ritchie	S.C. State Senate
Shan Rose	League of Women Voters
Drew Royall	Department of Disabilities and Special Needs
Donna Royson	State Election Commission
John Russell	Governor's Office
John Scott	S.C. House of Representatives
Gary Simrill	S.C. House of Representatives
Steve Skardon	Palmetto Project
Gilbert Smith	S.C. Independent Living Council
Tanya Thompson	Protection and Advocacy for People with Disabilities
David Williams	Legislative Council, Columbia
Ron Wilson	York County Voter Registration/Elections

The task force was divided into five teams, each of which focused in depth on a specific functional area of HAVA: Administration and Funding, Education, Voting System Standards, Statewide Voter Registration System, and Accountability.

On-going management of the State Plan will be handled by the SEC with assistance from an advisory team appointed by the Chief Election Official. Members of this committee are as follows:

Name	Organization
William B. DePass, Jr. Co-Chair	Former Chairman, State Election Commission
Steve Skardon, Jr. Co-Chair	Palmetto Project
Conway Belangia	Greenville County Voter Registration/Elections
James Blake	Marion County Voter Registration /Elections
Bobby Bowers	SC Office of Research and Statistics
Marilyn Bowers	Pickens County Voter Registration/Elections
Mike Cinnamon	Richland County Election Commission
Dean Crepes	Lexington County Voter Registration/Elections
Edith Redden	Williamsburg County Voter Registration
Earl Whalen	Orangeburg County Voter Registration/Elections

HELP AMERICA VOTE ACT OF 2002

TENNESSEE'S 2004 STATE PLAN

PUBLIC COMMENT AND REVIEW
JULY 15, 2004 thru AUGUST 13, 2004

As required by Public Law 107-252,
Help America Vote Act 2002, Section 253 (b)

Riley C. Darnell, Secretary of State
Brook Thompson, Coordinator of Elections
Division of Elections
312 Eighth Avenue North
9th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243

State of Tennessee
Department of State
Division of Elections
312 Eighth Avenue North
9th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7956 Fax: (615) 741-1278

Fellow Tennesseans:

In 2002, President Bush signed into law the Help America Vote Act of 2002 (hereinafter HAVA). Last year, Tennessee began the process of implementing the required changes set out by HAVA. That process included forming a committee of state and county officials along with representatives from interest and advocacy groups to develop a State Plan for 2003.

In August 2003, Tennessee submitted its first State Plan to the Election Assistance Commission in accordance with Section 253(b) of HAVA. It was subsequently published in the Federal Register, and Tennessee has certified to the Election Assistance Commission that we are eligible to receive the 2003 HAVA funds.

Each year States must submit a plan to the Election Assistance Commission that reflects any changes from the State Plan for the previous fiscal year. The plan must also explain how the State succeeded in carrying out the plan for such previous fiscal year.

As many are aware, the Act will bring about changes in our electoral process. Some of these changes include the replacement of all punchcard and lever voting systems, a statewide voter registration list, the implementation of provisional voting, and a uniform complaint grievance process.

Many of these changes have already been successfully implemented while others will be implemented in the coming years. The 2004 State Plan illustrates our continued commitment to meet each requirement set forth in HAVA and to bring Tennessee into full compliance with the Act.

The plan will not be complete until it is reviewed by you, the citizens of Tennessee. The plan will be available for your review from July 15, 2004, to August 13, 2004.

I look forward to your thoughts and comments regarding the implementation of HAVA and how we can better meet the challenges of HAVA in the upcoming year.

Sincerely,

Brook K. Thompson
Coordinator of Elections

NOTICE

JULY, 15, 2004

SECRETARY OF STATE

STATE ELECTIONS DIVISION

PUBLIC NOTICE OF 2004 STATE PLAN

This public notice is in accordance with the Help America Vote Act of 2002 (HAVA). According to Section 256 of HAVA, the 2004 State Plan must be available for public inspection and comment thirty (30) days prior to the submission of the plan to the federal commission.

The preliminary version of the plan will be available for inspection and public comment from July 15, 2004, to August 13, 2004. The plan will be posted online at the official State website, http://www.tennessee.gov/sos/election.htm. The plan will also be available through the Secretary of State, Division of Elections, at (615) 741-7956 and at all local county election offices. Copies of the plan may be mailed, emailed, or faxed. Public comments may be sent to:

Department of State
Division of Elections
Attention: Cara Harr
312 Eighth Avenue North
9th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
(615) 741-7956
(615) 741-1278 (facsimile)
Cara.Harr@state.tn.us (email)

SUMMARY:

On October 29, 2002, President Bush signed into law the Help America Vote Act of 2002, which requires mandatory changes and improvements in the electoral process. In order to make these improvements, the federal government will provide funds to the individual states. These funds will be used to improve voting systems, to implement provisional voting, and to establish a statewide voter registration database. In order to qualify for funds under Title III, each State must design a long-range plan for implementing the Act.

An advisory committee was established for the purpose of assisting in the drafting of Tennessee's State Plan. The empanelled committee included the chief election officials of the two most populous jurisdictions within the State, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens. All public comments will be reviewed and taken into consideration in preparing the final draft. The final draft will be submitted to the Election Assistance Commission for publication in the Federal Register.

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HELP AMERICA VOTE ACT OF 2002

TENNESSEE'S 2004 STATE PLAN

According to §254(b) (12) of the Help America Vote Act, each state with a plan in effect during the previous fiscal year must provide a description of how the plan reflects changes from the State Plan for the previous fiscal year and how the State succeeded in carrying out the State Plan for such previous fiscal year.

The information listed in Sections 2, 3, 4, 5, 7, 8, 9, 10, and 11 of the 2003 State Plan have not changed in this fiscal year. The information in Sections 1 and 6 are being updated in this plan. Section 12 requires all subsequent plans to describe how they have been successful in the past year. We have included that information in this plan.

I. HOW THE STATE WILL USE THE REQUIREMENTS PAYMENT TO MEET THE REQUIREMENTS OF TITLE III, AND, IF APPLICABLE UNDER SECTION 251(B) (2), TO CARRY OUT OTHER ACTIVITES TO IMPROVE THE ADMINISTRATION OF ELECTIONS.

For the 2004 fiscal year, Tennessee is to receive $29,690,196 from the Title III requirements payments. Tennessee has allocated $1,562,642 for the state match. The total for the 2004 fiscal year budget is $31,252,838.

A. Voting Systems Standards

Tennessee will allocate an additional two million dollars ($2,000,000) to assist those counties which will be changing their entire voting system from a punchcard, lever, or central-based optical scan system to a DRE or precinct-based optical scan system. In last year's plan, we had estimated purchasing two machines per precinct and an additional machine per precinct that meets the disability requirement. After surveying the above counties, we have found that some counties will need more than three machines per precinct. Therefore, we are adding an additional two million dollars to subsidize those counties.

Other counties which have voting systems which meet many of the requirements set forth in HAVA but need to be upgraded in order to become fully compliant with HAVA were not addressed in the 2003 State Plan. Therefore, Tennessee will set out eleven million dollars ($11,000,000) to assist those counties in their upgrades. This money will be spent to purchase upgrades and to implement the upgrading process. Some counties will choose to purchase new voting systems instead of the upgrades, and this money will be used to assist those counties.

B. Computerized Statewide List and Administrative Costs

As stated in the 2003 State Plan, Tennessee plans to upgrade our current system. This process has begun and we have implemented several upgrades. Tennessee has also been working with other State agencies, such as the Department of Safety, to strengthen the communications between the agencies.

Tennessee will also use this money for administrative costs associated with the implementation of HAVA. One such project is the purchasing of new provisional ballot boxes for the approximately 2400 precincts in the State. This project has cost $250,000 to date.

C. Training and Education

Tennessee added an additional one million dollars ($1,000,000) to education and training. This money will be used to train poll workers, poll officials, administrators, and the public about the new voting systems. Numerous items such as manuals, videos, and other training supplies will be purchased with this money. It will also be used to train poll workers and poll officials on sensitivity issues related to individuals with disabilities.

D. Other

Tennessee has allocated an additional $2,090,285 to accessibility issues in this year's State Plan. Tennessee also received $409,715 from the HHS grant fund for accessibility issues. Tennessee will provide county training on surveying polling places and on sensitivity issues. This money will also be used for supplies to conduct the training and for manuals, videos, and other supplies needed for training. The money allocated for accessibility issues will also be spent on making polling places in Tennessee accessible to individuals with disabilities.

VI. THE STATE'S PROPOSED BUDGET FOR ACTIVITIES UNDER THIS PART; BASED ON THE STATE'S BEST ESTIMATES OF THE COSTS SUCH ACTIVITIES AND THE AMOUNT OF FUNDS TO BE MADE AVAILABLE.

HAVA 2004 FEDERAL FUNDING

Title III 2004 Requirements payments	**$ 29,690,196**
Tennessee 2004 State Match	**$ 1,562,642**
TOTAL:	**$ 31,252,838**

HAVA PROPOSED EXPENDITURES

	2003 State Plan	2004 State Plan	Total Amounts
Accessibility for Individuals with Disabilities (machines)	$10,800,000	$ 0	$10,800,000
Replacement machines for PC/LV/Central Optical	$ 8,667,000	$ 2,000,000	$10,667,000
Voting Machine Transitions and Upgrades	$ 0	$ 11,000,000	$ 11,000,000
Accessibility Issues (including training)	$ 500,000	$ 1,590,285	$ 2,090,285**
Administration and Statewide VR Database	$ 5,043,947	$15,662,553	$20,706,500
Education and Training	$ 1,000,000	$ 1,000,000	$ 2,000,000
TOTALS	$26,010,947	$31,252,838	$57,263,785

** We have an additional $409,715 from the HHS, grant which brings the total on accessibility issues to $2,500,000.

XII. SUCCESSES FROM THE 2003 STATE PLAN

A. Provisional Voting and Voting Information Requirements

Provisional voting has been implemented in Tennessee. Tennessee Code Annotated §2-7-112(3)(A)-(C) sets out the procedures used for casting a provisional ballot. Tennessee, which has never had provisional voting, submitted legislation to its General Assembly in March 2003 in order to comply with Section 302 (a) of HAVA. House Bill 1806/Senate Bill 1782 passed both houses of the 103rd General Assembly, and provisional voting became effective July 1, 2003. Provisional voting was successfully implemented in our February Presidential Preference Primary. The State also purchased new provisional ballot boxes for every precinct in order to comply with the new state law.

In order to comply with the voter information requirements, the Coordinator of Elections' office created a poster which contained information on how to vote a provisional ballot, general information on voting rights, and general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation and the process for the administrative complaint procedure. Administrators were informed that the posters must be displayed at every polling place on the day of each election for Federal office.

B. Computerized Statewide Voter Registration List

Tennessee is currently working on upgrades which will make our system HAVA compliant. Tennessee has already implemented new procedures with the Department of Safety and with other State agencies. The Coordinator of Elections will be proposing legislation in the 2005 session that will assist us in this process.

C. Programs for Educational Training

Tennessee has an on-going commitment to education and training with respect to Title III requirements. The Coordinator of Elections provided training this summer to all ninety-five administrators and county election commissioners on, among other things, provisional voting and the administrative complaint procedure. Provided in the training was material to be used by the administrators in training their poll workers. The Coordinator of Elections is also working with the Tennessee Protection and Advocacy group to provide training in September 2004 regarding accessibility issues.

D. Election Fund

Tennessee has established an election fund described in subsection (b) through the Secretary of State's fiscal office. This account is operational and has received Title I monies as well as our 2003 requirements payment and match.

E. Administrative Complaint Procedure

Tennessee has implemented a procedure for individuals to file a formal complaint if a violation of Title III has occurred, is occurring, or is about to occur. The State Coordinator of Elections promulgated a form which must be completed in order for an individual to file a formal complaint. The form was distributed to all ninety-five county administrators, and the State provided training regarding the new procedure. This information was also listed on the voter information poster that was distributed to all polling locations. The manner in which the formal complaint will be handled was discussed in the 2003 State Plan. The procedure has not changed in this fiscal year.

F. ADVISORY PANEL

The advisory committee met in order to discuss how the 2004 requirements payments would be distributed and to discuss any changes in the 2003 State Plan. Meetings were open to the public in the State's Legislative Plaza and held on July 1, 2004, and July 8, 2004. Notice was given in conformity with the Tennessee Open Meetings Act and was posted on the Elections Division website.

The State Plan was made available for public inspection and comment from July 15, 2004, to August 13, 2004, in accordance with section 256. Notice of the time for public inspection and comment was published in the Tennessee Administrative Register, on the Elections Division website, and through a press release to the Capitol Hill Press Corps. Comments were directed to the Coordinator of Elections' office. Copies of the plan were also available through the Coordinator of Elections' office and could be requested by mail, e-mail, or facsimile. A copy of the plan was available at the ninety-five county election commission offices. No public comments were received during the public comment period.

SUMMARY

Element	Timetable	Responsible Official
Voting Systems	January 1, 2006	Coordinator of Elections and County Administrators
Provisional Voting	Completed	Coordinator of Elections
Administrative Complaint Procedure	Completed	Coordinator of Elections
Voter Education	Ongoing process	Coordinator of Elections and County Administrators
Poll Worker, Poll Official Training	Ongoing process	Coordinator of Elections and County Administrators
Polling Place Accessibility	Ongoing process	County Administrators
Statewide Voter Registration List	January 1, 2006	Coordinator of Elections

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Thursday,
September 30, 2004

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 344
U.S. Treasury Securities—State and Local Government Series; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

[Department of the Treasury Circular, Public Debt Series No. 3–72]

U.S. Treasury Securities—State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this Notice of Proposed Rulemaking (NPRM) to revise the regulations governing State and Local Government Series (SLGS) securities. SLGS securities are non-marketable Treasury securities that are only available for purchase by issuers of tax-exempt securities. The NPRM deals with certain practices of issuers that in effect use the SLGS program as a cost-free option and which Treasury considers to be contrary to the purpose of the SLGS program. These practices also create volatility in Treasury's cash balances, make cash balance forecasting more difficult, and increase Treasury's borrowing costs. We are proposing changes to eliminate these practices. We are also proposing other changes that are designed to improve the administration of the SLGS program.

DATES: To be considered, comments must be received on or before November 1, 2004.

ADDRESSES: You may submit comments, identified by Docket Number BPD–02–04, by any of the following methods:

- *Federal eRulemaking Portal:* <*http://www.regulations.gov*>. Follow the instructions for submitting comments.
- *Agency Web Site:* <*http://www.publicdebt.treas.gov*>. Follow the instructions for submitting comments via e-mail to <*opda-sib@bpd.treas.gov*>.
- *E-mail:* <*opda-sib@bpd.treas.gov*>. Include Docket Number BPD–02–04 in the subject line of the message.
- *Fax:* 304–480–5277.
- *Mail:* Keith Rake, Deputy Assistant Commissioner, Bureau of the Public Debt, Department of the Treasury, P.O. Box 396, Parkersburg, WV 26101–0396, or Edward Gronseth, Deputy Chief Counsel, Elizabeth Spears, Senior Attorney, or Brian Metz, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, P.O. Box 1328, Parkersburg, WV 26106–1328.
- *Hand Delivery/Courier:* Keith Rake, Deputy Assistant Commissioner, Office of the Assistant Commissioner, Bureau of the Public Debt, Department of the Treasury, 200 3rd St., Parkersburg, WV 26101, or Edward Gronseth, Deputy Chief Counsel, Elizabeth Spears, Senior Attorney, or Brian Metz, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 200 3rd St., Parkersburg, WV 26101.

Instructions: All submissions received must be addressed to the Bureau of the Public Debt and include the Docket Number for this NPRM, BPD–02–04. All comments received will be posted without change to <*http://www.publicdebt.treas.gov*>. The posting will include any personal information that you provide in the submission.

FOR FURTHER INFORMATION CONTACT: Keith Rake, Deputy Assistant Commissioner, Office of the Assistant Commissioner, Bureau of the Public Debt, 200 3rd St., P.O. Box 396, Parkersburg, WV 26106–0396, (304) 480–5101, or by e-mail at <*opda-sib@bpd.treas.gov*> or Edward Gronseth, Deputy Chief Counsel, Elizabeth Spears, Senior Attorney, or Brian Metz, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, P.O. Box 1328, Parkersburg, WV 26106–1328.

SUPPLEMENTARY INFORMATION:

I. Practices and Regulatory Proposals

Treasury offers SLGS securities to issuers of tax-exempt securities. The purpose of the SLGS program is to assist state and local government issuers in complying with yield restriction and rebate requirements applicable to tax-exempt securities under the Internal Revenue Code.

In 1996, Treasury revised the regulations governing SLGS securities to make the program a more flexible and competitive investment vehicle for issuers in a manner that was intended to be cost effective. 61 FR 55690 (October 28, 1996). The regulations were revised to eliminate a number of requirements, including a requirement that issuers provide certain certifications as a condition to purchasing SLGS securities. In addition, the regulations were changed to permit an issuer to subscribe for SLGS securities and subsequently cancel the subscription, without a monetary penalty, under certain circumstances.

In 1997, Treasury amended the regulations to clarify that certain transactions in which issuers use SLGS securities to provide a cost-free interest rate hedge or option are prohibited. 62 FR 46444 (September 3, 1997). A new provision was added (current § 344.2(f)(1), (f)(2)) to the effect that it is impermissible to subscribe for SLGS securities for deposit in a defeasance escrow or fund if (1) the amount of SLGS securities subscribed for, plus the securities already in the escrow or fund, plus the amount the issuer has acquired or has a right to acquire for deposit in the escrow or fund, exceeds the total amount of securities needed to fund such escrow or fund and (2) the securities in the escrow or fund are subject to an agreement conditioned on changes in the interest rate on open market Treasury securities. Examples of acceptable and unacceptable practices were also provided (current § 344.2(f)(2)).

Treasury noted that the prices established for SLGS securities do not include the cost of an option. Treasury considered whether it would be consistent with the purposes of the SLGS securities program to allow SLGS securities to serve as options if Treasury were appropriately compensated and second, if the answer to the first question is affirmative, whether there is a practical way for the Department to charge for the use of SLGS securities as options. Neither question was answered at that time. Treasury stated that unless it determines that it would be both advisable and practical to allow SLGS securities to serve as options if Treasury is appropriately compensated, the use of SLGS securities for such purpose would continue to be an inappropriate use of the SLGS program. We have determined at this time that it would not be practical to price options.

Treasury has recently become aware of several other practices involving SLGS securities that are also inappropriate uses of the securities and contrary to the purpose of the program. Many of these practices are variations on the use of SLGS securities as some form of a cost-free option. These practices also result in volatility in Treasury's cash balances and make cash-balance forecasting more difficult. Cash balance volatility creates uncertainty in the amount of marketable Treasury securities Treasury needs to issue and results in increased borrowing costs. These practices also result in higher administrative costs for Treasury.

A. Redemptions Before Maturity

Certain participants in the municipal bond market have noted that the early determination of SLGS rates and movements in market prices create arbitrage opportunities. Many arbitrage transactions have been undertaken as escrow restructurings (including redemptions of SLGS securities to reinvest in SLGS securities or

marketable securities at a higher yield), to eliminate "negative arbitrage." Negative arbitrage occurs when bond proceeds are invested at a yield that is less than the yield on the issuer's bond, often as a result of market conditions where the maximum SLGS rates available are lower than what would be permissible under the arbitrage requirements. Under the current regulations, such restructuring transactions to reinvest at a higher yield generally are not prohibited.

Treasury has concluded, however, that the practice of requesting redemption of SLGS securities before maturity to take advantage of relatively infrequent SLGS pricing is an inappropriate use of SLGS securities. Even if undertaken to eliminate negative arbitrage, Treasury considers this practice to be a cost-free option and inconsistent with the purpose of the program. There is a direct cost to Treasury in that Treasury is not being compensated for the value of the option. This practice also results in volatility in Treasury's cash balances and increases the difficulty of cash balance forecasting and thereby increases Treasury's borrowing costs. All redemptions before maturity also create administrative costs.

In this NPRM, we propose several changes to eliminate this practice and similar practices.

First, for SLGS securities subscribed for on or after the date of publication of the final rule, it would be impermissible to invest any amount received from the redemption before maturity of a SLGS Time Deposit security at a yield that exceeds the yield used to determine the amount of redemption proceeds for such Time Deposit security. It would also be impermissible to purchase a SLGS security with any amount received from the sale or redemption (at the option of the holder) before maturity of any marketable security, if the yield on such SLGS security being purchased exceeds the yield at which such marketable security is sold or redeemed. These impermissible practices would be added to § 344.2(f)(1), with conforming changes to the examples in proposed § 344.2(f)(2)(ii) and (iii).

In addition, as set forth in proposed § 344.2(e)(3)(i), upon starting a subscription for a SLGS security, a subscriber would be required to certify that: (A) If the issuer is purchasing a SLGS security with the proceeds of the sale or redemption (at the option of the holder) before maturity of any marketable security, the yield on such SLGS security does not exceed the yield at which such marketable security was sold or redeemed; and (B) if the issuer is purchasing a SLGS security with proceeds of the redemption before maturity of a Time Deposit security, the yield on the SLGS security being purchased does not exceed the yield used to determine the amount of redemption proceeds for such redeemed Time Deposit security.

Upon submission of a request for redemption before maturity of a Time Deposit security, the issuer would be required to certify that no amount received from the redemption will be invested at a yield that exceeds the yield used to determine the amount of redemption proceeds for such Time Deposit security. § 344.2(e)(3)(ii).

These certifications would be made electronically through SLGSafe (Treasury's web-based service through which subscribers submit SLGS securities transactions). SLGSafe is administered by the Bureau of the Public Debt (BPD).

We are proposing a definition of "yield" in § 344.1 that would apply to the certifications. The definition would require that, in comparing the yield of a SLGS security to the yield of a marketable debt instrument, the yield of the marketable debt instrument would be computed using the same compounding intervals and financial conventions used to compute interest on the SLGS security. The certifications do not contemplate any adjustment for credit quality in determining yield in the event that the marketable securities are other than U.S. Treasury securities (e.g., securities of a government-sponsored enterprise). We concluded that it would not be practical to determine the portion of yield differentials that is attributable to differences in credit.

The certifications refer to sales or redemptions of securities "before maturity;" they do not cover redemptions of securities at maturity. The proposal in this NPRM limits the yield on reinvestment of proceeds of SLGS redeemed before maturity. The proposal does not prohibit restructurings of an existing escrow to enhance the efficiency of the escrow, so long as the transaction complies with the yield limitations in the NPRM.

The yield certification for subscriptions would apply to subscriptions submitted on or after the effective date of the final rule. The yield certification for redemptions before maturity would apply to requests for redemption of Time Deposit securities subscribed for on or after the effective date of the final rule. We anticipate that the effective date of the final rule will be the date of publication of the final rule. In our discretion, however, we may determine that the effective date for some or all of the regulations will be at some later date, but the effective date will be no earlier than the date of publication of the final rule.

Second, we propose to reduce the number of hours during which SLGSafe subscriptions, requests for early redemption of Time Deposit securities, and requests for redemptions of Demand Deposit securities will be received to business days from 10 a.m. to 6 p.m., Eastern time. The 6 p.m. closing-time generally corresponds to when trading in the over-the-counter market in marketable securities declines in New York. We selected an eight-hour time frame in an effort to allow sufficient time for issuers, including those on the West coast, to complete their pricing and verification procedures. § 344.3(g). Access to SLGSafe for other functions, such as viewing account balances and obtaining statements of accounts, would be provided during existing operational hours, 8 a.m. to 10 p.m., Eastern time.

All changes to a Time Deposit subscription would have to be made by 3 p.m., Eastern Time, on the issue date. We are not proposing any change to the requirement that payment on SLGS securities must be submitted by 4 p.m., Eastern time, on the issue date. § 344.2(g).

Third, we plan to implement a non-regulatory change to make the rates specified in the daily SLGS rate table more current. As provided in § 344.4(b)(1) of the current regulations, the SLGS rate table will be released to the public by 10 a.m., Eastern time, each business day. In the rare instances when we are unable to post the current day's SLGS rates by 10 a.m., the SLGS rate table for the previous business day will apply.

Fourth, we propose to add a new provision in § 344.2(f)(1)(iv) making it impermissible to purchase a SLGS security with a maturity longer than is reasonably necessary to accomplish a governmental purpose of the issuer. A new example would also be added in proposed § 344.2(f)(2)(v).

B. Cancellations

We receive a large volume of cancellations of SLGS subscriptions submitted for the apparent purpose of re-subscribing at a higher yield. Issuers also have submitted multiple initial subscriptions for a single issue date and have later canceled some of those subscriptions, apparently because of reductions in the size of advance refunding transactions due to changes in market conditions. Some investors have subscribed for SLGS securities, later canceling the subscription or amending

the size when rates move favorably or unfavorably. In still other cases, subscriptions have been canceled because agents have subscribed for SLGS securities even though the issuer has not authorized the issuance of municipal bonds.

The ability of a SLGS investor to freely cancel a subscription is a cost-free option. The current regulations, however, permit an issuer to obtain a higher yield by canceling a SLGS subscription within the specified period and resubscribing. This provision provides a feature that is not available for marketable securities and results in hidden costs to the Federal taxpayer. The practice of canceling subscriptions also makes Treasury's cash balance forecasting more difficult and increases Treasury's borrowing costs. Treasury believes that the flexibility and efficiency associated with an issuer's ability to select maturities and interest payment dates, make SLGS securities a competitive investment vehicle, even without the cancellation option. For these reasons, we propose several changes including prohibiting cancellations.

First, cancellations of SLGS subscriptions would be prohibited unless the subscriber establishes, to the satisfaction of Treasury, that the cancellation is required for reasons unrelated to the use of the SLGS program to create a cost-free option. § 344.5(c), 344.8(c). The example in § 344.2(f)(3)(iv) of the current regulations, which permits cancellation and resubscription at a higher rate, would be eliminated. The examples in current (i), (ii), (iii) and (v) also would be modified to conform with this proposal. The applicable SLGS rate table would be the table in effect on the business day in which the subscription process was begun. The penalty for an impermissible failure to take delivery of SLGS securities would remain unchanged—the municipality (or, if applicable, the conduit borrower) would be ineligible to subscribe for SLGS securities for six months. § 344.2(h).

Second, for all subscriptions submitted for Time and Demand Deposit securities on or after the date of publication of the final rule, we propose to amend the regulations to permit a change in the aggregate principal amount originally specified in the subscription of no more than ten percent. § 344.5(d)(2), § 344.8(d). Currently, subscribers for Time Deposit securities may change the aggregate principal amount specified in the initial subscription up to $10 million or ten percent, whichever is greater. § 344.5(b)(4)(ii). There is currently no such requirement for Demand Deposit securities; the principal amount on Demand Deposit securities may be changed without penalty under the current regulations. § 344.8(b)(3).

Third, we propose that once an issuer selects an issue date for Time and Demand Deposit securities, the subscription cannot be amended to change the issue date. § 344.5(a), § 344.8(a). Under the current regulations, investors are allowed to amend their Time Deposit subscription by extending the issue date up to seven days after the originally specified issue date. § 344.5(b)(4)(i). The current regulations do not permit the issue date on Demand Deposit securities to be amended, although typically the issue date for Demand Deposit securities is not amended because they are one-day certificates of indebtedness that are automatically rolled over each day unless redemption is requested. § 344.7.

Fourth, we propose to require that a subscriber certify, upon starting a SLGS subscription, that the issuer has authorized the issuance of the state or local bonds. § 344.2(e)(2). In addition, a description of the municipal bond issue must be provided in SLGSafe (for example, "Water and Sewer Revenue Bonds Series 2004"). In the case of a false certification, Treasury could exercise its reserved right to revoke the issuance of the SLGS securities. § 344.2(m)(4).

II. Administrative Changes

We have also taken this opportunity to review other aspects of the SLGS program. We are proposing several changes to better administer the program.

A. Pricing Longer-Dated SLGS Securities

As of October 31, 2001, Treasury discontinued issuing 30-year marketable bonds. As a result of the shrinking supply of long-dated marketable securities, Treasury is evaluating its ability to estimate the long end of the Treasury yield curve and the SLGS rates that are derived from the Treasury yield curve. Under the current regulations, Time Deposit securities are offered out to 40-year maturities (based on the longest Treasury rate). §.344.4(a).

Treasury proposes to revise the SLGS regulations to allow us to establish better pricing methods if it becomes necessary at some point in the future. The current regulations provide that "current Treasury borrowing rate" means the "the prevailing market rate, as determined by Treasury, for a Treasury security with the specified period to maturity." § 344.1. The definition of "SLGS rate" is the "current Treasury borrowing rate" minus five basis points. § 344.1. Treasury plans to broaden the definition of "current Treasury borrowing rate." We propose that in the case where SLGS rates are needed for maturities currently not issued by the Treasury, we would have the option of establishing the SLGS rates by using suitable proxies and/or a different rate-setting methodology. We do not anticipate revising our SLGS rate methodology at this time. At any time that the Secretary determines that the methodology should be revised, we will provide notice of such change.

B. Notices of Redemption

There currently is a 10-day advance notice requirement for SLGS investors to redeem their Time Deposit securities early. § 344.6(c). We propose to increase the notification period to 14 days to improve our cash forecasting. This provision would not apply to Demand Deposit securities.

C. Mandating SLGSafe Transactions

We propose to make SLGSafe mandatory for all transactions. Under this proposal, all transactions must flow exclusively through SLGSafe, including: Certifications, confirmations, subscriptions, and redemptions. § 344.3(b).

There are tremendous operational efficiencies to be gained from mandating the use of existing web-based technology for processing SLGS transactions. We first addressed the concept of electronic subscriptions in a Proposed Rule published in the **Federal Register**, 61 FR 39228, 39230 (Jul. 26, 1996). In the interim rule that introduced SLGSafe, we stated our goal of having 100% electronic transactions by September 2002. **Federal Register**, 65 FR 55399, Sept. 13, 2000. We did not receive any comments on the interim rule.

To improve the ease of use, we improved the sign-on procedures for SLGSafe. In a Final Interim Rule, effective on August 11, 2004, we changed the method of access to SLGSafe. **Federal Register**, 69 FR 41756, Jul. 12, 2004 at § 344.3(g)(1). We did not receive any comments on the interim rule. Therefore, it is now possible to access SLGSsafe with a log-on ID and password instead of using a digital certificate. The log-on ID and password access information is now contained in the SLGSafe Application for Internet Access, PD F 4144–5. § 344.3(c)(1). The application is downloadable from BPD's Web site.

Because manual subscriptions would no longer be accepted, we propose to remove the references in the regulations

to our fax number and mailing address. Submission of subscriptions by fax or mail would only be permitted to the extent it is established to the satisfaction of BPD that good cause exists to submit subscriptions by other means. § 344.3(f)(3). The SLGS rate table will continue to be published on BPD's Website. § 344.4(b)(3). If the SLGS rate table is not available by 10 a.m., the SLGS rate table for the preceding day applies. In the event of a prolonged disruption, we will provide additional information on how to conduct SLGS transactions. Notification on how to submit subscriptions manually and lock-in a SLGS rate will be given. § 344.2(l), § 344.3(f)(4).

In addition, we propose to remove references to all paper and electronic forms, except the SLGSafe Application for Internet Access, which SLGSafe users will continue to submit in paper form to BPD.

We anticipate that use of the SLGSafe service will become mandatory on or after the date of publication of the final rule. We recommend that all subscribers who are not currently SLGSafe service users submit an application for SLGSafe access to BPD as soon as possible.

D. Miscellaneous Changes

This NPRM includes miscellaneous other minor or technical changes. *See, e.g.*, proposed §§ 344.0(a), 344.0(b), 344.1, 344.2(d), 344.2(h)(2), 344.2(i), 344.2(m)(5), 344.3(d), 344.3(f), 344.3(g), 344.4(a), 344.5, 344.6(a), 344.6(c), 344.6(f), 344.7(a), 344.9(a), 344.9(c), 344.11. Some of these changes are noted below.

Current § 344.0(a) provides that issuers of tax-exempt securities may purchase SLGS securities from any amounts that: (1) Constitute gross proceeds of an issue (as defined in 26 CFR § 1.148–1(b)); or (2) assist in complying with applicable provisions of the Internal Revenue Code relating to the tax exemption. To clarify the scope of permissible sources of funds for purchasing SLGS securities, we propose to amend the regulations to provide that SLGS securities may be purchased only from amounts that constitute gross proceeds of an issue.

Under current § 344.2(h)(2), late payment assessments, which include a $100 administrative fee, are due on demand. We propose to revise this provision to state that SLGS securities will not be issued until such time as we receive payment of the assessments. In addition, we have added language to allow us to publish a notice in the **Federal Register** if we determine the administrative fee should be changed. We do not anticipate raising the amount of the administrative fee at this time.

Current § 344.2(m) sets forth some of the rights Treasury reserves in administering the SLGS program. We propose to add a new § 344.2(m)(5) which would clarify that Treasury may review any transaction to ensure compliance with this part, including requiring an issuer to provide us with additional information relating to SLGS transactions, and determine an appropriate remedy under the circumstances.

We are proposing a number of technical changes to make the regulations consistent with current SLGSafe procedures and terminology, and to conform to other changes in this NPRM. In § 344.5, we have eliminated terminology referring to "initial" and "final" subscriptions because SLGSafe does not distinguish between "initial" and "final" subscriptions. Instead of submitting an "initial" subscription, the issuer would start the subscription process by entering certain information in required data fields in SLGSafe. A subscriber would complete the subscription by furnishing additional information in the designated required data fields in SLGSafe.

In proposed § 344.11, we have clarified that the early redemption provisions for the existing regulations apply to special zero interest securities. Issuance of special zero interest securities was discontinued on October 28, 1996. The proposals in this NPRM do not apply to these outstanding SLGS securities.

III. Procedural Requirements

A. Executive Order 12866

This notice of proposed rulemaking is not a significant regulatory action as defined in E.O. 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. Therefore, a regulatory assessment of anticipated benefits, costs, and regulatory alternatives is not required.

B. Regulatory Flexibility Act

Although this notice of proposed rulemaking is being issued in proposed form to secure the benefit of public comment, it relates to matters of public contract and procedures for United States securities. Therefore, the notice and public procedure requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), are inapplicable. Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

C. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (preferably by FAX to 202–395–6974, or by e-mail to *jlackeyj@omb.eop.gov*). A copy of the comments should also be sent to the Bureau of the Public Debt at the addresses previously specified. Comments on the collection of information should be received by November 1, 2004.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The collections of information in this proposed regulation are in sections 344.3(f)(3), 344.5(c), and 344.8(c). This information is required by the Bureau of the Public Debt (1) to determine whether there is good cause for an investor to submit subscriptions by fax or mail rather than electronically in SLGSafe and (2) to establish that a cancellation of a subscription is required for reasons unrelated to the use of the SLGS Program to create a cost-free option. This information will be used to determine whether exceptions will be granted to permit submission of subscriptions by fax or mail and cancellations of subscriptions. The likely respondents are state or local governments.

Because of the limited number of instances when a waiver may be sought, a "best estimate" has been developed based on the considered judgment of Treasury. This estimate has 1000 investors each requesting an average of one waiver per annum for a total of 1000 waiver requests annually.

The information required by Treasury in connection with a request for a waiver of the requirements under the regulations in sections 344.3(f)(3), 344.5(c), and 344.8(c) is similar to the type of information currently received by Treasury when an investor seeks relief from a provision of the current regulations. Because of the familiarity of SLGS investors with the current procedures for waivers and the infrequency of the instances in which these new waivers may be sought, the burden associated with compiling and submitting such information to Treasury is relatively modest. Accordingly, Treasury estimates that the proposed rule will impose .25 hours of burden with respect to each request with the total estimated annual burden of the proposed rule being 250 hours.

Estimated total annual reporting and/or recordkeeping burden: 250 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .25 hours.

Estimated number of respondents and/or recordkeepers: 1000.

List of Subjects in 31 CFR Part 344

Bonds, Government Securities, Securities.

For the reasons set forth in the preamble, we propose to amend 31 CFR part 344 by revising subparts A through D to read as follows (Appendixes A and B to part 344 remain unchanged):

PART 344—U.S. TREASURY SECURITIES—STATE AND LOCAL GOVERNMENT SERIES

Subpart A—General Information

Sec.

SLGSafe℠ Service

Subpart B—Time Deposit Securities

Subpart C—Demand Deposit Securities

Subpart D—Special Zero Interest Securities

Authority: 26 U.S.C. 141 note; 31 U.S.C. 3102, 3103, 3104, and 3121.

Subpart A—General Information

§ 344.0 What does this part cover?

(a) *What is the purpose of the SLGS securities offering?* The Secretary of the Treasury (the Secretary) offers for sale non-marketable State and Local Government Series (SLGS) securities to provide issuers of tax-exempt securities with investments from any amounts that constitute gross proceeds of an issue.

(b) *What types of SLGS securities are governed by this part?* This part governs the following SLGS securities:

(1) *Time Deposit securities—may be issued as:*

(i) certificates of indebtedness;
(ii) notes; or
(iii) bonds.

(2) *Demand Deposit securities*—may be issued as certificates of indebtedness.

(3) *Special Zero Interest securities.* Special Zero Interest securities, which were discontinued on October 28, 1996, were issued as:

(i) certificates of indebtedness; or
(ii) notes.

(c) *In what denominations are SLGS securities issued?* SLGS securities are issued in the following denominations:

(1) *Time Deposit securities*—a minimum amount of $1,000, or in any larger whole dollar amount; and

(2) *Demand Deposit securities*—a minimum amount of $1,000, or in any larger amount, in any increment.

(d) *How long is the offering in effect?* The offering continues until terminated by the Secretary.

§ 344.1 What special terms do I need to know to understand this part?

As appropriate, the definitions of terms used in this part are those found in the relevant portions of the Internal Revenue Code and the Income tax regulations.

Bond equivalent yield means the annualized yield computed by doubling the semiannual yield.

BPD's website refers to <*http://www.slgs.gov*>.

Business day(s) means Federal business day(s).

Current Treasury borrowing rate means the prevailing market rate, as determined by Treasury, for a Treasury security with the specified period to maturity. In the case where SLGS rates are needed for maturities currently not issued by Treasury, at our discretion, suitable proxies for Treasury securities and/or a rate setting methodology, as determined by the Secretary, may be used to derive a current Treasury borrowing rate. At any time that the Secretary establishes such proxies or a rate-setting method or determines that the methodology should be revised, we will make an announcement.

Day(s) means calendar day(s).

Issuer refers to the Government body that issues state or local government bonds described in section 103 of the Internal Revenue Code.

SLGS rate means the current Treasury borrowing rate, less five basis points, as released daily by Treasury in a SLGS rate table.

SLGS rate table means a compilation of SLGS rates available for a given day.

"We," "us," or "the Secretary" refers to the Secretary and the Secretary's delegates at the Department of the Treasury (Treasury), Bureau of the Public Debt (BPD). The term also extends to any fiscal or financial agent acting on behalf of the United States when designated to act by the Secretary or the Secretary's delegates.

Yield of a debt instrument is the discount rate that, when used in computing the present value of all principal and interest payments remaining to be made under the debt instrument, produces an amount equal to the price of the debt instrument. In comparing the yield of a SLGS security to the yield of a marketable debt instrument, the yield of the marketable debt instrument must be computed using the same compounding intervals and financial conventions used to compute interest on the SLGS security, as specified in § 344.4(c) of this part. When comparing the yield of a SLGS note or bond to the yield of a marketable debt instrument, use the bond equivalent yield. When comparing the yield of a SLGS certificate of indebtedness to the yield of a marketable debt instrument, use the simple annual yield.

You or *your* refers to a SLGSafe service user or a potential SLGSafe service user.

§ 344.2 What general provisions apply to SLGS securities?

(a) *What other regulations apply to SLGS securities?* SLGS securities are subject to:

(1) The electronic transactions and funds transfers provisions for United States securities, part 370 of this subchapter, "Electronic Transactions and Funds Transfers Related to U.S. Securities"; and

(2) The Appendix to subpart E to part 306 of this subchapter, for rules regarding computation of interest.

(b) *Where are SLGS securities held?* SLGS securities are issued in book-entry form on the books of BPD.

(c) *Besides BPD, do any other entities administer SLGS securities?* The Secretary may designate selected Federal Reserve Banks and Branches, as fiscal agents of the United States, to perform services relating to SLGS securities.

(d) *Can SLGS securities be transferred?* No. SLGS securities issued as any one type, *i.e.*, Time Deposit, Demand Deposit, or Special Zero Interest, cannot be transferred for other securities of that type or any other type. Transfer of securities by sale, exchange, assignment, pledge, or otherwise is not permitted.

(e) *What certifications must the issuer or its agent provide?*

(1) *Agent Certification.* When a commercial bank or other agent submits a subscription on behalf of the issuer, it must certify that it is acting under the issuer's specific authorization. Ordinarily, evidence of such authority is not required.

(2) *Municipal Bond Issuance Certification.* Upon starting a subscription, the subscriber must certify that the issuer has authorized the issuance of the state or local bonds.

(3) *Yield Certifications.*

(i) Upon starting a subscription for a SLGS security, a subscriber must certify that:

(A) If the issuer is purchasing a SLGS security with proceeds of the sale or redemption (at the option of the holder) before maturity of any marketable security, the yield on such SLGS security does not exceed the yield at which such marketable security was sold or redeemed; and

(B) If the issuer is purchasing a SLGS security with proceeds of the redemption before maturity of a Time Deposit security, the yield on the SLGS security being purchased does not exceed the yield that was used to determine the amount of redemption proceeds for such redeemed Time Deposit security.

(ii) Upon submission of a request for redemption before maturity of a Time Deposit security subscribed for on or after the date of publication of the final rule, the issuer must certify that no amount received from the redemption will be invested at a yield that exceeds the yield that is used to determine the amount of redemption proceeds for such Time Deposit security.

(f) *What are some practices involving SLGS securities that are not permitted?*

(1) *In General.* For SLGS securities subscribed for on or after the date of publication of the final rule, it is impermissible:

(i) To use the SLGS program to create a cost-free option;

(ii) To purchase a SLGS security with any amount received from the sale or redemption (at the option of the holder) before maturity of any marketable security, if the yield on such SLGS security exceeds the yield at which such marketable security is sold or redeemed;

(iii) To invest any amount received from the redemption before maturity of a Time Deposit security at a yield that exceeds the yield that is used to determine the amount of redemption proceeds for such Time Deposit security; or

(iv) To purchase a SLGS security with a maturity longer than is reasonably necessary to accomplish a governmental purpose of the issuer.

(2) *Examples.*

(i) *Simultaneous Purchase of Marketable and SLGS Securities.* In order to fund an escrow for an advance refunding, the issuer simultaneously enters into a purchase contract for marketable securities and subscribes for SLGS securities, such that either purchase is sufficient to pay the cash flows on the outstanding bonds to be refunded, but together, the purchases are greatly in excess of the amount necessary to pay the cash flows. The issuer plans that, if interest rates decline during the period between the date of starting a SLGS subscription and the requested date of issuance of SLGS securities, the issuer will enter into an offsetting agreement to sell the marketable securities and use the bond proceeds to purchase SLGS securities to fund the escrow. If, however, interest rates do not decline in that period, the issuer plans to use the bond proceeds to purchase the marketable securities to fund the escrow and cancel the SLGS securities subscription. This practice violates the prohibition on cancellation under § 344.5(c) or § 344.8(c), and no exception or waiver would be granted under this part because the ability to cancel in these circumstances would result in the SLGS program being used to create a cost-free option. In addition, this practice is prohibited under paragraph (f)(1)(i).

(ii) *Sale of Marketable Securities Conditioned on Interest Rates.* The existing escrow for an advance refunding contains marketable securities which produce a negative arbitrage. In order to reduce or eliminate this negative arbitrage, the issuer subscribes for SLGS securities at a yield higher than the yield on the existing escrow, but less than the permitted yield. At the same time, the issuer agrees to sell the marketable securities in the existing escrow to a third party and use the proceeds to purchase SLGS securities if interest rates decline between the date of subscribing for SLGS securities and the requested date of issuance of SLGS securities. The marketable securities would be sold at a yield which is less than the yield on the SLGS securities purchased. The issuer and the third party further agree that if interest rates increase during this period, the issuer will cancel the SLGS securities subscription. This practice violates the prohibition on cancellation under § 344.5(c) or § 344.8(c), and no exception or waiver would be granted under this part because the ability to cancel in these circumstances would result in the SLGS program being used to create a cost-free option. In addition, this practice is prohibited under paragraphs (f)(1)(i) and (ii).

(iii) *Sale of Marketable Securities Not Conditioned on Interest Rates.* The facts are the same as in paragraph (f)(2)(ii) of this section, except that in this case, the agreement entered into by the issuer with a third party to sell the marketable securities in order to obtain funds to purchase SLGS securities is not conditioned upon changes in interest rates on Treasury securities. This practice violates the yield gain prohibition in paragraph (f)(1)(ii) and is prohibited.

(iv) *Simultaneous Subscription for SLGS Securities and Sale of Option to Purchase Marketable Securities.* The issuer holds a portfolio of marketable securities in an account that produces negative arbitrage. In order to reduce or eliminate this negative arbitrage, the issuer subscribes for SLGS securities for purchase in sixty days. At the same time, the issuer sells an option to purchase the portfolio of marketable securities. If interest rates increase, the holder of the option will not exercise its option and the issuer will cancel the SLGS securities subscription. On the other hand, if interest rates decline, the option holder will exercise the option and the issuer will use the proceeds to purchase SLGS securities. This practice

violates the prohibition on cancellation under § 344.5(c) or § 344.8(c), and no exception or waiver would be granted under this part because the ability to cancel in these circumstances would result in the SLGS program being used to create a cost-free option. In addition, this practice is prohibited under paragraphs (f)(1)(i).

(v) *Purchase of SLGS Securities with a Maturity Longer than Reasonably Necessary.* An issuer issues bonds to finance a construction project. The issuer reasonably expects to spend all of the proceeds of the bonds on the project within three years after the bonds are issued. Nevertheless, on the issue date of the bonds, the issuer invests all of the bond proceeds in SLGS securities with a 20-year maturity. The issuer expects to redeem all of the SLGS securities during the three-year construction period. The issuer expects that interest rates will decline substantially during that three-year period and, as a result, the issuer will realize a substantial profit from redeeming the SLGS securities before maturity. The issuer's purchase of the SLGS securities violates paragraph (f)(1)(iv) because the 20-year maturity is longer than is reasonably necessary to accomplish the issuer's governmental purpose of constructing its project.

(g) *When and how do I pay for SLGS securities?* You must submit full payment for each subscription to BPD no later than 4 p.m., Eastern time, on the issue date. Submit payments by the Fedwire funds transfer system with credit directed to the Treasury's General Account. For these transactions, BPD's ABA Routing Number is 051036476.

(h) *What happens if I need to make an untimely change or do not settle on a subscription?* An untimely change can only be made in accordance with § 344.2(n) of this part. The penalty imposed for failure to make settlement on a subscription that you submit will be to render you ineligible to subscribe for SLGS securities for six months beginning on the date the subscription is withdrawn, or the proposed issue date, whichever occurs first.

(1) *Upon whom is the penalty imposed?* If you are the issuer, the penalty is imposed on you unless you provide the Taxpayer Identification Number of the conduit borrower that is the actual party failing to make settlement of a subscription. If you provide the Taxpayer Identification Number for the conduit borrower, the six-month penalty will be imposed on the conduit borrower.

(2) *What occurs if Treasury exercises the option to waive the penalty?* If you settle after the proposed issue date and we determine that settlement is acceptable on an exception basis, we will waive, under § 344.2(n), the six-month penalty under paragraph (h) of this section. You shall be charged a late payment assessment. The late payment assessment equals the amount of interest that would have accrued on the SLGS securities from the proposed issue date to the date of settlement plus an administrative fee of $100 per subscription, or such other amount as we may publish in the **Federal Register**. We will not issue SLGS securities until we receive the late payment assessment, which is due on demand.

(i) *What happens at maturity?* Upon the maturity of a security, we will pay the owner the principal amount and interest due. A security scheduled for maturity on a non-business day will be redeemed on the next business day.

(j) *How will I receive payment?* We will make payment by the Automated Clearing House (ACH) method for the owner's account at a financial institution as designated by the owner. We may use substitute payment procedures, instead of ACH, if we consider it to be necessary. Any such action is final.

(k) *How do I contact BPD?* BPD's contact information is posted on BPD's Web site.

(l) *Will the offering be changed during a debt limit or disaster contingency?* We reserve the right to change or suspend the terms and conditions of the offering (including provisions relating to subscriptions for, and issuance of, SLGS securities; interest payments; early redemptions; and rollovers) at any time the Secretary determines that the issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, or that a disaster situation exists. We will announce such changes by any means that the Secretary deems appropriate.

(m) *What are some of the rights that Treasury reserves in administering the SLGS program?* We may decide, in our sole discretion, to take any of the following actions. Such actions are final. Specifically, Treasury reserves the right:

(1) To reject any SLGSafe Application for Internet Access;

(2) To reject any electronic message or other message or request, including requests for subscription and redemption, that is inappropriately completed or untimely submitted;

(3) To refuse to issue any SLGS securities in any case or class of cases;

(4) To revoke the issuance of any SLGS securities and to declare the subscriber ineligible thereafter to subscribe for securities under the offering if the Secretary deems that such action is in the public interest and any security is issued on the basis of an improper certification or other misrepresentation (other than as the result of an inadvertent error) or there is an impermissible transaction under § 344.2(f); or

(5) To review any transaction for compliance with this part, including requiring an issuer to provide additional information, and to determine an appropriate remedy under the circumstances.

(n) *Are there any situations in which Treasury may waive these regulations?* We reserve the right, at our discretion, to waive or modify any provision of these regulations in any case or class of cases. We may do so if such action is not inconsistent with law and will not subject the United States to substantial expense or liability.

(o) *Are SLGS securities callable by Treasury?* No. Treasury cannot call a SLGS security for redemption before maturity.

SLGSafe℠ Service

§ 344.3 What provisions apply to the SLGSafe Service?

(a) *What is the SLGSafe Service?* SLGSafe is a secure Internet site on the World Wide Web through which subscribers submit SLGS securities transactions. SLGSafe Internet transactions constitute electronic messages under 31 CFR part 370.

(b) *Is SLGSafe use mandatory?* Yes. You must submit all transactions through SLGSafe.

(c) *What terms and conditions apply to SLGSafe?* The terms and conditions contained in the following documents, which may be downloaded from BPD's Web site and which may change from time to time, apply to SLGSafe transactions:

(1) SLGSafe Application for Internet Access and SLGSafe User Acknowledgment; and

(2) SLGSafe User's Manual.

(d) *Who can apply for SLGSafe access?* If you are an owner of SLGS securities or act as a trustee or other agent of the owner, you can apply to BPD for SLGSafe access. Other potential users of SLGSafe include, but are not limited to, underwriters, financial advisors, and bond counsel.

(e) *How do I apply for SLGSafe access?* Submit to BPD a completed SLGSafe Application for Internet Access. The form is found on BPD's Web site.

(f) *What are the conditions of SLGSafe use?* If you are designated as an

authorized user, on a SLGSafe application that we've approved, you must:

(1) Assume the sole responsibility and the entire risk of use and operation of your electronic connection;

(2) Agree that we may act on any electronic message to the same extent as if we had received a written instruction bearing the signature of your duly authorized officer;

(3) Submit electronic messages and other transaction requests exclusively through SLGSafe, except to the extent you establish to the satisfaction of BPD that good cause exists for you to submit such subscriptions and requests by other means; and

(4) Agree to submit transactions manually if we notify you that due to problems with hardware, software, data transmission, or any other reason, we are unable to send or receive electronic messages through SLGSafe.

(g) *When is the SLGSafe window open?* All SLGSafe subscriptions, requests for early redemption of Time Deposit securities, and requests for redemption of Demand Deposit securities must be received by BPD on business days no earlier than 10 a.m. and no later than 6 p.m., Eastern time. The official time is the date and time as shown on BPD's application server. Except as otherwise provided in § 344.5(d) and § 344.8(d), all other functions may be performed during the extended SLGSafe hours, from 8 a.m. until 10 p.m., Eastern time.

Subpart B—Time Deposit Securities

§ 344.4 What are Time Deposit securities?

Time Deposit securities are issued as certificates of indebtedness, notes, or bonds.

(a) *What are the maturity periods?* The issuer must fix the maturity periods for Time Deposit securities, which are issued as follows:

(1) *Certificates of indebtedness that do not bear interest.* For certificates of indebtedness that do not bear interest, the issuer can fix a maturity period of not less than fifteen days and not more than one year.

(2) *Certificates of indebtedness that bear interest.* For certificates of indebtedness that bear interest, the issuer can fix a maturity period of not less than thirty days and not more than one year.

(3) *Notes.* For notes, the issuer can fix a maturity period of not less than one year and one day, and not more than ten years.

(4) *Bonds.* For bonds, the issuer can fix a maturity period of not less than ten years and one day, and not more than forty years.

(b) *How do I select the SLGS rate?* For each security, the issuer shall designate an interest rate that does not exceed the maximum interest rate shown in the daily SLGS rate table as defined in § 344.1.

(1) *When is the SLGS rate table released?* We release the SLGS rate table to the public by 10 a.m., Eastern time, each business day. If the SLGS rate table is not available at that time on any given business day, the SLGS rate table for the preceding business day applies.

(2) *How do I lock-in a SLGS rate?* The applicable daily SLGS rate table for a SLGSafe subscription is the one in effect on the business day that you start the subscription process. This table is shown on BPD's Application server.

(3) *Where can I find the SLGS rate table?* The SLGS rate table can be obtained at BPD's Web site.

(c) *How are interest computation and payment dates determined?* Interest on a certificate of indebtedness is computed on an annual basis and is paid at maturity with the principal. Interest on a note or bond is paid semi-annually. The issuer specifies the first interest payment date, which must be at least thirty days and less than or equal to one year from the date of issue. The final interest payment date must coincide with the maturity date of the security. Interest for other than a full interest period is computed on the basis of a 365-day or 366-day year (for certificates of indebtedness) and on the basis of the exact number of days in the half-year (for notes and bonds). See the Appendix to subpart E to part 306 of this subchapter for rules regarding computation of interest.

§ 344.5 What other provisions apply to subscriptions for Time Deposit securities?

(a) *When is my subscription due?* The subscriber must fix the issue date of each security in the subscription. The issue date cannot be changed. The issue date must be a business day. The issue date cannot be more than sixty days after the date BPD receives the subscription. If the subscription is for $10 million or less, BPD must receive a subscription at least five days before the issue date. If the subscription is for over $10 million, BPD must receive the subscription at least seven days before the issue date.

EXAMPLE to paragraph (a): If SLGS securities totaling $10 million or less will be issued on November 16th, BPD must receive the subscription no later than November 11th. If SLGS securities totaling more than $10 million will be issued on November 16th, BPD must receive the subscription no later than November 9th. In all cases, if SLGS securities will be issued on November 16th, BPD will not accept the subscription before September 17th.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

(1) The issue date;

(2) The total principal amount;

(3) The issuer's name and Taxpayer Identification Number;

(4) The title of an official authorized to purchase SLGS securities;

(5) A description of the municipal bond issue;

(6) The certification required by § 344.2(e)(1), if the subscription is submitted by an agent of the issuer; and

(7) The certification required by § 344.2(e)(2) (relating to authorization of the state or local bonds).

(c) *Under what circumstances can I cancel a subscription?* You cannot cancel a subscription unless you establish, to the satisfaction of Treasury, that the cancellation is required for reasons unrelated to the use of the SLGS program to create a cost-free option.

(d) *How do I change a subscription?* You can change a subscription on or before 3 p.m., Eastern time, on the issue date. Changes to a subscription are acceptable with the following exceptions:

(1) You cannot change the issue date;

(2) You cannot change the aggregate principal amount originally specified in the subscription by more than ten percent; and

(3) You cannot change an interest rate to exceed the maximum interest rate in the SLGS rate table that was in effect for a security of comparable maturity on the business day that you began the subscription process.

(e) *How do I complete the subscription process?* The completed subscription must:

(1) Be dated and submitted by an official authorized to make the purchase;

(2) Separately itemize securities by the various maturities, interest rates, and first interest payment dates (in the case of notes and bonds);

(3) Not be more than ten percent above or below the aggregate principal amount originally specified in the subscription;

(4) Not be paid with proceeds that are derived, directly or indirectly, from the redemption before maturity of SLGS securities subscribed for on or before December 27, 1976;

(5) Include the certifications required by § 344.2(e)(3)(i); and

(6) Include the information required under paragraph (b), if not already provided.

(f) *When must I complete the subscription?* BPD must receive a completed subscription on or before 3 p.m., Eastern time, on the issue date.

§ 344.6 How do I redeem a Time Deposit security before maturity?

(a) *What is the minimum time a security must be held?*

(1) *Zero percent certificates of indebtedness of 16 to 29 days.* A zero percent certificate of indebtedness of 16 to 29 days can be redeemed, at the owner's option, no earlier than 15 days after the issue date.

(2) *Certificates of indebtedness of 30 days or more.* A certificate of indebtedness of 30 days or more can be redeemed, at the owner's option, no earlier than 25 days after the issue date.

(3) *Notes or bonds.* A note or bond can be redeemed, at the owner's option, no earlier than 30 days after the issue date.

(b) *Can I request partial redemption of a security balance?* You may request partial redemptions in any whole dollar amount; however, a security balance of less than $1,000 must be redeemed in total.

(c) *Do I have to submit a request for early redemption?* Yes. An official authorized to redeem the securities before maturity must submit an electronic request in SLGSafe. The request must show the Taxpayer Identification Number of the issuer, the security number, and the dollar amount of the securities to be redeemed. Upon submission of a request for redemption before maturity of a security subscribed for on or after the date of publication of the final rule, the request must include a yield certification under § 344.2(e)(3)(ii). BPD must receive the request no less than 14 days and no more than 60 days before the requested redemption date. You cannot cancel the request.

(d) *How do I calculate the amount of redemption proceeds for subscriptions on or after October 28, 1996?* For securities subscribed for on or after October 28, 1996, the amount of the redemption proceeds is calculated as follows:

(1) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, Treasury pays interest for the fractional interest period since the last interest payment date.

(2) *Redemption value.* The remaining interest and principal payments are discounted by the current Treasury borrowing rate for the remaining term to maturity of the security redeemed. This may result in a premium or discount to the issuer depending on whether the current Treasury borrowing rate is unchanged, lower, or higher than the stated interest rate of the early-redeemed SLGS securities. There is no market charge for the redemption of zero interest Time Deposit securities subscribed for on or after October 28, 1996. Redemption proceeds in the case of a zero-interest security are a return of the principal invested. The formulas for calculating the redemption value under this paragraph, including examples of the determination of premiums and discounts, are set forth in Appendix B of this part.

(e) *How do I calculate the amount of redemption proceeds for subscriptions from September 1, 1989, through October 27, 1996?* For securities subscribed for from September 1, 1989, through October 27, 1996, the amount of the redemption proceeds is calculated as follows:

(1) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, Treasury pays interest for the fractional interest period since the last interest payment date.

(2) *Market charge.* An amount shall be deducted from the redemption proceeds if the current Treasury borrowing rate for the remaining period to original maturity exceeds the rate of interest originally fixed for such security. The amount shall be the present value of the future increased borrowing cost to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. Present value is determined by using the current Treasury borrowing rate as the discount factor. When you request a redemption date that is less than thirty days before the original maturity date, we will apply the rate of a one month security as listed on the SLGS rate table issued on the day you make a redemption request. The market charge under this paragraph can be computed by using the formulas in Appendix A of this part.

(f) *How do I calculate the amount of redemption proceeds for subscriptions from December 28, 1976, through August 31, 1989?* For securities subscribed for from December 28, 1976, through August 31, 1989, the amount of the redemption proceeds is calculated as follows:

(1) *Interest.* Interest for the entire period the security was outstanding shall be recalculated if the original interest rate of the security is higher than the interest rate that would have been set at the time of the initial subscription had the term of the security been for the shorter period. If this results in an overpayment of interest, we will deduct from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semi-annually thereon, from the date of each overpayment to the date of redemption. The rate used in calculating the interest on the overpayment will be one-eighth of one percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period. If a bond is redeemed before maturity on a date other than a scheduled interest payment date, no interest is paid for the fractional interest period since the last interest payment date.

(2) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current Treasury borrowing rate for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. You can compute the market charge under this paragraph by using the formulas in Appendix A of this part.

(g) *How do I calculate the amount of redemption proceeds for subscriptions on or before December 27, 1976?* For bonds subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated as follows.

(1) *Interest.* The interest for the entire period the bond was outstanding shall be recalculated if the original interest rate at which the bond was issued is higher than an adjusted interest rate reflecting both the shorter period during which the bond was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issue for a marketable Treasury bond maturing on the semi-annual maturity period before redemption reduced by a penalty which must be the lesser of:

(i) One-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption; or

(ii) One-fourth of one percent.

(2) *Deduction.* We will deduct from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

Subpart C—Demand Deposit Securities

§ 344.7 What are Demand Deposit securities?

Demand Deposit securities are one-day certificates of indebtedness that are automatically rolled over each day until you request redemption.

(a) *How are the SLGS rates for Demand Deposit securities determined?* Each security shall bear a variable rate of interest based on an adjustment of the average yield for three-month Treasury bills at the most recent auction. A new rate is effective on the first business day following the regular auction of three-month Treasury bills and is shown in the SLGS rate table. Interest is accrued and added to the principal daily. Interest is computed on the balance of the principal, plus interest accrued through the preceding day.

(1) *How is the interest rate calculated?*

(i) First, you calculate the annualized effective Demand Deposit rate in decimals, designated "I" in Equation 1, as follows:

$$r = \left[\left(\frac{100}{p}\right)^{y/DTM} - 1\right] \times (1 - MTR) - TAC \qquad \text{(Equation 1)}$$

where:

I =Annualized effective Demand Deposit rate in decimals.

P =Average auction price for the most recently auctioned 13-week Treasury bill, per hundred, to three decimals.

Y =365 (if the year following issue date does not contain a leap year day) or 366 (if the year following issue date does contain a leap year day).

DTM =The number of days from date of issue to maturity for the most recently auctioned 13-week Treasury bill.

MTR =Estimated marginal tax rate, in decimals, of purchasers of tax-exempt bonds.

TAC =Treasury administrative costs, in decimals.

(ii) Then, you calculate the daily factor for the Demand Deposit rate as follows:

$$DDR = (1 + I)^{1/y} - 1 \qquad \text{(Equation 2)}$$

(2) *Where can I find additional information?* Information on the estimated average marginal tax rate and costs for administering Demand Deposit securities, both to be determined by Treasury from time to time, will be published in the **Federal Register**.

(b) *What happens to Demand Deposit securities during a Debt Limit Contingency?* At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, we will invest any unredeemed Demand Deposit securities in special ninety-day certificates of indebtedness. Funds invested in the ninety-day certificates of indebtedness earn simple interest equal to the daily factor in effect at the time Demand Deposit security issuance is suspended, multiplied by the number of days outstanding. When regular Treasury borrowing operations resume, the ninety-day certificates of indebtedness, at the owner's option, are:

(1) Payable at maturity;

(2) Redeemable before maturity, provided funds are available for redemption; or

(3) Reinvested in Demand Deposit securities.

§ 344.8 What other provisions apply to subscriptions for Demand Deposit securities?

(a) *When is my subscription due?* The subscriber must fix the issue date of each security in the subscription. The issue date cannot be changed. The issue date must be a business day. The issue date cannot be more than sixty days after the date BPD receives the subscription. If the subscription is for $10 million or less, BPD must receive the subscription at least five days before the issue date. If the subscription is for more than $10 million, BPD must receive the subscription at least seven days before the issue date.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

(1) The issue date;

(2) The total principal amount;

(3) The issuer's name and Taxpayer Identification Number;

(4) The title of an official authorized to purchase SLGS securities;

(5) A description of the municipal bond issue;

(6) The certification required by § 344.2(e)(1), if the subscription is submitted by an agent of the issuer; and

(7) The certification required by § 344.2(e)(2) (relating to authorization of the state or local bonds).

(c) *Under what circumstances can I cancel a subscription?* You cannot cancel a subscription unless you establish, to the satisfaction of Treasury, that the cancellation is required for reasons unrelated to the use of the SLGS program to create a cost-free option.

(d) *How do I change a subscription?* You can change a subscription on or before 3 p.m., Eastern time, on the issue date. You may change the aggregate principal amount specified in the subscription by no more than ten percent, above or below the amount originally specified in the subscription.

(e) *How do I complete the subscription process?* The subscription must:

(1) Be dated and submitted electronically by an official authorized to make the purchase;

(2) Include the certifications required by § 344.2(e)(3)(i) (relating to yield); and

(3) Include the information required under paragraph (b) of this section, if not already provided.

§ 344.9 How do I redeem a Demand Deposit security?

(a) *When must I notify BPD to redeem a security?* A Demand Deposit security can be redeemed at the owner's option, if BPD receives a request for redemption not less than:

(1) 1 business day before the requested redemption date for redemptions of $10 million or less; and

(2) 3 business days before the requested redemption date for redemptions of more than $10 million.

(b) *Can I request partial redemption of a security balance?* You may request partial redemptions in any amount. If your account balance is less than $1,000, it must be redeemed in total.

(c) *Do I have to submit a request for redemption?* Yes. An official authorized to redeem the securities must submit an electronic request through SLGSafe. The request must show the Taxpayer Identification Number of the issuer, the security number, and the dollar amount of the securities to be redeemed. BPD must receive the request by 3 p.m., Eastern time on the required day. You cannot cancel the request.

Subpart D—Special Zero Interest Securities

§ 344.10 What are Special Zero Interest securities?

Special zero interest securities were issued as certificates of indebtedness

and notes. The provisions of subpart B of this part (Time Deposit securities) apply except as specified in Subpart D of this part. Special Zero Interest securities were discontinued on October 28, 1996. The only zero interest securities available after October 28, 1996, are zero interest Time Deposit securities that are subject to subpart B of this part.

§ 344.11 How do I redeem a Special Zero Interest Security before maturity?

Follow the provisions of § 344.6(a)–(g) as published in the **Federal Register**, 65 FR 55399, Sept. 13, 2000, except that no market charge or penalty will apply when you redeem a special zero interest security before maturity.

Dated: September 24, 2004.

Donald V. Hammond,

Fiscal Assistant Secretary.

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Part V

Department of Justice

28 CFR Parts 35 and 36
Civil Rights Division; Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Proposed Rule

DEPARTMENT OF JUSTICE

28 CFR Parts 35 and 36

[CRT Docket No. 2004–DRS01; AG Order No. 2736–2004]

RIN 1190–AA46 and 1190–AA44

Civil Rights Division; Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

AGENCY: Department of Justice, Civil Rights Division.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Justice (Department) is issuing this Advance Notice of Proposed Rulemaking (ANPRM) in order to begin the process of adopting Parts I and III of the revised guidelines implementing the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA),[1] published by the Architectural and Transportation Barriers Compliance Board (Access Board) on July 23, 2004, at 69 FR 44083.[2] The ADA requires the Department to adopt enforceable accessibility standards that are "consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board" (42 U.S.C. 12186). The Department adopts and enforces standards consistent with the Access Board's guidelines under the Department's regulations implementing Title II (Subtitle A) and Title III of the ADA as the ADA Standards for Accessible Design (ADA Standards). Prior to their adoption by the Department, the revised Access Board guidelines are effective only as guidance to the Department; they have no legal effect on the public until the Department issues a final rule adopting revised ADA Standards. In this ANPRM, the current, legally enforceable ADA Standards will be referred to as the "current ADA Standards," while the revisions that will be proposed in the NPRM, based on Parts I and III of the revised ADA and ABA Accessibility Guidelines, will be referred to as the "revised ADA Standards." The Access Board's revised ADA Accessibility Guidelines will be cited as "ADAAG."

The purpose of this ANPRM is twofold: To solicit public input on various issues relating to the potential application of the revisions to the ADA Standards and to obtain background information for the regulatory assessment that the Department must prepare in the process of adopting the revisions to the ADA Standards.

DATES: All comments must be received by January 28, 2005.

ADDRESSES: Submit electronic comments and other data to *adaanprm.org* or *www.regulations.gov*. *See* **SUPPLEMENTARY INFORMATION**—*Electronic Submission of Comments and Electronic Access* for file formats and other information about electronic filing.

Address all written comments concerning this ANPRM to P.O. Box 1032, Merrifield, VA 22116–1032.

FOR FURTHER INFORMATION CONTACT: Anne Beckman or Kate Nicholson, Attorneys, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

You may obtain copies of this rule in large print, audiotape, or computer disk by calling the ADA Information Line at (800) 514–0301 (voice) and (800) 514–0383 (TTY). This rule is also available in an accessible format on the ADA Home Page at *www.ada.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Submission of Comments and Electronic Access

You may submit electronic comments to *adaanprm.org* or *www.regulations.gov*. You may view an electronic version of this proposed rule at *www.regulations.gov*. This rule is also available in an accessible format on the ADA Home Page at *www.ada.gov*. When submitting comments electronically, you must include CRT Docket No. 2004–DRS01 in the subject box and you must include your full name and address.

Inspection of Comments

All comments will be available to the public online at *adaanprm.org* and, by appointment, during normal business hours, at the office of the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, located at 1425 New York Avenue, Suite 4039, Washington, DC 20005. To arrange an appointment to review the comments, please contact the ADA Information Line listed above.

Purpose

On July 26, 1990, President George H.W. Bush signed into law the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), a comprehensive civil rights law prohibiting discrimination on the basis of disability. In 2001, President George W. Bush underscored the nation's commitment to ensuring the rights of over 50 million individuals with disabilities nationwide by announcing the New Freedom Initiative (*www.whitehouse.gov/infocus/newfreedom*). The New Freedom Initiative builds upon the legacy of the ADA by promoting improved access to assistive and universally designed technology, educational opportunities, the workplace, and community living for individuals with disabilities. The New Freedom Initiative also expressly recognizes the importance of ADA enforcement. The Access Board's publication of revised accessibility guidelines is the culmination of a long-term effort to facilitate ADA compliance and enforcement by eliminating inconsistencies among Federal accessibility requirements and between Federal accessibility requirements and State and local building codes. In support of this effort, the Department is announcing its intention to adopt, in a separate Notice of Proposed Rulemaking (NPRM) to follow this ANPRM, standards consistent with Parts I and III of the Access Board's revised guidelines as the ADA Standards for Accessible Design. To facilitate this process, the Department is seeking public comment on the issues discussed in this notice.

The ADA and Department of Justice Regulations

The ADA broadly protects the rights of individuals with disabilities in employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life and, in addition, requires that newly designed and constructed or altered public accommodations and commercial facilities be readily accessible to and usable by individuals with disabilities. Under the ADA, the Department is responsible for issuing regulations to implement Title II and Title III of the Act, except to the extent that transportation providers subject to Title II or Title III are regulated by the Department of Transportation.

Title II applies to State and local government entities, and, in Subtitle A, protects qualified individuals with

[1] Part II of the Architectural Transportation Barriers Compliance Board's revised guidelines applies to facilities subject to the ABA. Regulations implementing the ABA are issued by the Department of Defense, the Department of Housing and Urban Development, the General Services Administration, and the U.S. Postal Service.

[2] The Access Board's revised ADA Accessibility Guidelines are available on the Access Board's Web site at *www.access-board.gov*.

disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition of discrimination established by section 504 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 794) (hereinafter, Section 504), to all activities of State and local governments regardless of whether these entities receive Federal financial assistance (42 U.S.C. 12131 *et seq.*). Title III prohibits discrimination on the basis of disability in the activities of places of public accommodation (businesses that are generally open to the public and that fall into one of twelve categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities like factories, warehouses, or office buildings)—to comply with the ADA Standards (42 U.S.C. 12182 *et seq.*).

On July 26, 1991, the Department issued its final rules implementing Title II and Title III, which are codified at 28 CFR part 35 (Title II) and part 36 (Title III). Appendix A of the Title III regulation, at 28 CFR part 36, contains the current ADA Standards, which were based upon the ADAAG published by the Access Board on the same date. Under the Department's regulation implementing Title III, places of public accommodation and commercial facilities are required to comply with the current ADA Standards with respect to newly constructed or altered facilities. By contrast, under the regulation implementing Title II, State and local government entities are currently permitted to choose to apply either the requirements contained in the Uniform Federal Accessibility Standards (UFAS) or those contained in the ADA Standards with respect to their newly constructed or altered facilities. For greater uniformity, when the Department proposes to adopt the revised ADA Standards, the Department will also propose to withdraw the option of using UFAS under Title II.

The Roles of the Access Board and the Department of Justice

The Access Board was established by section 502 of the Rehabilitation Act, 29 U.S.C. 792. The Board consists of thirteen public members appointed by the President, of whom a majority must be individuals with disabilities, and twelve Federal agencies designated by law, including the Department of Justice and the Department of Transportation. The ADA requires the Access Board to "issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter * * * to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities" (42 U.S.C. 12204). The ADA requires the Department of Justice to issue regulations that include enforceable accessibility standards applicable to facilities subject to Title II or Title III that are consistent with the minimum guidelines issued by the Access Board (42 U.S.C. 12134, 12186).

The Department of Justice was extensively involved in the development of the ADAAG. As a Federal member of the Access Board, the Department voted to approve the revised guidelines. Although the enforceable standards issued by the Department under Title II and Title III must be consistent with the minimum guidelines published by the Access Board, it is the responsibility solely of the Department of Justice to promulgate standards and to interpret and enforce those standards.

The ADA also requires the Department to develop regulations with respect to existing facilities subject to Title II (Subtitle A) and Title III. How and to what extent the Access Board's guidelines are used with respect to the readily achievable barrier removal requirement applicable to existing facilities under Title III of the ADA and with respect to the provision of program accessibility under Title II of the ADA is solely within the discretion of the Department of Justice.

The Revised Guidelines

The revised ADA and ABA Accessibility Guidelines are the product of ten years of effort to modify and update the current guidelines, reflecting compromise and the cooperative efforts of a host of private and public entities. Part I provides scoping requirements for facilities subject to the ADA; scoping is a term used in the revised guidelines to describe requirements (set out in Parts I and II) that prescribe what elements and spaces and, in some cases, how many, must comply with the technical specifications set out in Part III. Part II provides scoping requirements for facilities subject to the ABA, and Part III provides uniform technical specifications for facilities subject to either statute. This revised format is intended to eliminate unintended conflicts between the two Federal accessibility standards and to minimize conflicts between the Federal regulations and the model codes that form the basis of many State and local building codes.

Since 1998, the Access Board has amended ADAAG four times, adding specific guidelines in the following areas: State and local government facilities (63 FR 2000, Jan. 13, 1998); building elements designed for use by children (63 FR 2060, Jan. 13, 1998); play areas (65 FR 62497, Oct. 18, 2000); and recreation facilities (67 FR 56352, Sept. 3, 2002). These amendments to ADAAG have not previously been adopted by the Department as ADA Standards.

The revisions to ADAAG that were published by the Access Board on July 23, 2004, represented the culmination of a lengthy review process. In 1994, the Access Board began the process of updating the original ADAAG by establishing an advisory committee comprised of members of the design and construction industry, the building code community, State and local government entities, and people with disabilities. In 1999, based largely on the report and recommendations of this advisory committee,[3] the Access Board issued a proposed rule to jointly update and revise its ADA and ABA accessibility guidelines, 64 FR 62248–01 (Nov. 16, 1999). In response to its rule, the Access Board received more than 2,500 comments from individuals with disabilities, affected industries, State and local governments, and others. The Access Board provided further opportunity for participation by holding public hearings throughout the nation. From the beginning, the Access Board also worked vigorously to harmonize the ADA and ABA Accessibility Guidelines with industry standards and model codes that form the basis for many state and local building codes. The Access Board released an interim draft of its guidelines to the public in April 2002, 67 FR 15509, in order to provide an opportunity for entities with model codes to consider amendments that would promote further harmonization. By the date of its final publication on July 23, 2004, 69 FR 44083, the revised ADA Accessibility Guidelines had been the subject of extraordinary public participation and review. Through this ANPRM, the Department is announcing its intention to publish a proposed rule that will

[3] After a two-year process of collaboration with the Access Board, the Advisory Committee issued "Recommendations for a New ADAAG" in September 1996.

adopt revised ADA Standards consistent with all of the amendments to ADAAG since 1998.

The Department's Request for Comments

Before publishing a proposed rule, the Department is seeking public comment on the issues discussed below. These issues have been divided into four substantive sections in this ANPRM: I. General Issues; II. Specific Issues; III. Miscellaneous Matters; and IV. Regulatory Assessment Issues.

Because the Department, as a member of the Access Board, has already had the opportunity to review comments provided to the Access Board during its development of the amendments to ADAAG, it is not necessary to resubmit those comments to the Department. In addition to seeking comments in response to the specific questions raised in this ANPRM, the Department is particularly interested in receiving comments from covered entities and from individuals with disabilities about the potential application of the new or revised ADAAG requirements as they may apply to existing facilities.

I. General Issues

The prospect of adopting revised ADA Standards raises a number of general issues, ranging from setting an effective date for the application of the revised ADA Standards to determining what effect the new provisions will have on those elements of facilities that are already in compliance with the current ADA Standards. Responses should clearly identify the specific question being addressed according to the numbered questions in this document.

Effective Date: Time Period

Current Approach. The Department must set an effective date for the application of the revised ADA Standards to facilities that will be newly constructed or altered following the publication of a final rule. When the ADA was enacted, the effective dates for various provisions were delayed in order to provide time for covered entities to become familiar with their new obligations. Title II and Title III of the ADA generally became effective on January 26, 1992, six months after the regulations were published. New construction under Title II and alterations under either Title II or Title III had to comply with the design standards on that date. For new construction under Title III, the requirements applied to facilities designed and constructed for first occupancy after January 26, 1993—eighteen months after the ADA Standards were published by the Department.[4]

Possible New Approaches. The Department is seeking comment on the following three options.

Option I: Eighteen months. Under this option, the effective date of the proposed revised ADA Standards would be eighteen months after publication of the final rule—the same time period used for the effective date of the ADA as a whole and for the effective date of the current ADA Standards with respect to new construction under Title III. Although this time period has the advantage of ample precedent, it was originally used in the context of a new law with which there was little or no familiarity or experience. It may be inappropriately long in the current context.

Option II: Six months. Under the second option, the effective date of the proposed revised ADA Standards would be six months after publication of the final rule—the time period used for newly constructed and altered facilities subject to Subtitle A of Title II of the ADA and for altered facilities subject to Title III. The Department is considering this shorter period of time because the changes in scoping and technical specifications to the revised ADA Standards are primarily incremental. Further, those requirements that are new (for elements and spaces that are not addressed in the current ADA Standards) have been developed with extensive public participation and, in some cases, have been available to the public through the amended editions of ADAAG for several years. Finally, the new format and organization of the revised ADA Standards would follow the format and organization of the model codes and should be more familiar to covered entities and design professionals than were the current ADA Standards when adopted. The Department recognizes, however, that because covered entities may have large ongoing construction projects, such entities may need longer than this proposed six-month period to incorporate the final changes to the revised ADA Standards into the design of those projects.

Option III: Twelve months. Under the third option, the effective date of the revised ADA Standards would be twelve months after publication of the final rule. This option shortens the time period envisioned by Option I, while providing more time than Option II in order to allow for the integration of the revised ADA Standards into larger construction projects.

Question 1. Should the effective date of the proposed revised ADA Standards be modeled on the effective date used to implement the current ADA Standards—eighteen months after publication of the final rule—or a shorter period? If you favor a shorter period, please indicate which period you favor and provide as much detail as possible in support of your view.

Effective Date: Triggering Event

The term "triggering event" identifies the event or action that compels compliance with the ADA Standards. The Department's regulations implementing Title II (28 CFR Part 35) and Title III of the ADA (28 CFR Part 36) establish the separate triggering events for new construction and alterations that are explained below. The Department's experience to date indicates that these triggering events work well; therefore, the Department is reluctant to change them. The Department recognizes, however, that ADAAG now includes requirements for types of facilities, such as recreation and play areas, that may pose design and construction issues compelling a different result.

Current Approach. Title III of the ADA and the implementing regulations provide that covered entities must design and construct facilities "for first occupancy" after the effective date in accordance with the current ADA Standards (28 CFR 36.401). Thus, for purposes of Title III, the triggering event for newly constructed facilities, which is dictated by statute, is first occupancy. The Title III regulation defines "first occupancy" in relation to the completion of the application for a building permit (which had to have been completed less than twelve months before the effective date) and the issuance of a certificate of occupancy (which had to have been completed after the effective date). With respect to altered facilities under Title III, the triggering event is the date "physical alteration begins" (28 CFR 36.402(a)(2)). The implementing regulation for Title II provides that the triggering event for both new construction and alterations is the commencement of construction (28 CFR 35.151).

Possible Additional Approach. To the extent applicable, the Department intends to continue to use the same triggering event for each category

[4] Subtitle A of Title III of the ADA, at 42 U.S.C. 12183, prohibits the design or construction of facilities that are not readily accessible to and usable by individuals with disabilities when such facilities are intended for first occupancy more than 30 months after enactment of the ADA, except in cases of structural impracticability. This requirement is implemented in the Department's Title III regulation at 28 CFR 36.401.

described above; that is, for new construction under Title III, first occupancy;[5] for alterations under Title III, when physical alteration begins; and under Title II, for both new construction and alterations, the commencement of construction. The Department is concerned, however, that while these triggering events are appropriate for most building situations, they may not necessarily be appropriate for all of them—particularly if there are Title III facilities that do not require building permits or that do not receive certificates of occupancy. The Department is concerned that, as applied to these different types of facilities, the triggering events established under the Title II and Title III regulations may be difficult to apply. Therefore, the Department is considering "first use" as an alternative trigger for such facilities.

Question 2. The Department is asking the public to identify any facilities for which the current triggering events might prove unworkable. Are there facilities covered by the revised ADA Standards that are subject to Title III for which first occupancy/physical alteration do not apply in the new construction/alteration context? Please be specific about the type of facility that would be affected, and what other event, such as "first use," would work better for each specified type of facility. Are there facilities subject to Title II for which commencement of construction would be difficult to apply? Please be specific about the type of facility, and what other event, such as "first use," would work better for each specified type of facility.

Revised ADA Standards: Existing Facilities

As noted above, the Department anticipates proposing revised ADA Standards for new construction and alterations that are consistent with ADAAG. In making this proposal, one of the most important issues that the Department must address is the effect that new or changed ADA Standards will have on the continuing obligation of public accommodations to remove architectural, transportation, and communication barriers in existing facilities to the extent that it is readily achievable to do so. This issue has not been addressed in ADAAG because it is outside of the scope of the Access Board's authority under the ADA. Responsibility for implementing Title III's requirement that public accommodations eliminate existing architectural barriers where it is readily achievable to do so rests solely with the Department of Justice.

The Department's current regulation implementing Title III of the ADA, 28 CFR 36.304, establishes the requirements for readily achievable barrier removal by public accommodations. Under this regulation, the Department uses the ADA Standards as a guide to identify what constitutes an architectural barrier. Once adopted, the revised ADA Standards will present a new reference point for Title III's requirement to remove the architectural barriers in existing places of public accommodation. The Department is concerned that the incremental changes in ADAAG may place significant cost burdens on businesses that have already complied with the ADA Standards in their existing facilities. The Department therefore seeks to strike an appropriate balance to ensure that people with disabilities are able to achieve access to buildings and facilities without imposing unnecessary financial burdens on existing places of public accommodation with respect to their continuing obligations under the readily achievable barrier removal requirement.

The Department is considering several ways in which to reduce such financial burdens. One approach is to establish a safe harbor under which the Department would deem compliance with scoping and technical requirements in the current ADA Standards by elements in existing facilities to constitute compliance with the ADA for purposes of meeting barrier removal obligations. Another possible approach is to reduce the scoping requirements for some of the new or changed requirements as they are applied to existing facilities. Yet another potential approach is to determine that certain new or revised technical requirements are inappropriate for barrier removal and thus would not be required in satisfaction of a barrier removal obligation. These approaches can be used alone or in combination.

Option I: Safe harbor for compliant elements. This option would provide a safe harbor for any elements of existing facilities that are in compliance with the specific requirements (scoping and technical specifications) of the current ADA Standards. For this purpose, compliance with the scoping and technical requirements of the current ADA Standards would be determined on an element-by-element basis in each covered facility; that is, only those elements in each covered facility that are in compliance with applicable scoping and technical requirements in the current ADA Standards would be subject to the safe harbor. Elements that are addressed for the first time in the revised ADA Standards, however, would not be subject to the safe harbor.

Several considerations support this approach. To the extent places of public accommodation have complied with the specific scoping and technical requirements of the current ADA Standards, it would be an inefficient use of resources to require them to retrofit simply to comply with the revised ADA Standards if the change provides only a minimal improvement in accessibility. In addition, covered entities would have a strong disincentive to comply voluntarily with the readily achievable barrier removal requirement if, every time the ADA Standards are revised, they are required once again to retrofit elements just to keep pace with the current standards.

The Department recognizes that there are also considerations opposing this approach. When adopted, some of the revised ADA Standards will reflect up-to-date technologies that could provide critical access for individuals with disabilities in certain contexts that is not provided under the current ADA Standards. While the incremental benefit of the revisions may be minimal with respect to some elements, with respect to others the revised ADA Standards could confer a significant benefit on some individuals with disabilities that would be forgone if this option is adopted. Because there are valid arguments on both sides of this issue, the Department is seeking public comment on the issue of whether or not to provide a safe harbor for design elements that comply with the current ADA Standards.

This safe harbor option would, of course, have no effect on noncompliant elements. To the extent that elements in existing facilities are not already in compliance with scoping and technical requirements in the current ADA Standards, existing public accommodations would be required to remove barriers, to the extent readily achievable, to make elements comply with the revised ADA Standards.

Here is an example of how that option would work. The current ADA Standards address maximum side reach ranges, which are required to be no higher than 54 inches. The revised ADA Standards lower that range to 48 inches (ADAAG 308.3). If this option was adopted, a public accommodation, *e.g.*, a hotel chain, that had lowered its light switches to 54 inches or an entity that had lowered its pay phones to 54 inches

[5] If the Department decides to use the six-month effective date of Option II in Question 1, above, the application of the two-step test for first occupancy (building permit and certificate of first occupancy) currently used for new construction under Title III would be modified to fit within that period.

would not be required to do further barrier removal to reduce those elements to 48 inches. However, if this option was not adopted, even existing facilities that had complied with the current ADA Standards by ensuring that all required accessible elements were no higher than 54 inches would be required to retrofit those elements to lower them to 48 inches, assuming it was readily achievable to do so. Under both options, however, existing facilities that had not complied with the current ADA Standards (whose required accessible elements were, for example, located 60 inches high) would still be required to undertake barrier removal to lower them to 48 inches, if readily achievable.

This option involves only those elements that are addressed by, and in compliance with, specific requirements (scoping and technical specifications) in the current ADA Standards. Elements that will be addressed for the first time in the revised ADA Standards would not be eligible for the safe harbor.

Question 3. Should the Department provide any type of safe harbor so that elements of facilities already in compliance with the current ADA Standards need not comply with the revised ADA Standards? Please provide as much detail as possible in support of your view.

Option II: Reduced scoping for specified requirements. The scoping requirements in the revised ADA Standards apply to new construction and alterations. Under a reduced scoping option, the Department would, for the purposes of barrier removal, provide an alternative set of reduced scoping requirements applicable to certain specific new or changed technical requirements in the revised ADA Standards. Examples of such new technical requirements might include specific elements in the guidelines adopted for play areas and recreation facilities.

For example, ADAAG now requires a swimming pool over 300 feet in perimeter to have two accessible means of entry to the pool (ADAAG 242.2). The Department anticipates adopting new standards based on this requirement. Under the current ADA Standards, while there have been requirements addressing parking, the entrance to the facility, common areas, and the route to the pool, there has been no scoping or technical requirement addressing entry into and exit from the pool itself.

In implementing this new requirement with respect to existing facilities pursuant to the readily achievable barrier removal requirement, the Department is considering whether it might be appropriate to state that providing only one accessible means of entry to an existing pool satisfies the obligation for readily achievable barrier removal. Even with this reduced scoping, the readily achievable defense would still be available to covered entities that cannot afford to provide even one means of entry. Under this option, however, even if it would be readily achievable for that entity to provide two accessible means of entry, it would only be required to provide one. This is just one example of a requirement for which reduced scoping might be appropriate. Others might include the minimum number of accessible saunas and steam rooms required in existing facilities or the minimum number of accessible boat slips required in existing boating facilities.

Option III: Exemption from specified requirements. The Department is also considering whether to identify particular elements in the scoping and technical requirements in the revised ADA Standards that will not be required for barrier removal. Among the possibilities is the requirement that handrails on stairs must meet accessibility requirements even in buildings that have elevator access (ADAAG 210). Under this option, the Department could determine that entities will not be required, for purposes of compliance with the readily achievable barrier removal requirement, to make handrails on stairs in an already existing elevator-accessible facility comply with the scoping and technical requirements in the revised ADA Standards.

There is precedent for this third option in the Department's current regulations, which currently exempt employee work areas from any obligation to retrofit pursuant to the readily achievable barrier removal requirement. Because the purpose of Title III is to ensure that public accommodations are accessible to their clients and customers, it is the Department's longstanding view that the barrier removal requirement does not apply to areas used exclusively as employee work areas (28 CFR part 36, App. B). The Department intends to continue this exemption in the new regulations but notes that, notwithstanding this exemption, Title I of the ADA requires employers to provide reasonable accommodation for any employee with a disability. Thus, to the extent any provisions in the revised ADA Standards address elements or spaces in work areas, compliance with those provisions with respect to those elements or spaces will not be necessary to comply with an entity's obligations under the readily achievable barrier removal requirement.

Question 4. Reducing or exempting specified requirements.

a. Should the Department adopt Option II, and develop an alternative set of reduced scoping requirements for the barrier removal obligation? If so, which specific requirements or elements should be addressed? If possible, provide detailed information about the costs or difficulties that would be incurred in making the modification.

b. Should the Department adopt Option III, and exempt certain scoping and technical requirements in the revised ADA Standards that will not be required for barrier removal? If so, which specific requirements or elements should be addressed? If possible, provide detailed information about the costs or difficulties that would be incurred in making the modification.

II. Specific Issues

The prospect of adopting revised ADA Standards also raises a number of issues for the Department with respect to specific provisions, ranging from whether altered detention and correction cells should be required to be accessible to what kinds of housing currently classified as transient should be reclassified as residential.

Reduced Scoping for Large Assembly Facilities

The ADAAG section 221 will reduce the number of wheelchair spaces and companion seats required in assembly areas that seat more than 500 patrons. The current ADA Standards provide that assembly areas with more than 500 seats must provide six wheelchair spaces plus one additional wheelchair space for each additional 100 seats. ADAAG provides that assembly areas that have 501 to 5000 seats must provide six wheelchair spaces plus one additional wheelchair space for each additional 150 seats (or fraction thereof) between 501 and 5000. Assembly areas that have more than 5000 seats must provide 36 wheelchair spaces plus one additional wheelchair space for each 200 seats (or fraction thereof) over 5000. Both the current ADA Standards and ADAAG require assembly areas to provide a companion seat adjacent to each wheelchair space.

The Department has been asked whether the regulations requiring the maintenance of accessible features in covered facilities would require existing assembly areas that comply with the scoping of the current ADA Standards to maintain that level of scoping, or if those assembly areas would be permitted to reduce the number of

wheelchair locations and companion seats to the level established in ADAAG. The Department's regulations contain two provisions that would apply to this situation. The regulations implementing Title II and Title III both provide that covered entities are to maintain in operable condition "those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities" (28 CFR 35.133 and 36.211). In addition, the current ADA Standards prohibit alterations that decrease accessibility below the requirements for new construction in effect at the time of the alteration, 28 CFR pt. 36, App. A, 4.1.6 (1) (a). Because these provisions clearly establish that covered entities must maintain only the required level of accessibility, the Department expects that the operators of existing assembly areas who want to adjust the number of wheelchair spaces in their facility to comply with the revised ADA Standards will be permitted to do so.

Alteration of Cells in Correctional Facilities

ADAAG establishes requirements for the design and construction of cells in detention and correctional facilities. The Access Board accepted comments on this issue during two separate rulemaking proceedings: the rulemaking that developed the guidelines for State and local government facilities completed in 1998, and the rulemaking that developed the guidelines that the Department is now proposing to adopt. The Department anticipates that it will propose revised ADA Standards that are consistent with the ADAAG requirements. However, when it adopted these new requirements, the Access Board specifically deferred one decision to the Attorney General. ADAAG sections 232.2 and 232.3 provide that "Alterations to cells shall not be required to comply, except to the extent determined by the Attorney General." This provision first appeared in the Access Board's 1999 proposed rule. At that time, the Access Board explained that—

> In publishing final amendments for State and local government facilities, the Board acknowledged that prison operators commenting on the proposed amendments urged that access not be required in altered correctional facilities because some existing facilities would not be able to support inmates with disabilities even if cells were made accessible. These comments also pointed to difficulties in complying due to design constraints unique to correctional facilities. In response, the Board had reserved a proposed scoping requirement for altered cells, but noted that public entities, including correctional entities, have an obligation to provide program access, as required by the Department of Justice (DOJ) title II regulations. Further, the Board noted that the program access requirement may effectively determine the degree of access necessary in an alteration. 64 FR 62259 (Nov. 16, 1999).

The Department anticipates that when it proposes to adopt ADA Standards consistent with ADAAG requirements applicable to facilities subject to Title II, the Department will establish requirements for alterations to cells. Therefore, the Department is now seeking public comment about the most effective means to ensure that existing correctional facilities are made accessible to prisoners with disabilities. The Department offers the three following alternatives for consideration:

Option 1: Require all altered elements to be accessible. The first option is to maintain the current policy applicable to other ADA alterations requirements. Under the current regulations, when a facility is altered, each altered element and space must comply with the applicable provisions of the ADA Standards. Applying this rule would require correctional facilities to provide accessible elements as existing cells are altered until the required number of accessible cells has been provided.

Option 2: Permit substitute cells to be made accessible within the same facility. The second option is to modify the alterations requirement by permitting the correctional authorities to meet their obligation by providing the required accessible features in cells within the same facility other than those specific cells in which alterations are planned. This would provide flexibility in deference to the unique circumstances presented in correctional and detention facilities by permitting local officials to choose between providing accessibility in the altered area or providing an appropriate accessible cell elsewhere in the altered facility. This alternative responds to the concern that the ADA's alterations provision as applied to correctional facilities may result in piecemeal accessibility that does not always provide the level of accessibility needed by individuals with disabilities. This option permits correctional and detention facility operators to select the most appropriate location for the accessible cells, while retaining the requirement for providing accessibility at the time of an alteration.

Option 3: Permit substitute cells to be made accessible within a prison system. This option also responds to the expressed concern that the alterations requirement as applied to prisons results in piecemeal accessibility. The Department's Title II regulation requires public entities to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities (28 CFR 35.150). The idea behind this alternative is to focus on ensuring that prisoners who have disabilities are housed in the facilities that best meet their needs. Under this option, correctional officials would not be required to include accessible cells in each facility that is being altered. Instead, they would be required to provide an equivalent accessible cell in an existing facility that is sufficiently accessible to ensure that prisoners can have access to the programs offered in the facility where they are housed. This option would address concerns that have been expressed that piecemeal alterations of cells may result in accessible cells being located in older facilities in which the existing construction provides limited opportunities to provide access to other areas of the facility.

If this option is adopted, the Department anticipates that the regulation would specify that public entities that elect to provide accessibility through this alternative for detention and correctional facilities would be required to ensure that prisoners with disabilities are housed in facilities appropriate to the level of confinement that would apply to any other individual sentenced for a similar offense. Such facilities would also be required to make available a range of programs and benefits similar to that made available to the general prison population.

Question 5. Should the Department retain the current ADA requirement to make each altered facility accessible to the extent required by the ADA Standards or should it adopt an alternative approach to ensure accessibility in correctional institutions? If you favor an alternative approach, please indicate which approach you favor and provide as much detail as possible in support of your view.

Recreation Facilities: Golf Courses

ADAAG now establishes comprehensive requirements for the design and construction of accessible golf courses. In addition to establishing scoping and technical requirements for individual elements in or serving the golf course, section 206.2.15 provides that—

> At least one accessible route shall connect accessible elements and spaces within the boundary of the golf course. In addition, accessible routes serving golf car rental areas; bag drop areas; course weather shelters

complying with 238.2.3; course toilet rooms; and practice putting greens, practice teeing grounds, and teeing stations at driving ranges complying with 238.3 shall comply with Chapter 4 except as modified by 1006.2. EXCEPTION: Golf car passages complying with 1006.3 shall be permitted to be used for all or part of accessible routes required by 206.2.15.

The Department anticipates that it will propose to adopt the ADAAG requirements for golf courses. However, the Department is aware that these requirements may raise operational issues that are within the purview of the Department's enforcement responsibilities.

The Department has been asked whether, and under what circumstances, a golf course must make specially designed or adapted golf cars available to persons with mobility impairments who are not able to walk from a golf car passage to the fairways or to the green.

The Department is considering addressing this issue in its ADA regulations by requiring each golf course that provides golf cars to make at least one, and possibly two, specialized golf cars available for the use of persons with disabilities, with no greater advance notice to be required from the disabled golfer than from other golfers. The Department believes that relevant considerations in determining whether and under what circumstances this requirement should be imposed include (i) whether the golf course makes golf cars available to golfers who are not disabled, (ii) the burden that such a requirement would impose on golf course facilities, and (iii) whether the course requires the use of golf cars during play.

The Department understands that the principal type of special golf car currently available is a one-seater with hand controls and a swivel seat (the swivel seat enables the golfer to play from the car). Golf course operators have expressed concern in the past that the available one-person cars (i) tip over easily on steep terrain and (ii) are too heavy for green use. Producers of newer designs for one-person cars claim to have overcome these problems.

Question 6. To what extent should golf courses be required to make accessible golf cars available to people with disabilities? Please provide as much detail as possible in support of your view. The Department also requests specific information concerning the extent to which the one-person machines on the market are, in fact, stable, lightweight, and moderately priced. The Department also requests information about whether golf cars are being manufactured that are readily adaptable for the addition of hand controls and swivel seats and whether such cars are otherwise suitable for driving on fairways and greens.

Coverage of Homeless Shelters, Halfway Houses, Transient Group Homes, and Other Social Service Establishments

For the first time, ADAAG includes specific scoping and technical provisions that apply to new construction and alteration of residential facilities. Residential facilities are facilities that contain dwelling units used primarily as long-term residences. Residential facilities can be distinguished from transient lodging facilities, which are facilities that provide short-term accommodations used primarily for sleeping (such as hotels). Previously existing ADAAG requirements for transient lodging facilities have been revised. As part of this revision, the Access Board deleted section 9.5 of the 1991 ADAAG, which established scoping and technical requirements for homeless shelters, group homes, and similar social service establishments. This deletion creates a gap in coverage that the Department's regulation must address.

The Department anticipates that when the ADA Standards are revised, the Department will provide that the facilities now covered by section 9.5 will be subject to the ADAAG requirements for residential facilities rather than the requirements for transient lodging. The Department considers this approach to be the most appropriate because the listed facilities are subject to the ADA because of the nature of the services that they provide, not the duration of those services. Program participants may be housed on either a short-term or a long-term basis in facilities such as shelters, halfway houses, and group homes.

The Department anticipates that this classification will also make it easier for the covered entities to satisfy their obligations under both the ADA and Section 504. The Department believes that many of these listed entities are recipients of Federal financial assistance from the Department of Housing and Urban Development (HUD). Therefore, they are subject to the requirements of both HUD's Section 504 regulation and the ADA Standards. ADAAG's specifications for the design of residential dwelling units have been coordinated with HUD's Section 504 requirements to eliminate inconsistencies and potential conflicts. The specifications for transient lodging units have not been similarly coordinated.

Therefore, if the Department continues to treat these listed facilities as transient lodging, the facilities may be subject to the provisions of two separate, and possibly conflicting, regulatory requirements for design and construction. If the Department modifies its current ADA Standards to permit these facilities to be designed in compliance with the requirements applicable to residential dwelling units, the potential conflict will be eliminated.

The Department is seeking public comment on this proposal.

Equipment Issues

In ADAAG, the Access Board has established guidelines applicable to a range of fixed equipment—equipment that is built into or permanently attached to a new or altered facility—that is subject to the ADA. The Department intends to adopt regulations based on these ADAAG specifications to govern the installation of newly manufactured equipment in new construction or alterations. Because the Access Board's jurisdiction extends only to the design, construction, and alteration of buildings and facilities, ADAAG does not address operational issues such as the acquisition of previously owned equipment, and it does not address coverage of movable or portable equipment or other personal property such as furniture. These issues are, however, within the jurisdiction of the Department. Therefore, the Department is seeking comments on the issues discussed below.

Previously Owned Fixed Equipment. The Department is aware that some building elements to which the ADA Standards apply, such as ATMs or amusement rides, utilize manufactured equipment that becomes built into the structure of a facility (so-called fixed equipment), which differs from equipment that continues to be portable or movable (so-called free-standing equipment). This fixed equipment may be new for the covered entity, but it is not necessarily newly manufactured. Some businesses traditionally elect to conserve costs by installing previously owned equipment and have expressed their concern that the Department will consider such fixed equipment as new for purposes of compliance with the revised ADA Standards merely because its first use occurs after the effective date of the revised ADA Standards. The Department generally views the installation of previously used equipment in a new location as an alteration, rather than new construction. Therefore, only the elements of the

facility that are actually altered, such as the route to the equipment, the mounting height, or the entrance that provides access to the equipment must comply with the revised Standards. Previously owned equipment installed as fixed equipment will not be treated as new for purposes of compliance with the revised ADA Standards.

Application of ADA Standards and ADA to Free-Standing Equipment. The Department is also aware that the public has expressed some uncertainty with respect to whether the ADA Standards apply to free-standing equipment, such as soft-drink dispensers, video arcade machines, free-standing ATMs, and furniture. Because ADAAG is intended to implement the ADA requirements applicable to the design, new construction, and alteration of buildings and facilities, the revised ADA Standards will apply directly only to fixed equipment—as described above, equipment that becomes built into the structure of a facility—and not to free-standing equipment.

The ADA itself, however, extends beyond the boundaries of new construction and alterations. The Department is required to develop regulations that implement the general nondiscrimination requirements of Title II and Title III, as well as the specific prohibitions on discrimination in Title III. Under this authority, the Department may establish requirements affecting equipment that is not fixed to ensure that people with disabilities have an equal opportunity to participate in the programs, services, and activities offered by covered entities. In establishing these requirements, the Department may look to the ADA Standards for guidance in determining whether various types of equipment or furnishings are accessible to people with disabilities.

The Department's current regulations implementing Title II and Title III of the ADA address equipment in several different contexts. The definition of "facility" in each regulation expressly includes "equipment" (28 CFR 35.104 and 36.104). Fixed equipment required to be accessible in new construction and alterations is identified in the ADA Standards (28 CFR part 36, App. A). Examples of accessible equipment that may be required are included in the definitions of auxiliary aids in 28 CFR 35.104 and 36.104. In addition, Appendix B to the Title III regulation, 28 CFR part 36, App. B, Proposed Section 36.309, second paragraph, further explains that—

> Purchase or modification of equipment is required in certain instances by the provisions in 36.201 and 36.202 [general prohibitions on discrimination]. For example, an arcade may need to provide accessible video machines in order to ensure full and equal enjoyment of the facilities and to provide an opportunity to participate in the services and facilities it provides. The barrier removal requirements of 36.304 will apply as well to furniture and equipment. * * *

Because covered entities continue to raise questions about the extent of their obligation to provide accessible free-standing equipment, the Department is considering whether there is a need for the Department's ADA regulations to contain specific language about the acquisition and use of mobile, portable, and other free-standing equipment or furnishings used by covered entities to provide services. If the Department does address specific requirements for free-standing equipment, it may look to the ADA Standards for guidance in determining whether various types of free-standing equipment are accessible to people with disabilities.

Question 7. The Department invites public comment on its approach to these issues. Because the Department anticipates that it may issue further guidance with respect to the acquisition and use of mobile, portable, and other free-standing equipment and furnishings used by covered entities to provide services, the Department is seeking comment on the question whether such guidance is necessary. If you think that such guidance is needed, please provide specific examples of situations that should be addressed.

Stadium-Style Seating

Background. Beginning in the mid-1990s, the first stadium-style movie theaters were built in the United States. These theaters employed a new type of theater design whereby, rather than placing rows of seats on a gradually sloping floor as in traditional-style movie theaters, all but a few rows of seats near the front of each theater were located on a series of elevated tiers or risers (typically 12–18 inches in height). The enhanced lines of sight provided by these stadium-style movie theaters proved to be highly popular with the movie going public and, consequently, fueled a boom in stadium-style theater construction nationwide.

While stadium-style theater designs have evolved somewhat over the years and typically vary from theater circuit to theater circuit, two essential features have remained constant: (i) Movie patrons seated in the stadium sections of stadium-style theaters enjoy enhanced lines of sight to the screen as compared to patrons seated in the traditional sections of these theaters; and (ii) movie patrons who use wheelchairs are excluded from the stadium sections of the great majority of existing stadium-style theaters nationwide.

Section 4.33.3 of the current ADA Standards requires, among other things, that "[w]heelchair areas * * * shall be *provided* * * * *lines of sight comparable to those for members of the general public.*" This line-of-sight requirement has generated considerable debate as applied to stadium-style movie theaters. Persons with disabilities and disability rights organizations have complained to the Department that they are afforded inferior lines of sight when limited to the traditional section of stadium-style theaters. Specifically, they have complained that, due to design considerations particular to stadium-style theaters (such as, for example, typically larger and wider screens), sitting in rows close to the screen in the traditional section often results in a painful and uncomfortable viewing experience, as well as distortion of images on the screen. Movie theater owners and operators, on the other hand, have countered that they satisfy section 4.33.3's line-of-sight requirement by providing patrons who use wheelchairs with "unobstructed" views of the movie screen. The movie theater industry has also expressed its view to the Department that section 4.33.3 provides insufficient guidance for theater designers concerning the placement of wheelchair seating areas in stadium-style movie theaters. Indeed, in 1999, the National Association of Theater Owners (NATO) petitioned the Department to promulgate revised regulations specifically addressing stadium-style movie theaters and suggested its preferred regulatory language. The Department responded that it was planning to review and update the current ADA Standards covering assembly areas, including stadium-style movie theaters, upon issuance of the revised ADAAG.

As the entity charged with primary enforcement responsibility for Title III, the Department has played a central role in ensuring that persons with disabilities have full and equal enjoyment of stadium-style movie theaters. Since at least 1998, the Department has consistently and publicly stated through such forums as meetings with movie industry representatives, speeches to disability and business organizations, and litigation in Federal courts, that, when a movie theater company is marketing and selling the enhanced stadium-style movie going experience to the general

public, excluding patrons who use wheelchairs from these stadium sections violates Title III of the ADA. The Department has also emphasized that individuals who use wheelchairs need not be provided the best seats in the house, but neither should they be relegated categorically to locations with the worst views of the screen. Rather, the Department has interpreted section 4.33.3 as requiring a qualitative comparison—including viewing angles—between the view of the screen afforded patrons who use wheelchairs and the views of the screen provided most other members of the movie audience. Such a reading of section 4.33.3, the Department believes, best comports with the plain language of the regulation, the well-established usage of the term "lines of sight" in the theater industry, and the anti-discrimination goals underlying Title III of the ADA.

Nonetheless, both the debates and litigation have continued. Since 1999, the Department has initiated enforcement actions against several movie theater companies and participated as well as amicus curiae in other private ADA litigation involving stadium-style theaters. To date, all Federal courts except one have adopted or endorsed the Department's interpretation of section 4.33.3's line-of-sight requirement. *See United States* v. *Cinemark USA, Inc.*, 348 F.3d 569 (6th Cir. 2003), *cert. denied*, 72 U.S.L.W. 3513 (U.S. June 28, 2004) (No. 03–1131); *Oregon Paralyzed Veterans of Am.* v. *Regal Cinemas, Inc.*, 339 F.3d 1126 (9th Cir. 2003), *cert. denied*, *Regal Cinemas, Inc.* v. *Stewmon*, 72 U.S.L.W. 3310 (U.S. June 28, 2004) (No. 03–641); *Lara* v. *Cinemark USA, Inc.*, 207 F.3d 783 (5th Cir. 2000); *cert. denied*, 531 U.S. 944; *United States* v. *Hoyts Cinemas Corp.*, 256 F. Supp. 2d 73 (D. Mass. 2003), *appeals docketed*, Nos. 03–1646, 03–1787, and 03–1808 (1st Cir. June 5, 2003); *United States* v. *AMC Entm't, Inc.*, 232 F. Supp. 2d 1092 (C.D. Cal. 2002).

Revised ADA Standards. Building on the line-of-sight heritage of the current ADA Standards, section 221.2.3 of ADAAG frames the basic comparability requirement in terms of viewing angles: "Wheelchair spaces shall provide spectators with * * * viewing angles that are substantially equivalent to, or better than, the * * * viewing angles available to all other spectators." This ADAAG provision applies to all types of public accommodations, including stadium-style movie theaters, sports arenas, and concert halls. The Department intends to adopt this ADAAG provision for all assembly areas.

The Department believes that it is prudent to supplement these generic assembly area requirements with more specific guidance on stadium-style movie theaters. In light of several factors—including the contentious nature of the debate surrounding the application of the current ADA Standards to stadium-style movie theaters, the movie industry's request for additional regulatory guidance relating to stadium-style movie theaters, as well as the Department's significant experience with issues relating to stadium-style theaters—the Department is considering proposing regulations specifically applicable to stadium-style movie theaters. The purpose of such a rule would be twofold. The Department would be seeking to ensure that patrons with disabilities have full and equal enjoyment of, and access to, stadium-style movie theaters. The Department would also be seeking to provide theater designers with detailed guidance concerning acceptable placement of wheelchair seating locations in stadium-style theaters, while also affording design flexibility.

Therefore, the Department is now seeking public comment about the Department's promulgation of rules specifically addressing stadium-style movie theaters. The Department anticipates such a regulation would only address line-of-sight issues. The Department also anticipates that the horizontal and vertical dispersion requirements set forth in ADAAG sections 221.2.3.1 and 221.2.3.2 would be adopted in their entirety and would apply independently of any line-of-sight regulation specifically applicable to stadium-style theaters. Finally, the Department does not believe that its proposed line-of-sight regulation represents a substantive change from the existing line-of-sight requirements of Standard 4.33.3 of the current ADA standards. As with the existing requirements, the proposed line-of-sight regulations would recognize the importance of viewing angles to the movie going experience and would be aimed at ensuring that movie patrons with disabilities are provided comparable views of the movie screen as compared to other theater patrons. The Department's proposed stadium-style theater regulation would set forth two separate requirements. First, the regulation would require wheelchair seating locations to be placed in the stadium section of a stadium-style movie theater. Second, the regulation would also establish one or more standards governing the placement of wheelchair seating locations within the stadium section. The Department offers the three following standards, either alone or in combination, for consideration and comment:

Option 1: Adopt Viewing Angle Requirement. One option would be simply to adopt the comparative viewing angle requirement set forth in ADAAG section 221.2.3. The advantage of this approach would be consistency of requirements as between stadium-style movie theaters and other types of public accommodation.

Option 2: Adopt "Distance From the Screen" Requirement. The second option would be to adopt a "distance from the screen" approach for locating wheelchair seating as established by some national consensus standards. For example, the American National Standards Institute (ANSI) recently published a standard specifying that wheelchair seating should be located within the rear 70% of the seats provided in a movie theater. While distance from the screen presents an easily applied standard for theater designers and code personnel, the Department's experience with stadium-style theaters suggests that such a distance from the screen generally would not be sufficient to provide patrons who use wheelchairs with an equivalent viewing experience as compared to the rest of the movie audience. Thus, if the Department adopted a distance from the screen standard, it would likely specify that wheelchair seating must be located within the rear 60% of seats provided in a stadium-style theater.

Option 3: Adopt Combination Viewing Angle/Percentile Requirement. The third option would be to adopt a combination viewing angle and percentile approach as used by the Department in a settlement agreement with a national theater circuit. This agreement specifies that wheelchair seating locations should be placed "within the area of an auditorium in which the vertical viewing angles to the top of the screen are from the 50th to the 100th percentile of vertical viewing angles for all seats as ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile)." To date, the Department has found this approach to provide a workable and effective standard for locating wheelchair seating in stadium-style theaters.

Question 8. Should the Department promulgate a regulation specifically relating to stadium-style movie theaters? If so, should this regulation simply adopt ADAAG's viewing angle requirement for lines of sight or should it instead also include alternative

distance from the screen or viewing angle/percentile approaches? How should the "stadium" section of a stadium-style theater be defined?

III. Miscellaneous Matters

There are a number of miscellaneous matters the Department may address in the NPRM.

Withdrawal of Outstanding NPRMs

The Department plans to notify the public of the withdrawal of three outstanding NPRMs: the joint NPRM of the Department and the Access Board dealing with children's facilities, published on July 22, 1996, at 61 FR 37964; the Department's proposal to extend the time period for providing curb cuts at existing pedestrian walkways, published on November 27, 1995, at 60 FR 58462; and the Department's proposal to adopt the Access Board's accessibility guidelines and specifications for State and local government facilities, published as an interim final rule by the Access Board on June 20, 1994, at 59 FR 31676, and by the Department as a proposed rule on June 20, 1994, at 59 FR 31808. To the extent that these amendments were republished in the July 23, 2004, publication of ADAAG, they will all be included in the Department's new NPRM.

Changes in Procedural Requirements for Certification of State Laws and Local Building Codes

Section 308 (b)(1)(A)(ii) of the ADA authorizes the Attorney General to certify the accessibility requirements of State and local governments that meet or exceed the minimum requirements for accessibility and usability of buildings and facilities covered by the new construction and alterations requirements of Title III of the Act (42 U.S.C. 12188 (b)(1)(A)(ii)). This procedure is voluntary and may be initiated at the discretion of a State or local government. In jurisdictions with certified accessibility codes, compliance with the certified code in the construction or alteration of covered buildings and facilities constitutes rebuttable evidence of compliance with the ADA in any enforcement proceeding that might be brought. The Department's regulations implementing the certification process are published in 28 CFR 36.601–36.608.

While most of these sections restate the statutory provision or establish the obligations of the Department in responding to a request for certification, one section, 28 CFR 36.603, establishes the obligations of a submitting authority that is seeking certification of its code. The Department is considering ways in which these provisions can be streamlined to facilitate the process of seeking certification.

The Department anticipates that it will propose to delete section 36.603 from the current regulation. In its place, the Department will issue sub-regulatory guidance that will provide streamlined submission requirements.

Changes in Public Hearing Procedure. Section 36.605 (a)(2) of the Title III regulation requires that an informal hearing be held in Washington, DC, on the Department's decision to issue a preliminary determination of equivalency for a jurisdiction's accessibility code. The Department is considering substituting a requirement that an informal hearing be held within the relevant jurisdiction. The Department believes that a hearing conducted within the affected jurisdiction will generally provide a better opportunity for interested parties to comment.

Effect of the Revised ADA Standards on Certified Accessibility Codes. With the adoption of the revised ADA Standards, certifying State and local government codes as equivalent will be a more straightforward process because of the Access Board's extensive efforts to harmonize the revised guidelines with the model codes, which form the basis of many State codes. The Department is currently considering what impact the revised ADA Standards should have on the status of accessibility requirements for jurisdictions that were determined in the past to have met or exceeded the ADA Standards.

The Department invites public comment on each of these issues.

Title II Complaints

Complaint Investigation. One of the issues the Department will address in its upcoming NPRM relates to the Department's current procedures with respect to the investigation of complaints alleging discrimination on the basis of disability by public entities under Title II of the ADA. In its revised regulation implementing Title II, the Department will clarify its enforcement procedures in order to streamline the Department's internal procedures for investigating complaints, reduce the administrative burdens associated with implementing the statute, and ensure that the Department retains the flexibility to allocate its limited enforcement resources effectively and productively.

Subtitle A of Title II of the ADA defines the remedies, procedures, and rights provided for qualified individuals with disabilities who are discriminated against on the basis of disability in the services, programs, or activities of State and local governments. While the ADA requires the Department to implement the requirements of Title II, it does not specify any particular means of doing so. It does not require the Department to investigate every complaint of discrimination, or even to rely upon complaints at all as a means of enforcement. The Department's current Title II regulation is based on the enforcement procedures established in regulations implementing Section 504. Thus, the Department's current regulation provides that the Department "shall investigate each complete complaint" alleging a violation of Title II and shall "attempt informal resolution" of such complaint (28 CFR 35.172(a)).

In the years since the current regulation went into effect, the Department has received many more complaints alleging violations of Title II than its resources permit it to investigate. The Department's experience dictates that it must have greater discretion to prioritize these complaints appropriately in order to ensure that resources are directed to resolving the most critical matters. Without the ability to exercise discretion in complaint processing, there will be substantial delays in the investigation of many meritorious complaints. These delays would make investigations more difficult, as witnesses disappear, memories fade, and circumstances change. In some time-sensitive cases, such delays might even result in an effective denial of justice as agency resources would be taken up by less sensitive cases. These problems would also result in increased uncertainty for complainants and covered entities, as they would be required to await disposition of their disputes without any knowledge of what might be required of them.

The approach of the current Title II regulation may be contrasted with that reflected in the current Title III regulation, which recognizes that the Department has the discretion not to investigate all complaints alleging discrimination on the basis of disability by places of public accommodation (28 CFR 36.502). To avoid the enforcement problems identified above, and to bring its Title II regulation into sync with its current enforcement procedures under both Title II and Title III, the Department will propose to clarify in its revised regulation that it may exercise its discretion in selecting Title II complaints for investigation and in determining the most effective means of

resolving those complaints. This clarification of the Department's enforcement procedures reflects the Department's determination to manage its Title II complaints as effectively as possible. It is not intended to create, eliminate, or otherwise alter any substantive rights or responsibilities under the ADA. It will not alter the Department's essential obligation to implement Title II of the ADA effectively, but will simply recognize the Department's discretion to determine how best to implement it.

As revised, the Department's Title II regulation will make clear that the Department may, within its discretion, dispose of complaints with inadequate legal or factual bases quickly, and, thus, dedicate more of its enforcement resources to complaints with stronger allegations. This process will allow the Department to continue to establish priorities and allocate resources to most effectively achieve the goals of the ADA. It will also allow the Department to respond more quickly to matters that need immediate resolution and to more fully address matters of systemic discrimination. The Department's resolution of those cases involving, for example, life-and-death situations, essential government services, and complex legal questions, will set high-profile precedents that will, in turn, facilitate local resolution of the types of complaints the Department is unable to pursue.

Exhaustion of Administrative Remedies. Another issue the Department will address in the NPRM involves the effect of the Prison Litigation Reform Act (PLRA), 42 U.S.C. 1997e, upon complaints by prisoners alleging unlawful discrimination on the basis of disability under Title II of the ADA. The PLRA amended the Civil Rights of Institutionalized Persons Act (CRIPA) to provide that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted" (42 U.S.C. 1997e(a)). The plain language of the statute provides that individuals seeking to challenge prison conditions by invoking the provisions of "any * * * Federal law" are required first to exhaust "such administrative remedies as are available." Title II of the ADA protects prisoners from unlawful discrimination on the basis of disability, and among the administrative remedies available to such individuals to redress discrimination is the filing of a Title II complaint with the Department. Therefore, in order to properly implement this legislation, the Department's revised regulation implementing Title II of the ADA will provide that in order to exhaust administrative remedies as required under the PLRA, prisoners alleging unlawful discrimination on the basis of disability under Title II will be required to file an administrative complaint with the Department prior to filing suit in court. As with all complaints of discrimination under Title II, the Department may, in its discretion, investigate and attempt to resolve the allegations of unlawful discrimination made in these complaints. However, given the large number of prisoner complaints and the Department's limited resources, it is unlikely that the Department will be able to investigate every such complaint. The Department wishes to ensure that this requirement does not prove to be a bar for prisoners with disabilities seeking redress of their grievances in the courts. Therefore, the Department will propose that, for purposes of the PLRA, a complainant will be deemed to have successfully exhausted the administrative remedy of filing a complaint with the Department if no action has been taken upon the complaint by the Department within a 60-day administrative period.

IV. Regulatory Assessment Issues

A regulatory assessment—a report analyzing the economic costs and benefits of a regulatory action "is not required for this ANPRM. One purpose of this ANPRM, however, is to seek comment on the Department's proposed methodology for the regulatory assessment that the Department must prepare in connection with the issuance of the NPRM. A regulatory assessment will be required for the NPRM under Executive Order 12866, as amended without substantial change to its requirements by Executive Order 13258, and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. Executive Order 12866 requires Federal agencies to submit any "significant regulatory action" to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for review and approval prior to publication in the **Federal Register**. A proposed regulatory action that is deemed to be economically significant under section 3(f)(1) of that order (having an annual effect on the economy of $100 million or more) is required to include a formal benefit-cost analysis. A formal benefit-cost analysis must include both qualitative and quantitative measurements of the benefits and costs of the proposed rule as well as a discussion of each potentially effective and reasonably feasible alternative.

As part of the Department's initial NPRM regulatory assessment, the Department expects to adopt the final regulatory assessment prepared by the Access Board for the final ADAAG and approved by OMB. (See regulatory assessment for ADAAG at *www.access-board.gov.* The assessment has also been placed in the dockets of both the Access Board and the Department and is available for public inspection.) However, the regulatory assessment for the Department's NPRM must be broader than that of the Access Board in several respects. First, the Department must include as part of the estimated annual cost of the revised ADA Standards the cost of each of the supplemental guidelines (now folded into the final ADAAG document) issued by the Access Board subsequent to the 1991 ADAAG. As discussed above, the Access Board adopted the supplemental guidelines in separate rulemaking initiatives before ultimately combining them into the final ADAAG document. The costs associated with these supplemental guidelines, therefore, were considered part of the Access Board's baseline, and not as new costs associated with the Board's issuance of ADAAG. Because the Department did not adopt any of the supplemental guidelines separately, the Department must consider their associated costs as part of adopting revised ADA Standards consistent with ADAAG.

Further, unlike the Access Board, the Department must prepare an assessment of the costs and benefits arising from any compliance with the revised ADA Standards that may be required for barrier removal in existing facilities. Which elements of existing facilities will be required to comply with the revised ADA Standards and in what manner will depend upon which option the Department selects with respect to existing facilities under Questions 3 and 4, above.

Because the regulatory assessment for the NPRM will include both the costs associated with the supplemental guidelines and those associated with the compliance of certain elements of existing facilities, the NPRM may be deemed economically significant. If so, the Department will have to prepare a full benefit-cost analysis in connection with the NPRM.

Also, consistent with the Regulatory Flexibility Act of 1980 and Executive Order 13272, the Department must consider the impacts of any proposed rule on small entities, including small

businesses, small nonprofit organizations, and small governmental jurisdictions. The Department will make an initial determination as to whether the proposed rule is likely to have a significant economic impact on a substantial number of small entities, and if so, the Department will prepare an initial regulatory flexibility analysis analyzing the economic impacts on small entities and regulatory alternatives that reduce the regulatory burden on small entities while achieving the goals of the regulation. In response to this ANPRM, the Department encourages small entities to provide cost data on the potential economic impact of applying specific provisions of ADAAG to existing facilities and recommendations on less burdensome alternatives, with cost information.

Basic Principles of Proposed Regulatory Framework

The Proposed Regulatory Framework, which is set forth in Appendix A, describes the approach that the Department is considering for the regulatory assessment that it must prepare in connection with the NPRM. In brief, the framework proposes to assess benefits and costs associated with a proposed adoption of revised ADA Standards consistent with ADAAG in accordance with the following principles:

- The proposed framework assumes that the regulatory analysis for the proposed regulation will be required to include a full benefit-cost analysis subject to the requirements of OMB Circular A–4. The framework is designed to conform with those requirements.
- The analysis will cover the benefits and costs of the revised ADA Standards for readily achievable barrier removal for existing buildings as well as the benefits and costs of the revised ADA Standards for new construction and alterations (only the latter has been estimated by the Access Board in its regulatory assessment for ADAAG).
- Only incremental benefits and costs of the revised ADA Standards will be assessed. Benefits and costs associated with the current ADA Standards will be considered baseline benefits and costs.
- Benefits will be addressed with regard to not only user value, but also insurance value and existence value, as explained in Appendix A.
- The analysis will address the alternative approaches to application of the revised ADA Standards set out under Questions 3 and 4, above.
- To estimate the incremental benefits and costs of the readily achievable barrier removal obligation, a computer simulation model will be developed based upon statistical databases developed to show cost per element or space to be modified and number of elements or spaces to be modified, taking into account the factor of "readily achievable." The data will be stratified by age and size of facility, financial condition, and other applicable features.
- The risk of measurement error will be addressed through risk analysis and threshold analysis, as explained in Appendix A.

The following questions for public comment address issues raised in connection with the Proposed Regulatory Framework. The Department is seeking comments from covered entities, persons with disabilities, and all other members of the public with respect to both benefits and costs. Where applicable, responses should clearly identify the specific question being addressed according to the numbered question. For additional information, please see Appendix A to this document.

Data Collection Questions, By Type of Entity

The Department is not, in the following data collection questions, seeking information about the cost of applying revised ADA Standards to new construction and alterations. As stated above under Item IV, the Department expects to adopt the Access Board's final regulatory assessment (see regulatory assessment for ADAAG at www.access-board.gov) as its assessment of the cost that will be incurred for new construction and alterations, which is the situation addressed in the Access Board's regulatory assessment. The following data collection questions are intended to elicit information about the costs and benefits that will result if the new guidelines are used as the basis for mandatory barrier removal. Question 9 is a general question soliciting data about the potential costs and benefits of using any or all of the changed or new requirements in the new guidelines as the basis for mandatory barrier removal. Question 10 is a general question soliciting information about the effect of the new or changed requirements on the obligations of small entities with respect to barrier removal. Questions 11–47 contain numerous questions that reiterate this general question with respect to a sampling of specific new or changed requirements. The Department is seeking comments from all stakeholders "covered entities, persons with disabilities, and all other members of the public "with respect to both costs and benefits. The Department also wishes to solicit comments on any areas where additional costs may be imposed or benefits may be realized indirectly as a result of the ultimate regulations. Where applicable, responses should clearly identify the specific question being addressed according to the numbered question.

All Types

Question 9. Many of the new and changed requirements in ADAAG are expected to have negligible cost for new construction and alteration, such as the change in the maximum side reach from 54 inches to 48 inches (ADAAG 308.3). See Chapter 6, item 6.20, of the regulatory assessment for ADAAG at *www.access-board.gov*. Other new and changed requirements are expected to have a cost impact for new construction and alterations. See Chapter 7 of the above cited regulatory assessment for ADAAG. The Department invites comments from covered entities, individuals with disabilities, and individuals without disabilities on the benefits and costs of applying these new and changed specifications to existing facilities pursuant to the readily achievable barrier removal requirement of Title III. Please be as specific as possible in your answers. (Changed requirements would not be applied under the barrier removal obligation to elements that comply with the current ADA Standards if the Department adopts the safe harbor provision addressed under Question 3. New requirements would be applied even if the Department adopts the safe harbor provision but their impact could be reduced under the options addressed under Question 4.)

Question 10. Consistent with the Regulatory Flexibility Act and Executive Order 13272, the Department will determine whether a proposed rule adopting all or part of the Access Board's ADAAG revisions would be likely to have a significant economic impact on a substantial number of small entities, and if so, what the Department could do to reduce that economic impact while achieving the goals of its regulation. The Department welcomes comments providing information on the rule's potential economic impact on covered small entities, including retrofitting costs. Also, please provide any potential regulatory alternatives that could reduce those burdens.

Question 11. The Department is considering excluding as a barrier removal obligation for existing facilities, if it selects Option II under Question 4, above, the requirement at ADAAG 210

that accessible handrails be added to stairs in buildings with elevators. The Department is soliciting comments from all stakeholders on this approach. Please be as specific as possible in your response.

Question 12. ADAAG 229.1 is a new requirement that at least one window be accessible to persons with disabilities in a room with windows that can be opened by persons without disabilities. The Department wishes to collect data about the effect of this new requirement if it is applied to existing facilities under the barrier removal requirement of Title III. Do you have rooms with windows that open, of the sliding or double hung type, in your existing facility? If so, how many? Would the hardware that works for new windows in new buildings work on these windows in your existing facility without additional cost?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having at least one accessible window in each room that has windows that are operable by persons without disabilities.

Office Buildings

Question 13. New requirements at ADAAG 230.1 and 708.1 require two-way communications systems (except in residential facilities) to be equipped with visible as well as audible signals. The Department wishes to collect data about the effect of this new requirement if it is applied to existing facilities under the readily achievable barrier removal requirement of Title III. Do you use a two-way communications system in your existing office building? What would be the cost of equipping a unit with both audible and visible signals? How many two-way communications systems do you have in your existing office building?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having both audible and visual signals on two-way communications systems in existing office buildings.

Question 14. Under the current ADA Standards, men's toilet rooms with six or more water closets and urinals, but fewer than six toilet compartments, are not required to provide an ambulatory accessible toilet compartment with grab bars. Under ADAAG 213.1, urinals will be counted, so that if there are a total of six urinals or water closets, an ambulatory accessible toilet compartment with grab bars will be newly required. Additional costs in new construction include the costs of adding grab bars but because of fire code requirements, no cost is allocated with respect to new construction and alterations to the requirement that an accessible compartment must be between 35 and 37 inches wide and 60 inches deep. The Department wishes to collect data about the effect of this requirement in existing facilities. Are some or all of the men's rooms in your existing office building required to have an ambulatory accessible toilet compartment? Will the changed requirement result in more such compartments being necessary in your existing office building? If so, what would be the unit cost of adding such a compartment? How many additional ambulatory accessible toilet compartments would you be required to add in your existing office building?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having additional ambulatory accessible toilet compartments in men's rooms in existing office buildings.

Question 15. Under the current ADA Standards, a private office building must provide a public TTY if there are four or more public pay telephones in the building. Under the revised ADA Standards, a private office building will also be required to provide a public TTY on each floor that has four or more public telephones (ADAAG 217.4.2) and in each telephone bank that has four or more telephones (ADAAG 217.4.1). The Department wishes to collect data about the effect of this requirement if it is applied to existing facilities under the barrier removal requirement of Title III. Will the changed requirement result in more TTYs being necessary in your existing office building? How many more? Can a TTY be added to an existing facility at the same cost as to a new or altered facility?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having additional TTYs in existing office buildings.

Question 16. What data source do you recommend to assist the Department in estimating the number of existing office buildings categorized by such features as size, age, type, physical condition, and financial condition?

Question 17. What data source do you recommend to assist the Department in estimating the extent to which existing office buildings comply with the current ADA Standards?

Question 18. What data source do you recommend to assist the Department in estimating the incremental cost of making noncompliant elements of existing office buildings comply with the revised ADA Standards?

Hotels and Motels

Question 19. A new requirement at ADAAG 806.2.4.1 provides that if vanity counter top space is provided in nonaccessible hotel guest toilet or bathing rooms, comparable vanity space must be provided in accessible hotel guest toilet or bathing rooms. The Department wishes to collect data about the effect of this requirement if it is applied to existing facilities under the readily achievable barrier removal requirement of Title III. Do you currently provide any accessible vanity counter space in your existing accessible guest toilet or bathing rooms? How much available extra room, usable for an accessible vanity counter top, is there on average in your existing accessible guest toilet or bathing rooms?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having comparable vanity space in accessible hotel guest toilet or bathing rooms.

Question 20. What data source do you recommend to assist the Department in estimating the number of existing hotels and motels categorized by such features as size, age, type, physical condition, and financial condition?

Question 21. What data source do you recommend to assist the Department in estimating the extent to which existing hotels and motels comply with the current ADA Standards?

Question 22. What data source do you recommend to assist the Department in estimating the incremental cost of bringing noncompliant elements of existing hotels and motels into compliance with the revised ADA Standards?

Stadiums and Arenas

Question 23. What data source do you recommend to assist the Department in estimating the number of existing stadiums and arenas categorized by such features as size, age, type, physical condition, and financial condition?

Question 24. Are there data sources that the Department could consult to estimate the extent to which existing stadiums and arenas comply with the current ADA Standards?

Question 25. What data source do you recommend to assist the Department in estimating the incremental cost of bringing noncompliant elements of existing stadiums and arenas into compliance with the revised ADA Standards?

Hospitals and Long Term Care Facilities

Question 26. A new requirement at ADAAG 607.6 provides that the shower spray unit in an accessible shower

compartment must have an on-off switch. The Department wishes to collect data about the effect of this requirement if it is applied to existing facilities under the readily achievable barrier removal requirement of Title III. Do all of the shower spray units that you currently use for accessible shower compartments in your existing hospital or long-term care facility have on-off switches? If not, how many shower spray units in accessible shower compartments do you have without on-off switches? Would you have to purchase a new shower spray unit to add the on-off feature or is there a way to adapt your current unit for this purpose?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having an on-off switch on the shower spray unit in an accessible shower compartment.

Question 27. What data source do you recommend to assist the Department in estimating the number of existing hospitals and long-term care facilities categorized by such features as size, age, type, physical condition, and financial condition?

Question 28. Are there data sources that the Department could consult to estimate the extent to which existing hospitals and long-term care facilities comply with the current ADA Standards?

Question 29. Are there data sources that the Department could consult to assess the incremental cost of bringing noncompliant elements of existing hospitals and long-term care facilities into compliance with the revised ADA Standards?

Residential Dwelling Units

Question 30. A changed requirement at ADAAG 804.2 requires a 60-inch (rather than the current 40-inch) clearance space in so-called galley kitchens, which have cabinets and appliances on opposite walls, if there is only one entry to the kitchen. The Department wishes to collect data about the effect of this requirement if it is applied to existing facilities under the readily achievable barrier removal requirement of Title III. Are any of the kitchens in the accessible dwelling units of your existing housing facility of the one-entry galley type? Is clearance of 60 inches provided? If not, is extra space available for this purpose?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having a 60-inch (rather than the current 40-inch) clearance space in galley kitchens.

Question 31. What data source do you recommend to assist the Department in estimating the number of existing residential dwelling units categorized by such features as size, age, type, physical condition, and financial condition?

Question 32. What data source do you recommend to assist the Department in estimating the extent to which existing residential dwelling units comply with the current ADA Standards?

Question 33. What data source do you recommend to assist the Department in estimating the incremental cost of bringing noncompliant elements of existing residential dwelling units into compliance with the revised ADA Standards?

State and Local Government Buildings: Cells and Courtrooms

Question 34. How many State and local detention and holding cells were newly constructed or altered in each of the past five years? How many would you project will be newly constructed or altered in each of the next five years?

Question 35. How many State and local courtrooms were newly constructed or altered in each of the past five years? How many would you project will be newly constructed or altered in each of the next five years?

Question 36. What data source do you recommend to assist the Department in estimating the number of existing cells and courtrooms categorized by such features as size, age, type, physical condition, and financial condition?

Question 37. What would be a good source to assist the Department in estimating how many State and local government building codes already meet the requirements that will be in the revised ADA Standards for cells and courtrooms?

Question 38. What would be a good source to assist the Department in estimating the cost of bringing existing cells and courtrooms into compliance with the revised ADA Standards?

Play Areas

Question 39. Among the new requirements at ADAAG 240 are new scoping provisions for the minimum number of ground level and elevated play components that are required to be on an accessible route for newly constructed or altered play areas. The basic requirement for ground level play components is that one of each type must be on an accessible route. If a new or altered play area contains elevated play components that fail to meet specified accessibility requirements, then a specified greater number of ground level play components must be on an accessible route. The Department wishes to collect data about the effect of this requirement in existing play areas. Are any of the ground level play components in your existing play area on an accessible route? Is one of each type of ground level play component in your existing play area on an accessible route? Are there elevated play components in your existing play area? Are any of them on an accessible route?

Question 40. What data source do you recommend to assist the Department in estimating the number of existing play areas categorized by such features as size, age, type, physical condition, and financial condition?

Question 41. What would be a good source to assist the Department in estimating the cost of bringing existing play areas into compliance with the revised ADA Standards?

Recreation Facilities

Question 42. A new requirement at ADAAG 234.3 provides that every new or altered amusement ride must provide at least one wheelchair space or transfer seat or transfer device. The preamble to the final recreation facilities guidelines provides that the transfer device may be separate from, rather than integral to, the ride. The Department wishes to collect data about the effect of this requirement if it is applied to existing amusement rides under the barrier removal requirement of Title III. With respect to your existing rides, have you used transfer devices or other means to make the ride accessible to persons with disabilities? If so, what did the transfer device cost?

Persons with disabilities and the general public are invited to comment on the incremental benefit of having transfer devices available for use on existing rides.

Question 43. A new requirement at ADAAG 235.2 requires accessible boat slips to be provided in accordance with a table, which ranges from one accessible boat slip for facilities with 25 or fewer boat slips to 12 accessible boat slips for facilities with 901 to 1,000 boat slips. ADAAG 1003.3.1 provides that an accessible boat slip must be at least 60 inches wide along its entire length (with an exception for two-foot sections at least 36 inches wide if separated by 60-inch wide sections at least 60 inches in length). The Department wishes to collect data about the effect of this requirement if it is applied to existing boat slips under the readily achievable barrier removal requirement of Title III. How many boat slips are there in your existing facility? When was your facility built? The Department is considering reducing the number of boat slips that must be accessible in existing facilities if it selects Option II under Question 4,

above. The Department is soliciting comments from all stakeholders on this approach. Please be as specific as possible in your response.

Question 44. An exception to the new requirement at ADAAG 206.2.15 permits the accessible route requirements (which must connect all greens, weather shelters, rental areas, and the like) for golf courses to be satisfied by golf car passages, defined at ADAAG 1006.3 as a 48-inch wide passage, providing 60-inch wide openings in curbs or other constructed barriers every 75 yards. The Department wishes to collect data about the effect of this requirement if it is applied to existing golf courses under the readily achievable barrier removal requirement of Title III. What would you have to do to your existing golf course to make it comply with the requirements for golf car passages?

Question 45. A new requirement at ADAAG 242.1 requires a new swimming pool whose perimeter is over 300 linear feet to have at least two accessible means of entry, at least one of which must be a lift or a sloped entry. The Department is considering reducing the number of accessible entries for a pool over 300 feet in perimeter in existing facilities if it selects Option II under Question 4, above. The Department is soliciting comments from all stakeholders on this approach. Please be as specific as possible in your response.

Question 46. What data source do you recommend to assist the Department in estimating the number of existing recreational areas of each type to be covered in the revised ADA Standards, categorized by such features as size, age, type, physical condition, and financial condition?

Question 47. What data source do you recommend to assist the Department in estimating the cost of making each of the following types of existing recreation facilities comply with the revised ADA Standards: amusement rides, boating facilities, fishing piers and platforms, golf, miniature golf, sports facilities (bowling, shooting, and exercise facilities, among others), and swimming pools and spas?

General Data Collection Questions Concerning Benefits

Question 48. Do you have any general comments or concerns about the Department's proposed methodology for determining benefits? As discussed in the text of the proposed framework, the Department is charged with ascertaining the value of the benefits that the revised ADA Standards will provide for both people with disabilities and others. The Department is seeking comments from the public on how best to quantify, monetize, or describe the benefits provided by the proposed revised regulations, including suggestions on how to quantify, monetize or describe use values, insurance values, and existence values, each as described in Appendix A.

Question 49. What benefits do you see in the revised ADA Standards for people with disabilities? For example, how might the revised requirements for accessible routes be of benefit to the users of a building? How could these benefits be quantified?

Question 50. The proposed framework states that the Department will "roll up" the elements by type of building facility, the five principal regulatory groupings, new construction and alterations, and the entire proposed revisions. Is this a sufficiently detailed organization of the benefits and costs? Will it give all stakeholders an accurate picture of how the proposed revisions will be of benefit? If not, what sort of organization of the benefits would be more useful for accurately conveying the important information?

Regulatory Assessment Process Questions

OMB Circular A–4 (*www.whitehouse.gov/omb/circulars/a004/a-4.pdf*) provides guidance to Federal agencies on the development of regulatory analysis. Regulatory analysis is a tool agencies use to anticipate and evaluate the likely consequences of rules. It provides a formal way of organizing the evidence on the key effects of the various alternatives that should be considered in developing regulations. The motivation is to (i) learn if the benefits of an action are likely to justify the costs or (ii) discover which of various possible alternatives would be the most cost-effective.

This ANPRM seeks additional information to assist the Department in preparing a regulatory analysis under Circular A–4, in particular the provisions of sections D (Analytical Approaches) and E (Identifying and Measuring Benefits and Costs).

Question 51. Circular A–4 describes several analytical approaches including benefit-cost analysis and cost-effectiveness analysis. Stakeholders are encouraged to express their views and to advise the Department as to how best to conduct these analyses as part of any rulemaking that is published to adopt the revised ADA Standards.

Question 52. The Department is seeking comment, advice, and information on its proposed approach in the three key application areas, as follows:

a. Categorizing the revised ADA Standards for purposes of identifying benefits and costs;

b. Defining baselines in accordance with OMB Circular A–4, sec. E.2.; and

c. Identifying and quantifying benefits and costs.

Question 53. Stakeholders are invited to provide the Department with comments and advice on the proposed classification, the proposed roll-ups, and other related matters.

Question 54. With respect to elements in existing facilities that may be subject to the revised ADA Standards through the readily achievable barrier removal requirement, the use of market prices (or willingness to pay) as a measure of benefits may be insufficient where a given provision in the revised ADA Standards renders an existing facility more accessible rather than newly accessible. Such might be the case, for example, with respect to the provision requiring an independent means of getting in and out of the pool in an otherwise accessible swimming facility. The public is asked to comment on ways and means of handling this issue.

Dated: September 23, 2004.

John Ashcroft,

Attorney General.

Appendix A—Proposed Framework for the Regulatory Analysis

1. Introduction

As directed by Executive Order 12866 and OMB Circular A–4, as well as the Regulatory Flexibility Act and Executive Order 13272, the Department may be required to conduct a comprehensive Regulatory Impact Analysis of the revised ADA Standards. A Regulatory Impact Analysis may include a statement of need for the proposed regulation, the identification of a reasonable range of alternatives, the conduct of a Benefit-Cost Analysis of the proposed regulation and the alternatives, and an analysis of uncertainty in the identification and quantification of costs and benefits. The Benefit-Cost Analysis entails the comprehensive description of the incremental costs and benefits of each alternative, to the extent practicable, in terms of monetary value. In this context, a Benefit-Cost Analysis would apply to each of the new or changed scoping and technical provisions in the revised ADA Standards that represent substantive changes from the current ADA Standards, as well as to possible alternatives to those provisions. The proposed Regulatory Impact Analysis would be included as part of the NPRM, and while the public will have an opportunity to comment on its assumptions and results at that time, this is the time to suggest significant changes to the Department's proposed methodology. In presenting in this ANPRM its current thinking on how it might approach the regulatory analysis, the Department seeks to engage the public in the choice of its methodology before significant

time and effort is expended on its implementation.

Role of Regulatory Impact Analysis in the ADA Regulatory Process

Regulatory Impact Analysis is intended to inform stakeholders in the regulatory process of the effects, both positive and negative, of proposed new regulations. The principal stakeholders are those who will be directly affected by the proposed regulations, namely people with disabilities and the owners and developers of facilities that will incur the direct costs of compliance. However, the public at large, including people both with and without disabilities, is also a key stakeholder in the regulatory process. The costs and cost savings associated with the proposed regulatory action will ripple throughout the economy, potentially affecting business costs and consumer prices. Businesses may respond to the new and revised requirements in a number of ways, some of which entail costs that may be easily measurable, such as increased or reduced construction, operating, and maintenance costs, and others of which entail costs that may not be as easily measurable, such as delays in construction and renovation. Thus, in addition to their effect on direct capital, operating, and maintenance costs, new and revised accessibility requirements influence less obvious but equally genuine aspects of cost, such as construction schedules. Construction schedules might be lengthened where the regulations impose new requirements and shortened where the burden of a given scoping or technical provision has been reduced relative to the current ADA Standards. The Regulatory Impact Analysis will seek to recognize and account for such schedule-related changes in costs.

The public at large will also benefit from the proposed regulations. Accessible facilities benefit persons with and without disabilities alike. This represents their use value. For individuals with disabilities, use value will include benefits arising from the ability to participate in previously inaccessible facility-based activities, or the availability of more convenient or independently usable facility elements or spaces. In addition, because people who do not need the protections of the ADA in the present may need them in the future, like an insurance policy, people without disabilities may place a value on accessible features. People may also place some value on the existence of accessible features unrelated to their anticipation of future personal need for them. This is reflected in people's possible willingness to pay something to ensure that equal access is provided for others (family, friends, and other members of society) who are or might become temporarily or permanently disabled, or to safeguard the principle of equal protection for people with disabilities, regardless of the risk of onset or the general incidence of disability. Benefit-Cost Analysis helps the general public ascertain whether the value of these "nonuse" related benefits is quantitatively significant relative to the costs.

Some stakeholders might believe that economic analysis of any kind is simply irrelevant with respect to the implementation of a civil rights statute. The ADA is a comprehensive civil rights statute protecting the rights of persons with disabilities, and as such, could provide sufficient justification for regulatory action even if the Benefit-Cost Analysis were to produce negative results. Others might believe that, although economic yardsticks must not override the protections laid down in Federal statutes, the comprehensive articulation, if not quantification, of all benefits, including the nonuse values discussed above, can help promote understanding and further societal implementation of the protections established in law. Some might also believe that Benefit-Cost Analysis can be helpful in evaluating options for exempting certain elements or spaces in existing facilities from the provisions of the revised ADA Standards. Stakeholders are encouraged to express their views and to advise the Department as to how best to conduct these analyses as part of any rulemaking that is published to adopt the revised ADA Standards.

2. Scope of the Regulatory Impact Analysis

In conducting its analysis, the Department will be required to take a broader approach to the assessment of the benefits and costs of the revised ADA Standards than the Access Board was required to take in assessing ADAAG. The Department's broader approach is required for two reasons. First, while the Access Board developed the guidelines contained in ADAAG incrementally over several years, the Department is now proposing to adopt ADAAG as a whole, as the revised ADA Standards. Since 1992, the Access Board has undertaken five separate and distinct rulemaking actions. The most recent of those rulemaking actions involves 68 substantive changes and additions to the scoping and technical requirements provided in the current ADA Standards (estimated to impose annual incremental costs on new or altered facilities of between $12.6 and $26.7 million). The other four rulemaking actions involved the adoption of supplemental guidelines for children's facilities ($0); state and local facilities; play areas (between $37 and $84 million); and recreational facilities (between $26.7 and $34.4 million). Examined singly, the Board estimated each of the five rulemaking actions to entail incremental annual costs of less than $100 million, which is the threshold established in OMB Circular A–4 as the trigger for the Benefit-Cost Analysis requirement.

The Department, however, is proposing to adopt the revisions to the current ADA Standards and the four supplemental guidelines as a whole as the revised ADA Standards. When combined, the Access Board's estimated annual cost of all of the ADAAG revisions falls within a range between $76.3 million and $145.1 million (uncorrected for between-year inflation). With the mid-point of this range at about $111 million, there is a material probability that the combined cost of adopting the revised ADA Standards as a whole will exceed the $100 million threshold.

The second reason that the Department will likely be required to undertake a full Benefit-Cost Analysis is that the Department, unlike the Access Board, is responsible for implementing the requirements of the ADA with respect to existing facilities. Thus, the Department must account for the additional incremental costs and benefits attributable to the adoption of the revised ADA Standards to the extent that the new or revised provisions will apply to existing facilities. The additional incremental cost associated with these requirements increases the likelihood that the total regulatory costs will exceed the $100 million threshold for Benefit-Cost Analysis.

To the extent practicable, the Department proposes to apply state-of-the-art methods of Benefit-Cost Analysis as provided in OMB Circular A–4. While Circular A–4 is definitive with respect to principles, it leaves Federal agencies with discretion with respect to the means and methods of application. The Department is seeking comment, advice, and information on its proposed approach in the three key application areas, as follows: (1) Categorizing the revised ADA Standards for purposes of identifying costs and benefits; (2) defining baselines and incremental costs; and (3) identifying and quantifying costs and benefits.

3. Categorization of the Revised ADA Standards for Purposes of Assessing Costs and Benefits

The adoption of the current ADA Standards represented a fundamental change in the accessibility of facilities and, accordingly, in the extent to which people with disabilities are able to participate in the mainstream activities of daily life. Most provisions of the revised ADA Standards represent improvements in the quality of accessibility and the degree of inclusion. However, unlike the current ADA Standards, many of the improvements in the quality and degree of accessibility resulting from the revised ADA Standards will derive from changes in the scoping, design, and features of specific elements and spaces of a facility, rather than as a result of changes to the facility as whole.

The various elements and spaces addressed in the revised ADA Standards vary among different types of facilities and will be classified accordingly. In addition, the impact of the new and revised requirements may be fundamentally different with respect to facilities that are newly constructed or altered after the effective date of the revised ADA Standards, on the one hand, and existing facilities, on the other. This in turn requires an additional level of categorization. The Department and the stakeholders in this regulatory action have an interest in viewing the combined costs, benefits, and net benefits with respect to the substantive new and revised provisions in the revised ADA Standards both as a whole and as applied to particular types of facilities.

Under the Department's proposed categorization scheme, the Department will assess costs and benefits for each element addressed in the revised ADA Standards, as categorized by building and facility type, separately for newly constructed or altered facilities and existing facilities. Once costs and benefits are assessed for each element, they (costs, benefits, and net benefits) will be

aggregated ("rolled-up") with respect to (i) the type of building and facility; (ii) newly constructed or altered facilities; (iii) existing facilities; and (iv) the revised ADA Standards as a whole. The different "roll-ups" will enable stakeholders to examine the regulatory analysis from their particular perspective.

4. Distinguishing the Baselines From the Incremental Costs and Benefits

OMB Circular A–4 stipulates that a regulatory analysis is only supposed to account for those costs and benefits that arise as a result of the proposed regulatory action itself. Such costs and benefits are called "incremental" because they reflect only the costs and benefits imposed by the adoption of the regulation—excluded are any costs and benefits that are imposed by already existing requirements. The latter costs and benefits constitute the "baseline" against which the incremental costs and benefits of the new regulation are compared. The baseline thus represents the costs and benefits that would arise whether or not the proposed regulations are adopted. Although the current enforceable ADA Standards clearly impose costs and benefits upon society, for the purpose of the proposed Regulatory Impact Analysis, which will be designed to identify the incremental costs and benefits of the proposed rulemaking, the current ADA Standards and other Federal requirements will be considered the baseline, and as such, will be assigned zero costs and benefits. Thus, technically, if compliance with a current requirement costs $40, and compliance with the changed requirement costs $50, this will be stated as baseline of zero, incremental cost of $10.

As a general principle, the Department proposes to determine the incremental cost for each element or space addressed by a new or revised standard in the revised ADA Standards by first determining whether or not the current ADA Standards specify scoping and technical requirements for that element or space. If the current ADA Standards do address the element or space, then the provision in the revised ADA Standards will be referred to as a change in existing requirements. If not, the provision in the revised ADA Standards will be referred to as a new requirement.

Incremental Costs Applied to Newly Constructed or Altered Facilities

Where a given provision in the revised ADA Standards reflects a change in the existing requirements applicable to a particular element or space, the incremental cost (or savings) for that element or space in facilities newly constructed or altered after the effective date of the revised ADA Standards will be only the difference between the costs and benefits imposed by the requirement in the current ADA Standards and other Federal requirements with respect to that element or space and the costs and benefits imposed by the changed requirement. This is because, if the revised ADA Standards were not adopted, those elements in such facilities would still be required to comply with the current ADA Standards and other Federal requirements. If, with respect to any given element or space, it costs more to implement the revised Standard than it would have cost to implement the current Standards, the assessment of incremental cost will capture that additional amount. If it costs less, the assessment of incremental savings will capture that amount.

With respect to new requirements, the entire actual cost of compliance will be attributed to the revised ADA Standards. New requirements are those applicable to elements and spaces for which there were previously no standards. For example, all amusement rides built or altered after the effective date of the revised ADA Standards are required to be accessible to persons who use wheelchairs or other mobility devices. Neither the current ADA Standards nor other Federal requirements contain any requirement with respect to amusement rides. Therefore, the costs and benefits of complying with this requirement can be attributed entirely to the revised ADA Standards.

In its regulatory analysis, the Access Board presented results based on two baseline concepts, one in which the baseline is taken as the current ADAAG requirements, and a second in which the baseline is taken as the voluntary model codes, in which the requirements are very similar to the revised ADA Standards that will be proposed in the NPRM. That regulatory analysis also discussed the extent to which State and local governments have adopted the model codes. The Department may take a similar approach in its Regulatory Impact Analysis or it may calculate incremental costs in new and altered facilities, with respect to those States and localities that have adopted a model code, as the difference between the model code requirements and the revised ADA Standards if that is determined to be practicable.

Incremental Costs Applied to Existing Facilities

The same principles will apply with respect to incremental costs applicable to elements and spaces in existing facilities (those that were or will be newly constructed or altered prior to the effective date of the revised ADA Standards). Thus, with respect to elements and spaces in existing facilities, the relevant incremental costs (savings) will be only the difference between the costs and benefits imposed by the requirement in the current ADA Standards and other Federal requirements with respect to that element or space and the costs and benefits imposed by the changed requirement.

The Department is considering several options with respect to existing facilities with respect to their continuing obligations under the readily achievable barrier removal requirement. Which options the Department chooses will affect the calculation of costs and benefits with respect to elements and spaces in those existing facilities with respect to that requirement. For example, if the Department were to exempt elements and spaces that are compliant with the current ADA Standards from any obligation to comply with the revised ADA Standards pursuant to the readily achievable barrier removal requirement, the incremental costs and benefits of the revised ADA Standards with respect to those elements and spaces will be zero. In that case, only the incremental costs and benefits (actual costs and benefits of the revised ADA Standards, minus the costs and benefits of the current ADA Standards) of implementing the revised ADA Standards with respect to noncompliant (nonexempt) elements of such facilities, to whatever extent that may be required under the readily achievable barrier removal requirement, would be counted.

The Department is also considering other options that may affect the calculation of incremental costs and benefits for existing facilities with respect to their obligations under the readily achievable barrier removal requirement. Under one option, existing facilities would be permitted to apply reduced scoping requirements for specified elements and spaces in the revised ADA Standards, such as the number of accessible entries to swimming pools. Whether or not this option is selected, the entire cost of the requirement would be attributable to the revised ADA Standards because, in the absence of the new regulation, there would be no requirement applicable to these elements or spaces. However, should the Department elect to apply reduced scoping to such elements and spaces, the incremental costs and benefits of the revised ADA Standards will likely be lower than they would be if the Department did not apply reduced scoping. Under another option, for purposes of the readily achievable barrier requirement, the Department may simply exempt existing facilities from compliance with certain scoping and technical requirements in the revised ADA Standards that are deemed inappropriate for barrier removal. Under this option, the incremental costs and benefits will also be lower than they would be if the Department did not provide such exemption.

5. Identifying and Quantifying Costs, Benefits, and Net Benefits

While the revised ADA Standards will apply directly to newly constructed or altered facilities, the Department will determine in its ADA regulation whether and to what extent the revised ADA Standards will apply to existing facilities. The cost of any required compliance with the revised ADA Standards by existing facilities will be more difficult to determine than the cost of compliance for newly constructed and altered facilities. Many existing facilities are subject only to the readily achievable barrier removal requirement. Under that requirement, what is readily achievable for any given facility must be determined on a case-by-case basis and, by statute, has no monetary or other absolute parameters. In addition, cost estimates are more readily available with respect to newly constructed and altered facilities. Thus, while the basic principles are the same for both, the Department is considering rather different technical approaches to the Benefit-Cost Analysis of the revised ADA Standards with respect to newly constructed and altered facilities, on the one hand, and existing facilities, on the other.

Costs and Benefits of Provisions Applied to Newly Constructed and Altered Facilities

For facilities that will be newly constructed or altered after the effective date of the revised ADA Standards, the Department will seek to estimate the economic value of the incremental costs and benefits of each new or revised provision, and from there the net costs or benefits of the rule as a whole, by fairly conventional means. Using the Access Board's estimates of direct unit costs as a starting point, the Department will estimate the direct life-cycle costs (based on an estimated 50-year life cycle of a building) imposed by each provision. These direct costs may include one-time cash expenditures occurring at the time of construction or alteration (also known as "capital" costs), annual cash expenditures necessary to cover the incremental costs of maintaining and operating accessible elements and spaces, and any loss of economic value caused by the reduction of productive space or productivity. Indirect costs include losses in social value that may arise as a result of the revised ADA Standards, such as reduced accessibility or, due to the increased cost of construction, a reduction in the number of total facilities and buildings that are constructed.

Benefits are primarily represented by the creation of social value, and can be divided into three categories. "Use value" is the value that people both with and without disabilities derive from the use of accessible facilities. "Insurance value" is the value that people both with and without disabilities derive from the opportunity to obtain the benefit of accessible facilities. Finally, "existence value" is the value that people both with and without disabilities derive from the guarantees of equal protection and non-discrimination that are accorded through the provision of accessible facilities. Other kinds of benefits include the saving of direct costs, such as from reduced construction, alteration, or retrofitting expenses resulting from reduced accessibility requirements.

Based on the estimates of costs and benefits, the Department will calculate the annualized value and the net present value of the rule as whole. In addition to requiring the presentation of annualized costs and benefits, OMB Circular A–4 stipulates that net present value is to be regarded as a principal measure of value produced by a Benefit-Cost Analysis when costs and benefits are separated from each other over time (*i.e.*, when some people benefit from accessible facilities long after their construction). A net present value greater than zero would indicate that benefits exceed costs and that the regulation can be expected to increase the general level of economic welfare accordingly. While a net present value of less than zero could mean that costs exceed benefits, the existence of significant unmeasured and qualitative benefits must be taken into account. The Department proposes to identify and discuss all unmeasured and qualitative benefits. As one means of accounting for measurement risk, the Department also proposes to adopt the method of Threshold Analysis. Under this method, if quantitatively measured costs appear to exceed quantitatively measured benefits, the Department will calculate the value that society would need to assign to un-quantified benefits in order to balance the ledger. This "threshold value" will be reported for public review and comment in the NPRM, along with a qualitative description of the un-quantified benefits at issue.

Quantification of Costs and Benefits

Among the conventions of economic analysis, and an accepted principle in OMB Circular A–4, is that the amount of money people either pay or are willing to pay for goods and services represents a reasonable index of the total benefit they derive from such goods and services. This is called "willingness to pay." The Department recognizes that the research community has made significant progress in the measurement of willingness to pay using proxies from market prices, surveys, and other methods. The Department also recognizes that some values nevertheless defy measurement. For example, while society clearly values the existence of constitutional protections, ascertaining the monetary equivalence of such values might be controversial and technically impracticable. Accordingly, the Department proposes to express benefits that are difficult to measure in qualitative rather than quantitative terms.

Circular A–4 indicates that, where available and relevant, market prices represent the appropriate starting point for ascertaining willingness to pay. Thus, for example, if a movie theater or swimming pool becomes newly accessible as a result of the revised ADA Standards, the resulting user value could be determined by multiplying the volume of new visits by people with disabilities by the market price of entry (namely, the ticket price). However, an issue with market prices arises where a provision in the revised ADA Standards renders an existing facility "more" accessible rather than newly accessible. Such might be the case, for example, with respect to the provision requiring an independent means of getting in and out of the pool in an otherwise accessible swimming facility, or the provision requiring equal access to the good seats in an otherwise accessible theater. In such cases, it may be argued that the price of entry overstates the value of the provision, since entry per se would still be feasible without the change. On the other hand, others may argue that the swimming or theater experience is fundamentally altered, perhaps even newly facilitated in a meaningful way, by the availability of improved, independent access. In practice, practitioners of Benefit-Cost Analysis employ empirical data, opinion surveys, expert judgment, and sensitivity analysis to obtain reasoned estimates of use value.

Economists also recognize that, as applied to people with low incomes, the willingness-to-pay index can underestimate economic value from the perspective of public policy. For example, the food purchases of single parents living below the poverty line are smaller than similarly constituted households with higher incomes. While both constitute willingness-to-pay data, for the low-income household, the data indicate affordability, not the economic value obtained from nutrition. In this regard, the Department recognizes that the median income among people with disabilities is significantly lower (about half) than that of the U.S. population generally. As a result, the willingness of people with disabilities to pay for access to architecturally improved facilities might not reflect the value of such facilities as viewed by the framers of the ADA and other policy makers. In practice, most Regulatory Impact Analyses use benefit values, such as a value of a statistical life in assessing health and safety regulations, assuming that the population receiving the benefits is of average income.

Another issue that arises when willingness to pay is used as an index of value is that market prices simply do not exist for all goods and services. Such might be the case with a municipal swimming pool provided free of charge, or for a token, largely subsidized user fee. Another example might be the improvement of a particular element or space, such as a kitchen or toilet, in an otherwise accessible office building. Survey-based information is the principal means of obtaining willingness-to-pay data in such cases. A commonly used survey approach in Regulatory Impact Analysis is called the "Stated Preference" method. Stated Preference surveys pose carefully conceived and scientifically structured hypothetical choices and trade-offs to random samples of survey respondents. Special statistical analysis of the survey data is then employed in order to obtain estimates of willingness to pay. A concern with the Stated Preference surveys is that respondents may not have sufficient incentives to offer thoughtful responses that are consistent with their preferences, or that respondents may be inclined to bias their responses for one reason or another. Without a real budgetary constraint, for example, respondents with disabilities might be inclined to exaggerate their willingness to pay for more accessible facilities. On the other hand, respondents without disabilities might understate their true willingness to pay for accessibility measures due to a tendency to underestimate the risk of becoming disabled oneself. Additionally, people might have difficulty articulating the strength of their feelings regarding, for example, the integration of a child with a disability into a mainstream school or play area if they do not have a child with a disability. Perhaps people are more likely to underestimate than overestimate their willingness to pay for the existence of legal protections if they have not experienced disability first-hand or within their family. The Department recognizes the need to anticipate the risk of both under- and over-estimation of value based on the hypothetical willingness-to-pay questions posed in Stated Preference surveys. The Department recognizes as well that, other things being equal, "revealed preference" data—data based on actual transactions—is to be preferred over Stated Preference data because revealed preferences represent actual decisions in which market participants enjoy or suffer the consequences of their decisions.

Finally, measurement error is inevitable in the assessment of both costs and benefits. The revised Standards will have different implications for elements and spaces in facilities of different types and different ages. The number of elements and spaces in facilities is itself uncertain. Data will often be sparse and will be subject to recording errors of many kinds. In addition to the method of Threshold Analysis described above, the Department proposes to adopt the method of Risk Analysis to help ensure that the analysis is transparent with respect to measurement risk. While rather technical in application, the principle is straightforward: with Risk Analysis, every number employed in the analysis is expressed as a range—what statisticians call a "probability distribution"—that reflects the whole array of possible outcomes and the probability of each occurring. When all the ranges are combined into estimates of total costs and total benefits for a given regulatory provision, the result is not a single "best guess" of net benefit, but a probability range of possible outcomes.

Costs and Benefits of Provisions Applied to Existing Facilities Under the Barrier Removal Requirement: Proposed Simulation Model

Title III of the ADA reflects Congress's specific intent not to establish—either in the statute or regulations—absolute technical or monetary standards for what constitutes readily achievable barrier removal in existing buildings. Some stakeholders, particularly businesses (and especially small businesses), have long expressed concern regarding the need to assess the costs of compliance with the readily achievable barrier removal requirement in absolute terms, notwithstanding the essentially relative nature of the statutory requirement.

The Department is considering the development of a computer simulation model to estimate the incremental costs and benefits of the revised ADA Standards as applied to existing facilities that may be required to retrofit particular elements or spaces only to the extent required by the readily achievable barrier removal requirement. For each new or revised scoping or technical provision in the revised ADA Standards representing a substantive change from the current ADA Standards, the computer model would assess the statistical probability that existing facilities would be required to implement the provision pursuant to the readily achievable barrier removal requirement. In order to determine whether a provision would apply to a given facility, the Department contemplates plugging a range of different factors relevant to the "readily achievable" analysis into the model, including the possibility of using multiple criteria that distinguish among small- and large-sized enterprises.

Two statistical databases would be developed in order to implement the simulation model. One is a database of costs associated with retrofitting elements and spaces in existing facilities, where the facilities are stratified by type, age, physical condition, and financial size. This database would also include estimates of user and nonuser benefits. The second database would include the estimated number of elements and spaces in existing facilities that would be subject to the readily achievable barrier removal requirement (in each year of the life-cycle analysis) in each stratum. Within each stratum, the incidence of facilities in various classes would permit the model to be executed for each of the options under Departmental consideration. The Department would collect the information used to populate the databases from all available sources. As set out above, all entries in the databases would be expressed as a range of probabilities in order to account for the inevitable risk of error and varying degrees of sampling quality. Thus, the model would be statistical by nature, which means that different types and sizes of facilities would be represented as sample data, not data for each facility in the nation. Costs would be statistical in the same sense.

[FR Doc. 04–21875 Filed 9–29–04; 8:45 am]

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Federal Register

Thursday,
September 30, 2004

Part VI

The President

Federal Register
Vol. 69, No. 189
Thursday, September 30, 2004

Presidential Documents

Title 3—

The President

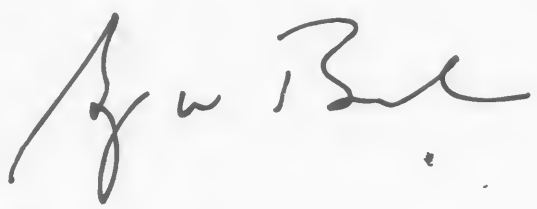
Presidential Determination No. 2004–50 of September 24, 2004

Presidential Determination on Eligibility of the African Union to Receive Defense Articles and Services Under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act, as Amended

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and services to the African Union will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 24, 2004.

[FR Doc. 04–22100
Filed 9–29–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Documents

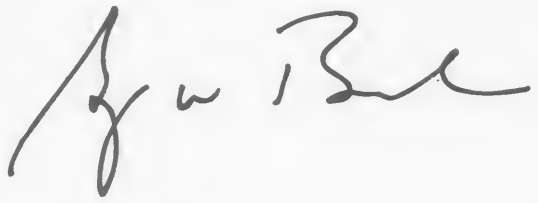
Presidential Determination No. 2004–51 of September 24, 2004

Determination to Make Available Assistance for Sudan

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

Consistent with the authority vested in me by the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106), under the heading "International Disaster and Famine Assistance," I hereby determine that it is in the national interest of the United States and essential to efforts to reduce international terrorism to furnish $20 million in assistance for Sudan from funds made available under that heading.

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



THE WHITE HOUSE,
Washington, September 24, 2004.

[FR Doc. 04–22101
Filed 9–29–04; 8:45 am]
Billing code 4710–10–P

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Presidential Documents

Presidential Determination No. 2004–52 of September 24, 2004

Certification Permitting Rescission of Iraq as a Sponsor of Terrorism

Memorandum for the Secretary of State

On September 13, 1990, Acting Secretary of State Eagleburger designated Iraq as a state sponsor of terrorism (55 *Fed. Reg.* 37793–01).

Consistent with section 6(j)(4)(A) of the Export Administration Act of 1979, Public Law 96–72, as amended, and as continued in effect by Executive Order 13222 of August 17, 2001, 66 *Fed. Reg.* 44025, I hereby certify that:

(1) There has been a fundamental change in the leadership and policies of the Government of Iraq;

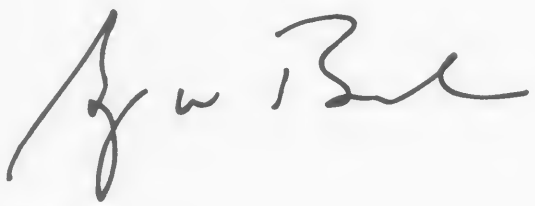
(2) Iraq's government is not supporting acts of international terrorism; and

(3) Iraq's government has provided assurances that it will not support acts of international terrorism in the future.

Accordingly, the prerequisites for your determination to rescind Iraq's designation as a state sponsor of terrorism will be satisfied once you have transmitted this certification to the Congress.

This certification shall also satisfy the provisions of section 620A(c)(1) of the Foreign Assistance Act of 1961, Public Law 87–195, as amended, and section 40(f)(1)(A) of the Arms Export Control Act, Public Law 90–629, as amended.

You are authorized and directed to report this certification to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 24, 2004.

[FR Doc. 04–22102
Filed 9–29–04; 8:45 am]
Billing code 4710–10–P

Federal Register

Thursday,
September 30, 2004

Part VII

The President

Executive Order 13358—Assignment of Functions Relating to Certain Appointments, Promotions, and Commissions in the Armed Forces

Federal Register
Vol. 69, No. 189
Thursday, September 30, 2004

Presidential Documents

Title 3—

The President

Executive Order 13358 of September 28, 2004

Assignment of Functions Relating to Certain Appointments, Promotions, and Commissions in the Armed Forces

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Assignment of Functions to the Secretary of Defense.* The Secretary of Defense shall perform, except with respect to the Coast Guard during any period in which it is not operating as a service in the Navy, the functions of the President under the following provisions of title 10, United States Code:

(a) subsection 1521(a);

(b) the first sentence of subsection 12203(a);

(c) the first sentence of subsection 14111(a), except with respect to reports relating to the grades of brigadier general or above, or rear admiral (lower half) or above; and

(d) subsection 14310(a), except with respect to removals relating to a promotion list for grades of brigadier general or above, or rear admiral (lower half) or above.

Sec. 2. *Assignment of Functions to the Secretary of Homeland Security.* The Secretary of Homeland Security shall perform, with respect to the Coast Guard during any period in which it is not operating as a service in the Navy, the functions assigned to the President by the following provisions of the United States Code:

(a) subsection 1521(a) of title 10;

(b) the first sentence of subsection 12203(a) of title 10;

(c) subsection 729(g) of title 14, except with respect to approval of, or removal of a name from, a report relating to the grades of rear admiral (lower half) or above; and

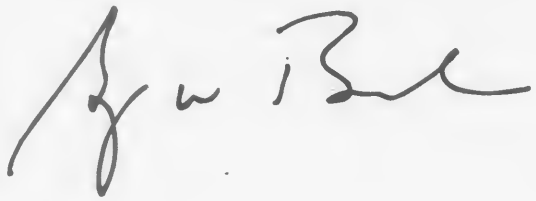
(d) subsection 738(a) of title 14, except with respect to removals relating to a promotion list for grades of rear admiral (lower half) or above.

Sec. 3. *Reassignment of Functions Assigned.* The Secretary of Defense and the Secretary of Homeland Security may reassign the functions assigned to them by this order to civilian officers, within their respective departments, who hold a position for which the President makes an appointment by and with the advice and consent of the Senate, except that the Secretary of Defense and the Secretary of Homeland Security may not reassign the functions assigned by sections 1(b) and 2(b), respectively. The Secretary of Defense may not reassign the function assigned by section 1(c) of this order except to such an officer within the Office of the Secretary of Defense (as defined in section 131(b) of title 10).

Sec. 4. *General Provisions.* (a) This order shall take effect on October 1, 2004.

(b) Nothing in this order shall be construed to limit or otherwise affect the authority of the President as Commander in Chief of the Armed Forces of the United States, or under the Constitution and laws of the United States to nominate or to make or terminate appointments.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
September 28, 2004.

[FR Doc. 04–22212
Filed 9–29–04; 11:31 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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H.R. 361/P.L. 108–304

Sports Agent Responsibility and Trust Act (Sept. 24, 2004; 118 Stat. 1125)

H.R. 3908/P.L. 108–305

To provide for the conveyance of the real property located at 1081 West Main Street in Ravenna, Ohio. (Sept. 24, 2004; 118 Stat. 1130)

H.R. 5008/P.L. 108–306

To provide an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through September 30, 2004, and for other purposes. (Sept. 24, 2004; 118 Stat. 1131)

S. 1576/P.L. 108–307

Harpers Ferry National Historical Park Boundary Revision Act of 2004 (Sept. 24, 2004; 118 Stat. 1133)

Last List September 9, 2004

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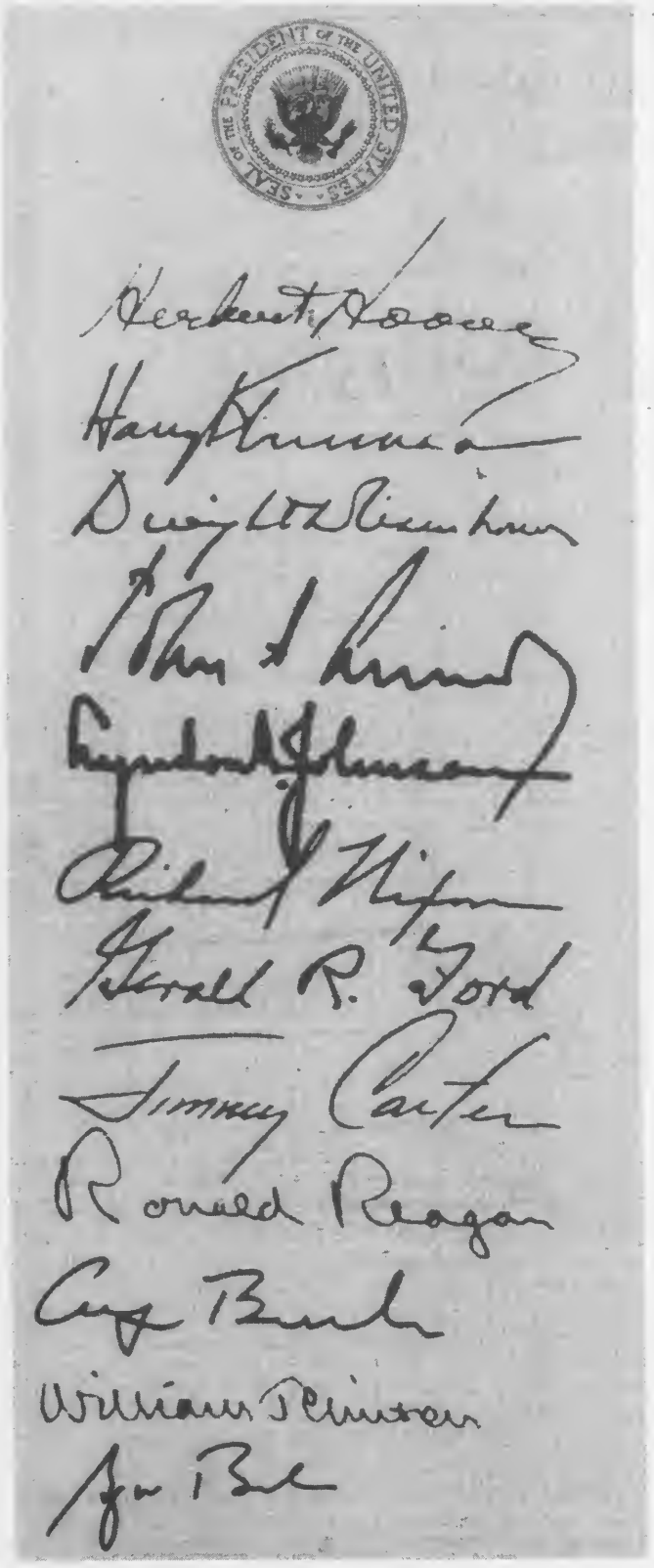

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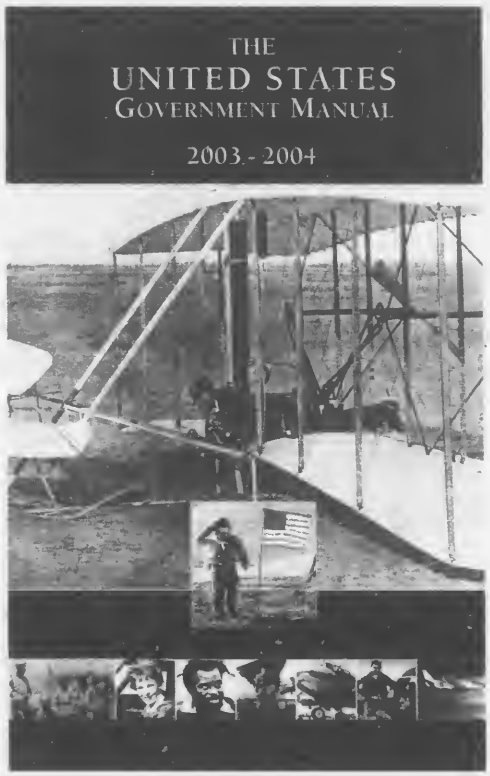

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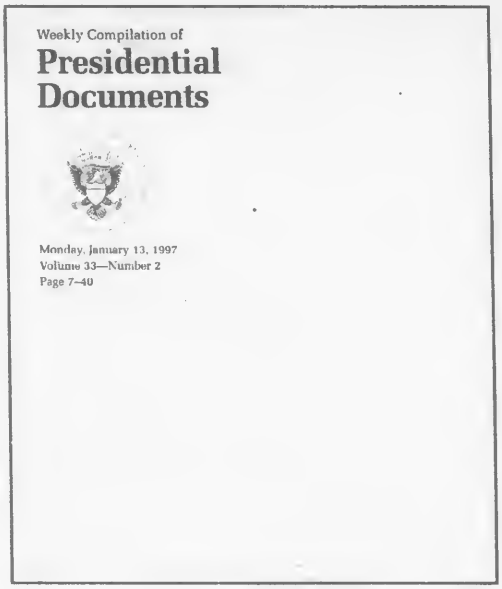

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