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3–17–04 Wednesday
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 330 and 385

[Docket No. RM99–5–000; Order No. 639–B]

Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf

Issued March 8, 2004.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is removing certain regulations promulgated under the Outer Continental Shelf Lands Act following a judicial determination that the Commission lacked authority to issue the regulations.

EFFECTIVE DATE: The rule is effective March 17, 2004.

FOR FURTHER INFORMATION CONTACT: Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8947.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

Introduction

1. The Federal Energy Regulatory Commission (Commission) is removing certain regulations promulgated under the Outer Continental Shelf Lands Act (OCSLA) [1] following a judicial determination that the Commission lacked authority to issue the regulations.

Background and Discussion

2. On April 10, 2000, the Commission issued a rule requiring all entities that move natural gas on or across the Outer Continental Shelf to report certain information regarding their affiliations, rates, and conditions of service.[2] On January 11, 2002, the United States District Court for the District of Columbia determined that the Commission lacked authority under the OCSLA to promulgate such reporting requirements,[3] a determination subsequently affirmed.[4] In view of the courts' finding, the Commission is removing the reporting requirements set forth in part 330 of Subchapter O of its regulations.

Information Collection Statement

3. There is no need for Office of Management and Budget (OMB) review [5] under Section 3507(d) of the Paperwork Reduction Act of 1995,[6] since this final rule eliminates information collection and recordkeeping requirements. The removal of the OCSLA reporting requirements reduces the Commission's FERC–545 data collection burden by 1,760 hours and eliminates the $88,000 annual cost.

Environmental Analysis

4. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[7] However, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[8] The removal of regulations here qualifies for such an exclusion.[9] Therefore, no environmental analysis is necessary, and none has been done.

Regulatory Flexibility Act Certification

5. The Regulatory Flexibility Act of 1980 (RFA) [10] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[11] The Commission found that promulgation of the regulations at issue would not have a significant economic impact on small entities and certifies that the removal of these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

Document Availability

6. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

7. From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

8. User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll

[1] 43 U.S.C. 1301–1356.

[2] Regulations Under the OCSLA Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf, Order No. 639, 65 FR 20354 (Apr. 17, 2000), FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000 ¶31,097 (2000); *Order on Reh'g,* Order No. 639–A, 65 FR 47294 (Aug. 2, 2000), FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000 ¶31,103 (2000), *Order Denying Clarification,* 93 FERC ¶61,274 (2000); *Order Denying Clarification,* 93 FERC ¶61,274 (2000); *Order on Request for Confidential Treatment,* 96 FERC ¶61,296 (2001); *Order Clarifying Prior Order,* 97 FERC ¶61,040 (2001).

[3] *Chevron U.S.A., Inc.* v. *FERC,* 193 F. Supp. 2d 54 (D.DC 2002).

[4] *Williams Companies* v. *FERC,* 345 F.3d 910 (DC Cir. 2003).

[5] 5 CFR 1320.11.

[6] 44 U.S.C. 3507(d).

[7] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30,783 (1987).

[8] 18 CFR 380.4(a)(2)(ii).

[9] 18 CFR 380.4.

[10] 5 U.S.C. 601–612.

[11] 5 U.S.C. 605(b).

free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Effective Date

9. The removal of the OCSLA reporting regulations is effective immediately, pursuant to 5 U.S.C. 533(b). The Commission is issuing this as a final rule without a period for public comment, because under 5 U.S.C. 533(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice or where the agency finds notice and comment unnecessary. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because this rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.[12]

List of Subjects

18 CFR Part 330

Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linda Mitry,

Acting Secretary.

■ In consideration of the foregoing, under the authority of U.S.C. 825h, the Commission amends 18 CFR Chapter I as follows:

SUBCHAPTER O—REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)—[REMOVED]

■ 1. Subchapter O, consisting of part 330, is removed and reserved.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 2. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–8225r, 2601–2645; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 3. In § 385.2011, paragraph (b)(6) is removed.

[FR Doc. 04–5761 Filed 3–16–04; 8:45 am]

BILLING CODE 6717–01–P

[12] *See* 5 U.S.C. 804(3)(B) (2002).

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adding an exemption rule for the system of records F071 JTF A, entitled "Computer Network Crime Case System". The exemptions [(j)(2) and (k)(2)] increase the value of the system of records for law enforcement purposes.

The proposed rule was published on December 9, 2003, at 68 FR 68578. No comments were received; therefore, the Department of the Air Force is adopting the rule as published below.

EFFECTIVE DATE: February 10, 2004.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been certified that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been certified that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is to be amended as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Appendix D to part 806b is amended by adding paragraph (e)(8) to read as follows:

Appendix D to Part 806b—General and Specific Exemptions

* * * * *

(e) * * *

(8) System identifier and name: F071 JTF A, Computer Network Crime Case System.

(i) Exemption: (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) Reasons: (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

* * * * *

Dated: March 11, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5978 Filed 3–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 66

[USCG–2000–7466]

RIN 1625–AA55

Allowing Alternatives to Incandescent Lights, and Establishing Standards for New Lights, in Private Aids to Navigation

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of December 8, 2003 a final rule concerning private aids to navigation and the use of light-emitting diodes (LEDs). The final rule, as published, contained an incorrect telephone number. This document corrects that error.

DATES: Effective March 17, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on this correction notice, call or e-mail Dan Andrusiak, Office of Aids to Navigation (G–OPN), U.S. Coast Guard, at telephone 202–267–0327, or *dandrusiak@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule, as published, contained a telephone number in 33 CFR 66.01–5 in which two digits were transposed. The correct telephone number is (800) 368–5647.

Correction of Publication

§ 66.01–5 [Amended]

■ In rule FR Doc. 03–29650 published on December 8, 2003, (68 FR 68235), make the following correction. On page 68238, in the third column, in the introductory text of § 66.01–5, remove the telephone number "(800) 368–5674", and, in its place, add "(800) 368–5647".

Dated: March 9, 2004.

David S. Belz,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 04–6034 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–020]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Newburyport US1 Bridge, mile 3.4, across the Merrimack River between Newburyport and Salisbury, Massachusetts. Under this temporary deviation the bridge need operate only one bascule leaf for bridge openings from March 15, 2004 through April 2, 2004. The southeast bascule leaf may remain in the closed position to navigation. This temporary deviation is necessary to facilitate emergency structural repairs at the bridge.

DATES: This deviation is effective from March 15, 2004 through April 2, 2004.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Newburyport US1 Bridge has a vertical clearance in the closed position of 35 feet at mean high water and 42 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.605(a).

The bridge owner, Massachusetts Highway Department (MHD), requested a temporary deviation from the drawbridge operation regulations to facilitate emergency structural maintenance, the replacement of the concrete filled grid deck on the southeast bascule leaf, at the bridge. The southeast bascule leaf must remain in the closed position to perform these repairs. The north bascule leaf will open fully for the passage of vessel traffic during these repairs.

The Newburyport US1 Bridge has not received any requests to open during the month of March for the past seven years.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are necessary repairs that must be performed with undue delay in order to assure the continued safe reliable operation of the bridge.

Under this temporary deviation the Newburyport US1 Bridge may keep the southeast bascule leaf in the closed position from March 15, 2004 through April 2, 2004. The north bascule leaf will continue to open for the passage of vessel traffic according to the existing drawbridge operation regulations which require a one-hour advance notice by calling the number posted at the bridge.

This deviation from the operating regulations is authorized under 33 CFR 117.35(b), and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 5, 2004.

Vivien S. Crea,

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

[FR Doc. 04–6032 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–025]

RIN 1625–AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of February 5, 2004, a temporary final rule concerning the safety zone for the new Tacoma Narrows Bridge construction project. The wording in § 165.T13–016 Background and Purpose is being corrected to accurately reflect the location of the new piers. This document makes the clarification.

DATES: The temporary final rule reinstated and revised in the **Federal Register** (69 FR 5465) was effective on February 6, 2004. This correction is effective on March 1, 2004.

FOR FURTHER INFORMATION CONTACT: LTJG. Tyana Thayer c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6222.

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** on February 5, 2004 (69 FR 5465). In that document, the location described in Background and Purpose was inaccurate. This correction amends the regulatory text published on February 5, 2004. In rule FR Doc 04–2514 published on February 5, 2004 (69 FR 5465), make the following correction. On 69 FR page 5465, column 3 in Background and Purpose remove the word "north" and add in its place the word "south."

Dated: March 1, 2004.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–6033 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0084; FRL–7349–7]

Pesticide Tolerance Fees; Suspension of Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending its regulations governing payment of fees for tolerance petitions and related activities to reflect the statutory requirement that the fees for tolerance petitions and related tolerance activities will not be collected during the period beginning on October 1, 2003, and ending September 30, 2008. Under new legislation signed by the President on January 23, 2004, the collection of such fees is prohibited until after September 30, 2008. Collection is expected to resume on October 1, 2008. EPA is issuing this final rule without notice and opportunity for public comment because there is good cause to do so within the meaning of the Administrative Procedure Act (APA).

DATES: This final rule is effective March 11, 2004.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305–5944; fax number: (703) 305–5884; e-mail address: *frane.jean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you register pesticide products for food or feed uses, or submit petitions for pesticide tolerances. Additionally, this action may be of interest to agricultural producers, food manufacturers, or other pesticide manufacturers. Potentially affected categories and entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0084. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.gpoaccess.gov/ecfr/,* a beta site currently under development.

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

II. Current Tolerance Fees

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), EPA establishes pesticide tolerances and exemptions from the requirement of a tolerance for pesticide chemical residues in food and feed. Under section 408(d) of FFDCA, tolerances are established upon the petition of interested parties, such as pesticide producers or user groups. Under section 408(e) of FFDCA, EPA may also establish tolerances on its own initiative.

Section 408(m) of FFDCA requires EPA to establish a fee system to support the tolerance program. Prior to the 1996 enactment of amendments to the FFDCA under the Food Quality Protection Act, this same authority was found in section 408(o) of FFDCA. Under that prior authority, EPA issued regulations establishing fees for pesticide petitions. The primary fee regulations are located in 40 CFR 180.33, and are referred to in § 180.31 (pertaining to temporary tolerances) and in § 180.32 (pertaining to amendment and repeal of tolerances). The fee regulations are updated annually to reflect the cost of government salary increases.

In general, under § 180.33, fees are prescribed for the submission and review of petitions for a permanent tolerance or exemption, temporary tolerance or exemption, or amendment or repeal (revocation) of a tolerance. Fees are also prescribed for the filing of objections to a tolerance or exemption, and for the costs of preparing a record for judicial review of an Agency order. Sections 180.31 and 180.32 cross-reference the fees in § 180.33.

III. New Registration Service Fees and Suspension of Collection of Current Tolerance Fees

On January 23, 3004, President Bush signed into law the Consolidated Appropriations Act of 2004. This bill included provisions entitled the "Pesticide Registration Improvement Act of 2003," which amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), among other things, to establish a registration service fee system for covered pesticide registration applications and certain other registration-related actions

Section 501(d)(2) of the Consolidated Appropriations Act of 2004 prohibits EPA from collecting any tolerance fees under section 408(m)(1) of FFDCA beginning on October 1, 2003, and ending on September 30, 2008. Accordingly, EPA will no longer collect fees as prescribed in 40 CFR 180.31, 180.32, or 180.33, for any tolerance petition, or petition-associated tolerance activity covered by section 408(m)(1) of FFDCA.

IV. Good Cause Exemption under the APA

EPA has determined that notice and comment on this amendment to the tolerance fee regulations is not required. Under the APA (5 U.S.C. 553(b)(3)(B)), a rule is exempt from notice and public comments requirements "when the agency for a good cause finds (and incorporates the finding and a brief statements of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

Section 501(d)(2) of the Consolidated Appropriations Act of 2004 suspends the collection of fees under the authority of section 408(m)(1) of FFDCA. Accordingly, this rule is merely a housekeeping measure that conforms the regulatory text to the statute. Because the requirement is imposed by statute, the revisions to the regulatory text do not have any substantive effect.

Since the tolerance fee prohibition is statutory, public comment could not change the result dictated by the statute, and is therefore unnecessary and impracticable. In addition, delay in issuing this rule amending the existing regulations could result in confusion on the part of potential petitioners as to what fees are required. Notice and comment would therefore be contrary to the public interest. Accordingly, EPA has concluded that notice and comment on this rule would be impracticable, unnecessary, and contrary to the public interest, within the meaning of 5 U.S.C. 553(b)(3)(B).

EPA also believes that there is good cause to make this rule effective immediately, rather than effective within 30 days, within the meaning of 5 U.S.C. 553(d)(3). For the reasons stated above, EPA has determined that it is unnecessary, impracticable and contrary to the public interest to delay revisions to the text of the regulations to incorporate the statutory requirement that the collection of such fees be suspended. In addition, EPA has balanced the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of this rule. In so doing, EPA has concluded that, because the fee suspension is imposed by statute and is effective on October 1, 2003, the benefit to the public of making conforming changes to the regulatory text immediately outweighs the need, if

any, to give affected parties time to adjust their behavior accordingly. Indeed, EPA has determined that, on balance, making this rule effective immediately is in the public interest and affected parties will better be served by the avoidance of confusion (as a result of a discrepancy between the statute and the regulatory text) with regard to such fees. Thus, EPA has concluded that good cause exists to make this rule effective immediately, within the meaning of 5 U.S.C. 553(d)(3).

V. Statutory and Executive Order Reviews

This final rule merely conforms the codified regulatory text to the terms of the recently enacted statute. Because the prohibition to collect the tolerance fees in the regulation is imposed by statute, the revisions to the regulatory text do not have any substantive effect. As such, under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does this action significantly or uniquely affect small governments. This rule does not have tribal implications, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). This action will not have federalism implications, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not economically significant under Executive Order 12866. 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 under Executive Order 12866. This action does not involve technical standards; 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.

VI. Congressional Review Act

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*) 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. Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 11, 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 11, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ 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. 321q, 346a and 371.

■ 2. In § 180.31, paragraph (b)(1) is revised to read as follows:

§ 180.31 Temporary tolerances.

* * * * *

(b) (1) A request for a temporary tolerance or a temporary exemption from a tolerance by a person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act shall be accompanied by a copy of such experimental permit, such data as are available on subjects outlined in clauses (A), (B), (C), (D), (E), (F), and (G) of section 408(d)(1) of FFDCA, and an advance deposit to cover fees as provided in § 180.33(d), except that no fee under this section shall be levied during the period beginning on October 1, 2003, and ending on September 30, 2008.

* * * * *

■ 3. In § 180.32, paragraph (a) is revised to read as follows:

§ 180.32 Procedure for amending and repealing tolerances or exemptions from tolerances.

(a) The Administrator on his own initiative or on request from an interested person furnishing reasonable ground therefor, may propose the issuance of a regulation amending or repealing a tolerance for a pesticide chemical on one or more raw agricultural commodities or granting or repealing an exemption from tolerance for such chemical. Requests for such amendment or repeal shall be made in writing and be accompanied by an advance deposit to cover fees as provided in § 180.33, except that no fee under this section shall be levied during the period beginning on October 1, 2003, and ending on September 30, 2008.

* * * * *

■ 4. Section 180.33 is amended by adding new paragraph (p) to read as follows:

§ 180.33 Fees.

* * * * *

(p) No fee required by this section shall be levied during the period beginning on October 1, 2003, and ending September 30, 2008.

[FR Doc. 04–6008 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7633–2]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 27, 2000, we published an immediate final rule at 65 FR 64369 to authorize revisions to Arizona's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). At that time, we determined that the identified revisions to Arizona's hazardous waste program

satisfied all requirements for final authorization and authorized the changes through an immediate final rule. The immediate final rule was to be effective on December 26, 2000, unless written comments opposing the authorization were received during the comment period. At the same time, in the event we received written comments, we also published a proposed rule at 65 FR 64403 proposing these same changes to the Arizona hazardous waste program.

As a result of comments received on the immediate final rule, we withdrew the immediate final rule on December 22, 2000 at 65 FR 80790. By this action, we are issuing a final rule authorizing the revisions to the Arizona hazardous waste program as listed in the immediate final rule at 65 FR 64369 and responding below to each of the comments received.

EFFECTIVE DATE: Final authorization for Arizona shall be effective on March 17, 2004.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool, WST–2, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco 94105–3901, (415) 972–3316.

SUPPLEMENTARY INFORMATION: The reader should also refer to the proposed rule at 65 FR 64403 and the immediate final rule at 65 FR 64369, both published on October 27, 2000.

A. Background

We received written comments from five parties during the comment period. Only one party submitted comments which opposed the authorization. One comment expressed reservations about the ability of the State to administer the hazardous waste program and noted that there are numerous facilities in Arizona still operating under interim status. One comment expressed concern about the propriety of this authorization when two Title VI (civil rights) administrative complaints against Arizona are pending. Another comment expressed concern that Arizona does not have adequate permitting staff in the hazardous waste program to review and process permit applications. One comment expressed concern that Arizona is not adequately monitoring hazardous waste Treatment, Storage and Disposal facilities (TSDFs) in the State, and that Arizona does not have an adequate compliance and enforcement program. Finally, four parties commented on EPA's statement in the immediate final rule that EPA "continues to have independent authority under RCRA . . . [to] take enforcement action regardless of whether the State has taken its own actions." 65 FR 64369. Specifically, the comments indicated that this statement conflicts with the Eighth Circuit decision in *Harmon Industries, Inc.* v. *Browner,* 1919 F.3d 894 (8th Circuit 1999).

B. What Were the Comments and Responses to EPA's Proposal?

1. *Comment:* EPA received four comment letters objecting to EPA's assertion in the immediate final rule approving Arizona's RCRA program revisions that EPA retains the authority to take enforcement actions regardless of whether the State has taken its own actions. They assert that EPA's statement is in conflict with the holding in *Harmon Industries, Inc.* v. *Browner,* 191 F .3d 894 (8th Cir. 1999). In this decision, the court found "no support either in the text of the statute or the legislative history for the proposition that the EPA is allowed to duplicate a state's enforcement authority with its own enforcement action."

EPA's Response: EPA has considered the comments it received regarding the effect of state authorization on federal enforcement. The Agency, however, does not agree with the commenters and has not changed the statement in the final rule. EPA continues to believe that the statement in the preamble reflects the correct reading of RCRA § 3008(a) which provides that EPA may bring an enforcement action in a State with an authorized program. The only restriction placed on EPA's authority to enforce in a State with an authorized program is that EPA shall give notice to the State prior to issuing an order or commencing a civil action. See 42 U.S.C. 3008(a)(2). EPA has simply restated a longstanding position taken in civil actions, administrative adjudications, and regulations. See, *e.g., Power Engineering Co.* v. *U.S., 303* F.3d 1232 (10th Cir. 2002), cert. denied, 123 S.Ct. 1929 (2003); *In re: Bil-Dry Corp.,* 1998 WL 743914 (E.P.A. Oct. 8, 1998).

2. In a fifth comment letter, the commenter objected to authorization and expressed several concerns about the Arizona hazardous waste program.

Comment: EPA should not authorize the Arizona Department of Environmental Quality's (ADEQ) RCRA program revisions when there are two outstanding Title VI (civil rights) administrative complaints that have been filed against ADEQ.

EPA's Response: Title VI of the Civil Rights Act prohibits recipients of federal money, such as ADEQ, from discriminating against persons on the basis of color, race or national origin. Title VI prohibits both intentional and unintentional discrimination. Unintentional discrimination may be demonstrated if there is evidence that a recipient administers its programs in a way that results in a discriminatory effect. Two complaints related to hazardous waste management were filed on behalf of the communities located near two Arizona facilities, Heritage Environmental Services (Heritage) and Innovative Waste Utilization (IWU). The complaints alleged that ADEQ violated Title VI of the Civil Rights Act when it issued or considered issuing the facilities' RCRA permits. Both Complaints were investigated and dismissed by EPA's Office of Civil Rights (OCR).

Title VI complaints were filed in OCR, which has the legal authority and responsibility to investigate Title VI complaints filed with EPA. The complaints undergo a thorough, independent review, investigation and final decision. As of this date, both the complaint related to the IWU facility and the complaint related to the Heritage facility have been dismissed. In each case, OCR found no violations of Title VI or EPA's Title VI implementing regulations.

Comment: EPA should not authorize ADEQ's program revisions while there are numerous facilities in Arizona that are operating under interim status permits.

EPA's Response: EPA has been focusing on ADEQ's permitting activities and the need to complete permit processing for Arizona facilities. In the last two-year grant and in the current grant, ADEQ has committed to completion of all interim status permits. Staff and management vacancies in the past and, more recently, ADEQ's increased community involvement have delayed the permit approval process. ADEQ has however committed to meet EPA's national goal for permit decisions at facilities in the regulated universe by 2005. EPA is closely monitoring ADEQ's progress in meeting this commitment and we are confident they will make the agreed upon goal. Currently, there are six facilities operating under interim status, a significant decrease in the number of interim status facilities since 1998. There are ten facilities designated as interim status, inactive or closing. ADEQ estimates that they will be processing several additional closures within the next two years, which will further reduce the interim status universe. EPA is satisfied that ADEQ's progress on completion of the interim status permits is reasonable and adequate for purposes of this authorization decision.

Comment: The commenter raised the issue of ADEQ's staff competence in reviewing and approving permit

applications. Specifically, the commenter questioned ADEQ's approval of the permit for Innovative Waste Utilization, Inc. (IWU) in spite of a deficient emergency plan.

EPA's Response: ADEQ reviewed the draft permit application from IWU and found that it met all regulatory requirements, including those for the contingency plan (emergency plan). As a result of public comment, ADEQ revised the permit adding specificity as well as voluntary requirements in several sections, and adding conditions restricting transportation by schools, community education on potential emergencies and establishing a five year compliance and safety review to determine permit continuance. For example, compatibility testing requirements were added that include commonly accepted scientific references for compatibility, such as those identified in the EPA document *Technical Resources Document for the Storage and Treatment of Hazardous Waste in Tank Systems* (NIS PB 87–134391), and *A Method for Determining the Compatibility of Hazardous Waste* written by the California Department of Health Services (EPA Document 600/2–80–076). This information was not a requirement but rather supplemental information ADEQ chose to include to satisfy public concern.

EPA monitors ADEQ's permit activities regularly and often reviews draft permit decisions to ensure the protection of human health and the environment. EPA is satisfied with the quality of ADEQ's permit decisions and the competence of the staff.

Comment: The commenter questioned whether ADEQ was adequately monitoring (inspecting) Treatment, Storage and Disposal Facilities (TSDFs).

EPA's Response: There are 26 Treatment, Storage and Disposal Facilities (TSDFs) in Arizona's universe of regulated hazardous waste facilities. RCRA requires that each TSDF be inspected every two years. ADEQ ensures that the appropriate number of RCRA inspections are conducted in Arizona, although at times ADEQ or EPA may inspect TSDFs more often. Every other year EPA conducts oversight of ADEQ inspections to determine the adequacy of their inspection program. In the oversight inspections, EPA has been satisfied with the quality of inspections as well as the competence of the inspection staff. In addition, EPA has not observed significant violations at these TSDFs. EPA also monitors ADEQ's program through reporting on grant work plan commitments, annual on-site evaluations and oversight inspections, conference calls and joint inspections. EPA is satisfied that ADEQ provides adequate coverage of the universe of hazardous waste facilities and we continue to monitor and oversee this program to ensure that the public and the environment are protected.

Comment: In this comment, ADEQ's regulation of a particular facility, SONAS, was questioned. A lack of inspections at the facility was cited as evidence of ADEQ's failure to aggressively monitor compliance. The commenter also expressed concern about the treatment of contaminated soils at SONAS and the applicability of new rules on the treatment standards for metal wastes and mineral processing wastes to these soils.

EPA's Response: The SONAS facility is not a hazardous waste facility; it is a solid non-hazardous waste facility. ADEQ's regulation of the SONAS facility is therefore not specifically applicable to EPA's authorization of revisions to Arizona's hazardous waste management program. The petroleum contaminated soil (PCS) and the metals contaminated waste accepted at the SONAS facility are not RCRA hazardous wastes. These soils are defined as solid waste in the Arizona regulations. Therefore, the newly promulgated treatment standards for metal wastes do not apply. The approved solid waste facility plan for SONAS is available for public review at ADEQ. The ADEQ Solid Waste Section and the ADEQ Air Quality Division have conducted inspections at this facility and oversee facility operations. Additionally, a joint inspection by EPA and ADEQ's Hazardous Waste Section was conducted in May 2002.

Comment: The commenter raised questions regarding ADEQ's ability to carry out an adequate and equivalent RCRA compliance and enforcement program.

EPA's Response: As a result of program evaluations and grant negotiations with EPA, ADEQ is implementing an escalated enforcement policy which has shown significant program improvements in state fiscal year 2002–2003. ADEQ has revised internal procedures and created and filled a new enforcement coordinator position. The Inspections and Compliance Unit has also undertaken a vigorous staff hiring and training program. EPA is satisfied that ADEQ is developing a strong and consistent compliance and enforcement program that is equivalent to EPA's program.

C. What Decisions Have We Made in This Rule?

EPA has determined that approval of Arizona's RCRA program revisions identified in the October 27, 2000 immediate final rule (65 FR 64369) and Proposed Rule (65 FR 64403) should proceed. After reviewing the public comments received in response to the proposed authorization, EPA has made a final determination that Arizona's application to revise its authorized program meets all the statutory and regulatory requirements established by RCRA. Therefore, we grant Arizona final authorization to operate its hazardous waste program with the changes described in its application for program revisions previously identified. Arizona has responsibility for permitting Treatment, Storage and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Arizona, until the State is granted authorization to do so. ADEQ and EPA have agreed to a joint permitting process for RCRA permits for those provisions of HSWA for which ADEQ does not have authorization.

For further information on the scope and effect of today's action to approve Arizona's RCRA program revisions, please refer to the preambles of EPA's October 27, 2000 Immediate Final Rule (65 FR 64369) and Proposed Rule (65 FR 64403), as well as the withdrawal of those rules on December 22, 2000 (65 FR 80790).

D. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866.

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the Paperwork Reduction Act.

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

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.

5. Executive Order 13132: Federalism

EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the State, 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 described in EO 13132.

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

EO13175 does not apply to this rule because it will not have tribal implication (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks.

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

This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, Section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule.

10. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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 action will be effective on March 17, 2004.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian Lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 29, 2004.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 04–5641 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[CS Docket No. 97–80; PP Docket No. 00–67; FCC 03–225]

Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment; Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the revised public information collection, Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, CS Docket No. 97–80 and PP Docket No. 00–67, OMB Control Number 3060–1032. Therefore, the Commission announces that OMB Control No. 3060–1032 and associated rules 47 CFR 15.123, 76.1905, and 76.1906 are effective March 17, 2004. The incorporation by reference in 47 CFR 15.123 is approved as of March 17, 2004.

DATES: The rules in 47 CFR 15.123, 76.1905, and 76.1906 are effective March 17, 2004. The incorporation by reference in 47 CFR 15.123 is approved as of March 17, 2004.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for a revised information collection in Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, CS Docket No. 97–80 and PP Docket No. 00–67, 68 FR 66728, November 28, 2003. Through this document, the Commission announces that it received this approval on March 2, 2004; OMB Control No. 3060–1032. The effective date for this collection and associated rules 47 CFR 15.123, 76.1905, and 76.1906 is March 17, 2004. The incorporation by reference in 47 CFR 15.123 is approved as of March 17, 2004.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Leslie F. Smith, Federal Communications Commission, (202) 418–0217 or via the Internet at *leslie.smith@fcc.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–6026 Filed 3–16–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 04–11]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts modifications to the Commission's Part 36 Jurisdictional Separations Rules to conform those rules to revisions to the Part 32 Uniform System of Accounts adopted in the Commission's 2000 Biennial Regulatory Review. The Part 36 modifications the Commission adopts will not have any effect on the assignment of costs and revenues to the state and interstate, but rather are merely ministerial in nature.

DATES: Effective April 16, 2004.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 80–286; FCC 04–11, released on January 16, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Report and Order, we adopt modifications to the Commission's Part 36 Jurisdictional Separations Rules to conform those rules to revisions to the Part 32 Uniform System of Accounts adopted in the Commission's 2000 Biennial Regulatory Review. The part 36 modifications we adopt will not have any effect on the assignment of costs and revenues to the state and interstate, but rather are merely ministerial in nature.

II. Discussion

2. We conclude that it is necessary to adopt modifications to the Commission's part 36 rules consistent with the changes made to the part 32 rules in the *Phase 2 Order*, 67 FR 5669, February 6, 2002. With regard to the elimination of certain part 32 accounts, we find that modifying the part 36 rules to reflect the elimination of such accounts ensures that the part 32 references contained in part 36 are accurate. Because the costs recorded in the newly created subaccounts continue to be jurisdictionally separated in the part 36 rules at the higher account level, we find that modifications to the part 36 rules are not necessary in connection with these new subaccounts. We therefore modify the Commission's part 36 rules as set forth in Appendix C to reflect the revised part 32 accounting rules as adopted in the *Phase 2 Order*.

3. We disagree with those commenters who claim that the modifications to part 36 we adopt in this order should have been referred to the Joint Board. As an initial matter, we note that, although the Commission specifically invited comment from the Joint Board in order to identify any substantive impact on part 36, the Joint Board did not file comments. Moreover, contrary to the claims by NARUC and the state of Oregon, the part 32 changes do not require either reinitialization of the frozen category percentages or the identification of new jurisdictional allocators for the newly created subaccounts. The changes we adopt here are purely ministerial in nature and will not have any effect on jurisdictional cost allocations. For example, § 36.352 of the Commission's rules provides that Class A summary Account 6510 (Other Property Plant and Equipment Expenses) shall be separated based on the separation of Account 2001 (Telecommunications Plant in Service). Because the *Phase 2 Order* eliminated Class A summary Account 6510, § 36.352 is revised to direct Class A carriers to perform jurisdictional separations for detailed Accounts 6511 and 6512, rather than the summary Account 6510. Account 6510 was a summary of Accounts 6511 and 6512. Accounts 6511 and 6512, however, will continue to be separated based on Account 2001 (Telecommunications Plant in Service) as was Account 6510. The basis for conducting separations and the allocation between the jurisdictions remains the same. Similarly, as noted with regard to subaccounts, no part 36 changes are needed because the existing part 36 rules separate costs at the account level, not the subaccount level. We therefore conclude that referral to the Federal-State Joint Board on Separations was not necessary in this instance.

4. Finally, we take this opportunity to correct certain typographical errors in part 36 of our rules. We change the reference at the end of § 36.126(e)(2) from § 36.156 to § 36.155 and remove two references to "@@Q02" from § 36.321(a). We also modify §§ 36.631(a), (c) and (d) to correct typographical errors in the dates that these provisions became applicable.

III. Procedural Issues

A. Paperwork Reduction Act Analysis

5. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13. This order merely modifies account references in part 36 to conform to the part 32 revisions adopted in the *Phase 2 Order* to ensure that all account references in part 36 are consistent with the Uniform System of Accounts. We find, therefore, that the modifications to part 36 adopted in this order do not impose new or modified recordkeeping requirements or burdens on the public.

B. Final Regulatory Flexibility Certification

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

7. In this Order, we adopt modifications to Part 36 Jurisdictional Separations Rules to conform those rules to the revisions to the Part 32 Uniform System of Accounts adopted in our 2000 Biennial Regulatory Review. As indicated in our Initial Regulatory Analysis, our modifications to part 36 are due to the consolidation of several accounts that are also used in part 36. The alternative to not making these modifications would be that part 36 would reference part 32 accounts that are eliminated effective January 1, 2003. The modifications of part 36 to conform to the revised part 32 are necessary to eliminate the potential for confusion that may occur as a result of inconsistent account references. The conforming amendments to the Part 36 jurisdictional rules are a result of the consolidation of Part 32 accounts.

8. The modifications we adopt are ministerial in nature and merely

conform Part 36 account references to the Part 32 Uniform System of Accounts. These ministerial modifications do not have a significant economic effect on any entities and only clarify existing Commission rules. Therefore, we certify that the requirements of this Report and Order will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of this Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register.**

IV. Ordering Clauses

10. Pursuant to sections 1, 4, 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 CFR part 36, is amended as described.

11. Pursuant to 5 U.S.C. 553(d) and § 1.427(a) of the Commission's rules, Part 36 of the Commission's rules, is amended as set forth effective April 16, 2004. We will, however, permit carriers to implement Part 36 changes as of January 1, 2003.

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

List of Subjects in 47 CFR Part 36

Jurisdictional separations, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i), and (j), 205, 221(c), 254, 403 and 410.

■ 2. Amend § 36.112 by revising paragraph (a) to read as follows:

§ 36.112 Apportionment procedures.

(a) The costs of the general support facilities of Class A Companies (which are defined in part 32 of the Commission's Rules) are apportioned among the operations on the basis of the separation of the costs of the combined Big Three Expenses which include the following accounts:

Plant Specific Expenses

Central Office Switching Expenses—Accounts 6211 and 6212

Operators Systems Expenses—Account 6220

Central Office Transmission Expenses—Accounts 6231 and 6232

Information Origination/Termination Expenses—Accounts 6311, 6341, 6351, and 6362

Cable and Wire Facilities Expenses—Accounts 6411, 6421, 6422, 6423, 6424, 6426, 6431, and 6441

Plant Non-Specific Expenses

Network Operations Expenses—Accounts 6531, 6532, 6533, 6534, and 6535

Customer Operations Expenses

Marketing—Account 6611 and 6613

Services—Account 6620

* * * * *

■ 3. Amend § 36.121 by revising paragraph (a) to read as follows:

§ 36.121 General.

(a) The costs of central office equipment are carried in the following accounts:

Central Office Switching	Account 2210.
Non-digital Switching	Account 2211.
Digital Electronic Switching	Account 2212.
Operator Systems	Account 2220.
Central Office—Transmission	Account 2230.
Radio Systems	Account 2231.
Circuit Equipment	Account 2232.

* * * * *

■ 4. Amend § 36.124 by revising paragraphs (a) introductory text and (c) to read as follows:

§ 36.124 Tandem switching equipment—Category 2.

(a) Tandem switching equipment is contained in Accounts 2210, 2211, and 2212. It includes all switching equipment in a tandem central office, including any associated tandem switchboard positions and any intertoll switching equipment. Intertoll switching equipment includes switching equipment used for the interconnection of message toll telephone circuits with each other or with local or tandem telephone central office trunks, intertoll dial selector equipment, or intertoll trunk equipment in No. 5 type electronic offices. Equipment, including switchboards used for recording of calling telephone numbers and other billing information in connection with customer dialed charge traffic is included with Local Switching Equipment—Category 3.

* * * * *

(c) Effective July 1, 2001, through June 30, 2006, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balances of Accounts 2210, 2211, and 2212 to Category 2, Tandem Switching Equipment based on the relative percentage assignment of the average balances of Account 2210, 2211, 2212, and 2215 to Category 2, Tandem Switching Equipment during the twelve month period ending December 31, 2000.

* * * * *

■ 5. Amend § 36.125 by revising paragraphs (a) introductory text and (h) to read as follows:

§ 36.125 Local switching equipment—Category 3.

(a) Local switching equipment is included in accounts 2210, 2211, and 2212. It comprises all central office switching equipment not assigned other categories. Examples of local switching equipment are basic switching train, toll connecting trunk equipment, interlocal trunks, tandem trunks, terminating senders used for toll completion, toll completing train, call reverting equipment, weather and time of day service equipment, and switching

equipment at electronic analog or digital remote line locations. Equipment used for the identification, recording and timing of customer dialed charge traffic, or switched private line traffic (*e.g.* transmitters, recorders, call identity indexers, perforators, ticketers, detectors, mastertimes) switchboards used solely for recording of calling telephone numbers in connection with customer dialed charge traffic, or switched private line traffic (or both) is included in this local switching category. Equipment provided and used primarily for operator dialed toll or customer dialed charge traffic except such equipment included in Category 2 Tandem Switching Equipment is also included in this local switching category. This includes such items as directors translators, sender registers, out trunk selectors and facilities for toll intercepting and digit absorption. Special services switching equipment which primarily performs the switching function for special services (*e.g.* switching equipment, TWX concentrators and switchboards) is also included in this local switching category.

* * * * *

(h) Effective July 1, 2001, through June 30, 2006, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balances of Accounts 2210, 2211, and 2212 to Category 3, Local Switching Equipment, based on the relative percentage assignment of the average balances of Account 2210, 2211, 2212, and 2215 to Category 3, during the twelve month period ending December 31, 2000.

* * * * *

■ 6. Amend § 36.126 by revising paragraph (e)(2) to read as follows:

§ 36.126 Circuit equipment—Category 4.

* * * * *

(e) * * *

(2) Interexchange Circuit Equipment Used for Wideband Service—Category 4.22—This category includes the circuit equipment portion of interexchange channels used for wideband services. The cost of interexchange circuit equipment in this category is determined separately for each wideband channel and is segregated between message and private line services on the basis of the use of the channels provided. The respective costs are allocated to the appropriate operation in the same manner as the related interexchange cable and wire facilities described in § 36.155.

* * * * *

■ 7. In § 36.172, revise the section heading to read as follows:

§ 36.172 Other noncurrent assets—Account 1410.

* * * * *

■ 8. Revise § 36.201 to read as follows:

§ 36.201 Section arrangement.

(a) This subpart is arranged in sections as follows:

■ 9. Amend § 36.202 by revising paragraph (b) to read as follows:

§ 36.202 General.

* * * * *

(b) Except for the Network Access Revenues, subsidiary record categories are maintained for all revenue accounts in accordance with the requirements of part 32. These subsidiary records identify services for the appropriate jurisdiction and will be used in conjunction with apportionment procedures stated in this manual.

■ 10. Revise § 36.211 to read as follows:

§ 36.211 General.

(a) Operating revenues are included in the following accounts:

Account title	Account No.
Basic local service revenue (Class B telephone companies)	5000
Basic Area Revenue (Class A telephone companies)	5001
Network Access Revenues:	
End User Revenue	5081
Switched Access Revenue	5082
Special Access Revenue	5083
Long Distance Message Revenue	5100
Miscellaneous Revenue	5200
Uncollectible Revenue	5300

■ 11. In § 36.212, revise the section heading to read as follows:

§ 36.212 Basic local services revenue—Account 5000 (Class B telephone companies); Basic area revenue—Account 5001 (Class A telephone companies).

* * * * *

■ 12. Amend § 36.213 by revising paragraphs (a), (b), and (c) and by removing paragraphs (d) and (e) to read as follows:

§ 36.213 Network access revenues.

(a) End User Revenue—Account 5081. Revenues in this account are directly assigned on the basis of analysis and studies.

(b) Switched Access Revenue—Account 5082. Revenues in this account are directly assigned on the basis of analysis and studies.

(c) Special Access Revenue—Account 5083. Revenues in this account are directly assigned on the basis of analysis and studies.

■ 13. Revise § 36.216 to read as follows:

§ 36.216 Uncollectible revenue—Account 5300.

The amounts in this account are apportioned among the operations on the basis of analysis during a representative period of the portion of Account 1171, Allowance for doubtful accounts, related to telecommunications billing.

■ 14. Revise § 36.301 to read as follows:

§ 36.301 Section arrangement.

(a) This subpart is arranged in sections as follows:

General	36.301 and 36.302.
Plant Specific Operations Expenses:	
General	36.310.
Network Support/General Support Expenses—Accounts 6110 and 6120 (Class B Telephone Companies); Accounts 6112, 6113, 6114, 6121, 6122, 6123, and 6124 (Class A Telephone Companies).	36.311.
Central Office Expenses—Accounts 6210, 6220, 6230 (Class B Telephone Companies); Accounts 6211, 6212, 6220, 6231, and 6232 (Class A Telephone Companies).	36.321
Information Origination/Termination Expenses—Account 6310 (Class B Telephone Companies); Accounts 6311, 6341, 6351, and 6362 (Class A Telephone Companies).	36.331.
Cable and Wire Facilities Expenses—Account 6410 (Class B Telephone Companies); Accounts 6411, 6421, 6422, 6423, 6424, 6426, 6431, and 6441 (Class A Telephone Companies).	36.341.
Plant Nonspecific Operations Expenses:	
General	36.351.
Other Property Plant and Equipment Expenses—Account 6510 (Class B Telephone Companies); Accounts 6511 and 6512 (Class A Telephone Companies).	36.352.
Network Operations Expenses—Account 6530 (Class B Telephone Companies); Accounts 6531, 6532, 6533, 6534, and 6535 (Class A Telephone Companies).	36.353.
Access Expenses—Account 6540	36.354.
Depreciation and Amortization Expenses—Account 6560	36.361.
Customer Operations Expenses:	
General	36.371.
Marketing—Account 6610 (Class B Telephone Companies); Accounts 6611 and 6613 (Class A Telephone Companies).	36.372.
Services—Account 6620	36.373.
Telephone Operator Services	36.374.
Published Directory Listing	36.375.
All Other	36.376.
Category 1—Local Bus. Office Expense	36.377.
Category 2—Customer Services (Revenue Accounting)	36.378.
Message Processing Expense	36.379.
Other Billing and Collecting Expense	36.380.
Carrier Access Charge Billing and Collecting Expense	36.381.
Category 3—All other Customer Service Expense	36.382.
Corporate Operations Expenses:	
General	36.391.
General and Administrative Expenses—Account 6720	36.392.
Operating Taxes—Account 7200 (Class B Telephone Companies); Accounts 7210, 7220, 7230, 7240, and 7250 (Class A Telephone Companies).	36.411 and 36.412.
Equal Access Expenses	36.421.

■ 15. Amend § 36.310 by revising paragraph (a) to read as follows:

§ 36.310 General.

(a) Plant specific operations expenses include the following accounts:

Network Support Expenses	Account 6110 (Class B Telephone Companies); Accounts 6112, 6113, and 6114 (Class A Telephone Companies)
General Support Expenses	Account 6120 (Class B Telephone Companies); Accounts 6121, 6122, 6123, and 6124 (Class A Telephone Companies).
Central Office Switching Expenses	Account 6210 (Class B Telephone Companies); Accounts 6211 and 6212 (Class A Telephone Companies)
Operator System Expenses	Account 6220
Central Office Transmission Expenses	Account 6230 (Class B Telephone Companies); Accounts 6231 and 6232 (Class A Telephone Companies).
Information Origination/Termination Expenses	Account 6310 (Class B Telephone Companies); Accounts 6311, 6341, 6351, and 6362 (Class A Telephone Companies).
Cable and Wire Facilities Expenses	Account 6410 (Class B Telephone Companies); Accounts 6411, 6421, 6422, 6423, 6424, 6426, 6431, and 6441 (Class A Telephone Companies).

* * * * *

■ 16. In § 36.311, revise the section heading to read as follows:

§ 36.311 Network Support/General Support Expenses—Accounts 6110 and 6120 (Class B Telephone Companies); Accounts 6112, 6113, 6114, 6121, 6122, 6123, and 6124 (Class A Telephone Companies).

* * * * *

■ 17. Amend § 36.321 by revising the section heading and paragraph (a) to read as follows:

§ 36.321 Central office expenses—Accounts 6210, 6220, and 6230 (Class B telephone companies); Accounts 6211, 6212, 6220, 6231, and 6232 (Class A telephone companies).

(a) The expenses related to central office equipment are summarized in the following accounts:

Central Office Switching Expense	Account 6210 (Class B telephone companies); Accounts 6211 and 6212 (Class A telephone companies).
Operator Systems Expense	Account 6220.
Central Office Transmission Expense	Account 6230 (Class B telephone companies); Accounts 6231 and 6232 (Class A telephone companies).

* * * * *

■ 18. In § 36.331, revise the section heading to read as follows:

§ 36.331 Information origination/termination expenses—Account 6310 (Class B telephone companies); Accounts 6311, 6341, 6351, and 6362 (Class A telephone companies).

* * * * *

19. In § 36.341, revise the section heading to read as follows:

§ 36.341 Cable and wire facilities expenses—Account 6410 (Class B telephone companies); Accounts 6411, 6421, 6422, 6423, 6424, 6426, 6431, and 6441 (Class A telephone companies).

* * * * *

■ 20. Revise § 36.351 to read as follows:

§ 36.351 General.

(a) Plant nonspecific operations expenses include the following accounts:

Other Property Plant and Equipment Expenses	Account 6510 (Class B telephone companies); Accounts 6511 and 6512 (Class A telephone companies).
Network Operations Expenses	Account 6530 (Class B telephone companies); Accounts 6531, 6532, 6533, 6534, and 6535 (Class A telephone companies).
Access Expenses	Account 6540.
Depreciation and Amortization Expenses	Account 6560.

■ 21. In § 36.352, revise the section heading to read as follows:

§ 36.352 Other property plant and equipment expenses—Account 6510 (Class B telephone companies); Accounts 6511 and 6512 (Class A telephone companies).

* * * * *

■ 22. In § 36.353, revise the section heading to read as follows:

§ 36.353 Network operations expenses—Account 6530 (Class B telephone companies); Accounts 6531, 6532, 6533, 6534, and 6535 (Class A telephone companies).

* * * * *

■ 23. Revise § 36.371 to read as follows:

§ 36.371 General.

Customer Operations Expenses are included in the following accounts:

Marketing	Account 6610 (Class B telephone companies); Accounts 6611 and 6613 (Class A telephone companies).
Services	Account 6620.

■ 24. In § 36.372, revise the section heading to read as follows:

§ 36.372 Marketing—Account 6610 (Class B telephone companies); Accounts 6611 and 6613 (Class A telephone companies).

■ 25. Revise § 36.391 to read as follows:

§ 36.391 General.

Corporate Operations Expenses are included in the following account:

General and Administrative	Account 6720.

■ 26. Amend § 36.392 by revising the section heading and paragraph (c) to read as follows:

§ 36.392 General and administrative—Account 6720.

* * * * *

(c) The expenses in this account are apportioned among the operations on the basis of the separation of the cost of the combined Big Three Expenses which include the fcllowing accounts:

Plant Specific Expenses

Central Office Switching Expenses—Account 6210 (Class B Telephone Companies); Accounts 6211 and 6212 (Class A Telephone Companies)

Operators Systems Expenses—Account 6220

Central Office Transmission Expenses—Account 6230 (Class B Telephone Companies); Accounts 6231 and 6232 (Class A Telephone Companies)

Information Origination/Termination Expenses—Account 6310 (Class B Telephone Companies); Accounts 6311, 6341, 6351, and 6362 (Class A Telephone Companies)

Cable and Wire Facilities Expense—Account 6410 (Class B Telephone Companies); Accounts 6411, 6421, 6422, 6423, 6424, 6426, 6431, and 6441 (Class A Telephone Companies)

Plant Non-Specific Expenses

Network Operations Expenses—Account 6530 (Class B Telephone Companies); Accounts 6531, 6532, 6533, 6534, and 6535 (Class A Telephone Companies)

Customer Operations Expenses

Marketing—Account 6610 (Class B Telephone Companies); Accounts 6611 and 6613 (Class A Telephone Companies)

Services—Account 6620

■ 27. In § 36.411, revise the section heading to read as follows:

§ 36.411 Operating taxes—Account 7200 (Class B Telephone Companies); Accounts 7210, 7220, 7230, 7240, and 7250 (Class A Telephone Companies).

■ 28. Revise § 36.501 to read as follows:

§ 36.501 General.

For separations purposes, reserves and deferrals include the following accounts:

Other Jurisdictional Assets—Net	Account 1500.
Accumulated Depreciation	Account 3100.
Accumulated Depreciation—Property Held for Future Telecommunications Use.	Account 3200.
Accumulated Amortization—Capital Leases	Account 3400 (Class B Telephone Companies); Account 3410 (Class A Telephone Companies).
Net Current Deferred Operating Income Taxes	Account 4100.
Net Noncurrent Deferred Operating Income Taxes	Account 4340.
Other Jurisdictional Liabilities and Deferred Credits—Net	Account 4370.

■ 29. In § 36.505, revise the section heading to read as follows:

§ 36.505 Accumulated amortization—Tangible—Account 3400 (Class B Telephone Companies); Accumulated amortization—Capital Leases—Account 3410 (Class A Telephone Companies).

* * * * *

■ 30. Amend § 36.631 by revising paragraphs (a) introductory text, (c) introductory text, and (d) introductory text to read as follows:

§ 36.631 Expense adjustment.

(a) Until December 31, 1987, for study areas reporting 50,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

* * * * *

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section. After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

(d) Beginning January 1, 1988, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d)(1) through (4) of this section. After January 1, 2000, the expense adjustment (additional interstate expense allocation) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

* * * * *

[FR Doc. 04–5015 Filed 3–16–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG88

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Cirsium loncholepis* (La Graciosa thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Cirsium loncholepis* (La Graciosa thistle). Approximately 41,089 acres (ac) (16,628 hectares (ha)) are within the boundaries of the critical habitat designation. The designated critical habitat is in San Luis Obispo and Santa Barbara Counties, California.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Section 7(a)(2) of the Act requires that each Federal agency, in consultation with and with the assistance of the Service, ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of designating any particular area as critical habitat. We solicited data and comments from the public on all aspects of this designation, including data on economic and other impacts of the designation.

DATES: This rule is effective April 16, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule are available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that

additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 25 percent (306 species) of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

We proposed to designate critical habitat for *Cirsium loncholepis* (La Graciosa thistle) on November 15, 2001 (66 FR 57559), along with *Eriodictyon capitatum* (Lompoc yerba santa) and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant). We designated final critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* on November 7, 2002 (67 FR 67968), but did not designate *C. loncholepis* due to ongoing analysis of its taxonomic status.

Dr. David Keil is currently studying the taxonomic relationship between *Cirsium scariosum* (elk thistle) and *C. loncholepis* (David Keil, California Polytechnic State University, San Luis Obispo (CPSU), pers. comm. 2002). A highly variable species complex, *C. scariosum* occurs in montane wetlands throughout California including the Klamath Ranges, the Cascade Ranges, the Sierra Nevada, the Transverse Ranges, the South Coast Range, and the Peninsular Ranges (Keil and Turner 1993). A small number of *C. scariosum* populations occur at one of the headwaters of the Santa Maria River in the Mount Pinos region, less than 95 miles (mi) (153 kilometers (km)) inland of the *C. loncholepis* populations. Recent research suggests that the populations of *C. scariosum* in the Mount Pinos region and the Peninsular Ranges are related to *C. loncholepis* and may collectively represent a single taxon (David Keil, CPSU, in litt. 2003). Based on this analysis, Dr. Keil may propose a new taxon, *C. scariosum* var. citrinum; the new taxon would not supersede the current nomenclature until it is peer reviewed and published. Dr. Keil intends to publish his new treatment of the genus *Cirsium* in *The Flora of North America* (FNA). Publication of the FNA volume containing the genus Cirsium will likely occur between 2005 and 2006 (Dieter Wilken, Santa Barbara Botanical Garden, in litt. 2003). Because of delays in finalization of this taxonomic research, we determined to proceed with the designation of critical habitat for *C. loncholepis* based on its current taxonomic status. When the proposed taxonomic changes are published, we will as necessary re-evaluate, within the constraints of available funding, the critical habitat designation and the listing of *C. loncholepis*.

Please refer to the proposed critical designation (66 FR 57559) for an overview of *Cirsium loncholepis* biology, historic range, land ownership and management, and a list of the on-going threats to the species. Since the publication of the proposed critical habitat, subsequent research on *C. loncholepis* has added to our understanding of the species. For example, demographic studies found that the survival and rapid growth of seedlings to a large vegetative (non-flowering) state and large flowering individuals were the main demographic influences driving population growth rate in the populations studied (Lea 2002; Teed 2003). An investigation of seedling ecology found that seedlings tolerate saturated soils better than larger, more mature individuals, and higher seedling mortality occurs if soils dry out quickly (Huber 2003). This study also found that mice forage on seedlings and contribute to seedling mortality. Field observations suggest that *C. vulgare* (bull thistle), an invasive non-native species, may also threaten local populations of *C. loncholepis* due to competition (Tina Teed, CPSU, pers. comm. 2002). The population reported for Monterey County was erroneously identified as *C. loncholepis* and is not being considered a component of this new taxon (D. Keil, pers. comm., 2002).

Changes in land managers and the status of conservation easements within the proposed critical habitat units have occurred since publication of the

proposed rule. The Coastal Conservancy now holds a conservation easement for the western portion of the private parcel owned by the Unocal Corporation. The Center for Natural Land Management manages the parcel owned by the County of Santa Barbara (Rancho Guadalupe Dunes County Park) that was formerly managed by the Trust for Public Lands. This County of Santa Barbara parcel is south of the Unocal parcel and supports suitable habitat though no plants have been documented from that location. The Guadalupe-Nipomo Dunes National Wildlife Refuge is currently negotiating the development of a conservation easement on the entire Unocal parcel. The dune area and shoreline of the Santa Maria River mouth would then be managed as part of the refuge. Long-term management plans for *C. loncholepis* have not yet been developed for any of these areas.

Previous Federal Action

A proposed rule to list *Cirsium loncholepis* and three other species, as endangered was published in the **Federal Register** on March 30, 1998 (63 FR 15164). Please refer to the proposed rule listing the species for information on previous Federal actions prior to March 30, 1998 and to the proposed designation of critical habitat (66 FR 57559, 57564) for information on previous Federal actions prior to November 15, 2001. The proposed critical habitat rule also contains information regarding the litigation history related to the listing and designation of critical habitat for this species (*Southwest Center for Biological Diversity and California Native Plant Society* v. *U.S. Fish and Wildlife Service et al.* (Case No. C99–2992 (N.D.Ca.)).

The proposed rule to designate critical habitat for *Cirsium loncholepis* and two other species was signed on November 2, 2001, and published in the **Federal Register** on November 15, 2001 (66 FR 57559). In the proposal, we determined it was prudent to designate approximately 66,830 ac (27,046 ha) of land in Santa Barbara and San Luis Obispo Counties as critical habitat for *C. loncholepis, Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. Publication of the proposed rule opened a 60-day public comment period, which closed on January 14, 2002.

On May 7, 2002, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *Cirsium loncholepis, Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*, and a notice of availability of the draft economic analysis on the proposed determination (67 FR 30641). This second public comment period closed on June 6, 2002.

In August 2002, we agreed through a joint stipulation with the plaintiffs (Southwest Center for Biological Diversity and California Native Plant Society) to a 1-year extension on the publication date of a final rule for *Cirsium loncholepis* critical habitat to October 25, 2003. A delay in publication was proposed by the plaintiffs because of the uncertainty in the taxonomic status of *C. loncholepis*. (Please refer to the Background section of this rule for more information regarding *C. loncholepis* taxonomic issues.) A final rule designating critical habitat for the other two species was issued October 25, 2002 (67 FR 67968, November 7, 2002).

On September 12, 2003 we filed with the court a motion to modify its Stipulated Order Regarding Critical Habitat Designation, seeking additional time due to the continued uncertainty regarding the taxonomic status of *Cirsium loncholepis* and because appropriations provided by Congress in fiscal year 2003 were insufficient to cover this action. On November 6, 2003, the judge denied our motion for further extension. The Service is issuing this designation in compliance with the court's order.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed critical habitat for the three species. In addition, we invited public comment through the publication of a notice in the San Luis Obispo Tribune on November 18, 2001, and the Santa Barbara News-Press on November 27, 2001.

We received individually written letters from 11 parties, which included 4 designated peer reviewers, 1 Federal agency, and 1 State agency. Of the 11 parties responding individually, 6 supported the proposed designation, 3 were neutral, and 2 were opposed. Of the responding parties, five commented specifically on *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*, while three made general comments for all three taxa, and three commented specifically on *Cirsium loncholepis*.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with the species, with the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. All four of the peer reviewers supported the proposal and provided us with comments, which are included in the summary below and incorporated into the final rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat and *Cirsium loncholepis, Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. We previously addressed comments regarding critical habitat for *E. capitatum* and *D. increscens* ssp. *villosa* in a separate rule that did not include *C. loncholepis* (67 FR 67968). A peer review comment relating to the uncertainty in the taxonomic status of *C. loncholepis* prompted the separation of *C. loncholepis* from the final critical habitat designation for the other two species.

The comments were grouped according to peer review or public comments. Two general issues arose in the public comments that related specifically to the proposed critical habitat determination. These comments are addressed in the summary below. We did not receive any comments on the draft economic analysis of the proposed determination. However, we did receive one comment on economic issues during the first comment period on the proposed designation.

Peer Review Comments

(1) *Comment:* A peer reviewer suggested that we delay publication of a final rule for *Cirsium loncholepis* pending the determination of its taxonomic status. Recent research on *C. loncholepis* raises significant questions regarding the taxonomy of the species.

Our Response: We acknowledge the uncertainty in the taxonomy of *Cirsium loncholepis*. In 2002, we discussed with the plaintiffs, the Center for Biological Diversity and California Native Plant Society, appropriate action on the critical habitat designation given the questions raised by recent review of *Cirsium loncholepis* taxonomy (Please refer to the Background section of this rule for information regarding the study of the taxonomic relationship of *C. loncholepis* and *C. scariosum*.). We agreed, through a joint stipulation with the plaintiffs, to a 1-year extension until October 25, 2003 for completion of the final critical habitat determination for *C. loncholepis*. However, resolution of the taxonomic status of *C. loncholepis* did not occur during the 1-year extension. Given the continuing uncertainty regarding resolution of the taxonomic issue, the Service determined to proceed with the final determination.

(2) *Comment:* One peer reviewer recommended that we include all apparently suitable unoccupied habitats within the range of the species in our critical habitat designation. The reviewer stated that it is unclear from the proposed rule how many unoccupied areas or unsurveyed areas within the historical range of these taxa have been excluded from the proposed rule. Including these areas would improve the chances for recovery by increasing the habitat that would be protected and thus available for colonization.

Our Response: We acknowledge that all areas within the historical range of *Cirsium loncholepis* have not been surveyed. It is possible that suitable habitat for the taxon exists but remains unidentified. While additional surveys would help in further defining the distribution of *C. loncholepis*, we are required to designate as critical habitat those areas we know to be essential to the conservation of the species, using the best information available to us. We included in our critical habitat designation areas with the soil types and vegetation communities necessary to support *C. loncholepis* that are contiguous with the known locations of the taxon and are essential to the conservation of the species.

Within the geographic area occupied by *Cirsium loncholepis*, we designate only areas currently known to be essential to the conservation of the species. Essential areas already have the features and habitat characteristics that are necessary to sustain the species. We do not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area is not included in the critical habitat designation. Within the geographic area occupied by the species, we do not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

We agree that future conservation and recovery of the species depends not only on the areas it currently occupies, but also on providing the opportunity for it to shift in distribution over time, and to expand its current distribution. We have addressed this by designating as critical habitat the areas that surround existing populations and contain the primary constituent elements and are, therefore, essential to the conservation of *Cirsium loncholepis*. The number and location of standing plants (*i.e.*, above-ground expression) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions; and the extent and nature of the seedbank.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Critical habitat designations do not signal that habitat outside the designation is unimportant or not required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action.

(3) *Comment:* A peer reviewer commented that the Cañada de las Flores unit of *Cirsium loncholepis* critical habitat appears to be marginal in its contribution to the conservation and recovery of the species. Much of the area has been converted from grazing, which is generally compatible with the thistle, to intensive agriculture in the form of vineyards. The thistle may not be able to survive and recover under this change in land use.

Our Response: No vineyards currently occur within the Cañada de las Flores Unit. Much of the area surrounding the Cañada de las Flores unit, specifically within and south of Los Alamos Valley, has undergone recent land use changes in the form of vineyard development. However, the majority of the property within the Cañada de las Flores unit remains under a grazing regime with a small amount of agricultural row crops. The majority of the property in this unit is owned by Chevron, which is in the process of closing, excavating, and capping old well sites on the South Los Flores Ranch. A vineyard developer has approached the Service and Santa Barbara County about vineyard development on property within the southern portion of the Unit; less than 10 percent of the unit is proposed for vineyard conversion in the current plans (Bridget Fahey, Service biologist, pers. comm. 2002). Vineyard development on the property would likely occur in upland areas, away from marsh and wetland habitat that support *Cirsium loncholepis* and the federally endangered Santa Barbara Distinct Population Segment (DPS) of the California tiger salamander (*Ambystoma californiense*). Measures developed to protect wetland habitat on the property should be beneficial for *C. loncholepis* as well as the California tiger salamander. We included the Cañada de las Flores unit in our critical habitat designation because it contains the primary constituent elements and characteristics that make it essential for the conservation of *C. loncholepis*.

Public Comments

Issue 1: Site-Specific Areas and Other Comments

(4) *Comment:* A commenter requested that the Oceano Dunes State Vehicular Recreation Area be excluded from the Pismo-Orcutt unit of *Cirsium loncholepis* critical habitat. Designating critical habitat in this area would diminish, if not completely eliminate, opportunities for public use of the dunes for recreational activities. The Oceano Dunes State Vehicular Recreation Area is not necessary for the survival and recovery of the species when considering the large area (approximately 44,000 ac) that would be protected as critical habitat.

Our Response: We are sensitive to the concerns of individuals regarding the effects of critical habitat designation on private land or public lands under State or local jurisdiction. We agree that critical habitat should include only areas essential to the conservation of *Cirsium loncholepis*. Upon review of the area encompassed by the Oceano Dunes State Vehicular Recreation Area (ODSVA), we have removed from the final designation the heavily used off-highway vehicle (OHV) riding area within the ODSVA because the area is not essential for the conservation of *Cirsium loncholepis* (see Summary of Changes from the Proposed Rule section). However, we have retained the remaining portion of the ODSVA in our final designation because these areas are not disturbed and contain habitat essential for *C. loncholepis*. Unless a Federal nexus (*e.g.*, Federal funding, Federal permit, or other Federal actions) exists, the critical habitat designation poses no regulatory burden and should not affect activities at the Oceano Dunes State Vehicular Recreation Area. If a Federal nexus is found to exist, we will work with the State (or other non-Federal entity) and appropriate Federal agency to attempt to develop a project that can be completed without jeopardizing the continued existence of the *C. loncholepis* or adversely modifying its critical habitat.

We have analyzed the potential takings implications of designating critical habitat for *Cirsium loncholepis*. This final rule will not take private,

State, or other non-Federal property. Owners and users of non-Federal recreational areas that are included in the designated critical habitat will continue to have an opportunity to utilize private and public property in ways consistent with the conservation of *C. loncholepis*. Activities that do not have a Federal nexus are not restricted by the designation of critical habitat.

(5) *Comment:* California Department of Transportation (DOT) requested an exclusion of areas within the DOT operating Right of Way (ROW) in several, unspecified units of critical habitat for *Cirsium loncholepis*, where they overlap with the transportation system of California. The DOT requested an exclusion to reduce the need for habitat effects determinations for the taxa where routine disturbance occurs as a result of regular maintenance and operational improvements.

Our Response: In the region covered by this critical habitat designation, State and Federal roads appear to be within the Pismo-Orcutt unit. To clarify, we are not including roads that border the critical habitat units in our designation. The areas adjacent to the State roads that extend within the Pismo-Orcutt unit contain habitat essential to the conservation of *Cirsium loncholepis* as defined by the primary constituent elements. Therefore, we cannot justify excluding these particular areas from the critical habitat unit.

Due to mapping and time constraints, we did not map critical habitat in sufficient detail to exclude all road surfaces, although these would not contain the primary constituent elements essential for the conservation of this taxon. Therefore, we do not view road surfaces within the units as critical habitat for *Cirsium loncholepis*. Federal activities limited to roads and other paved or graveled areas would not trigger a section 7 consultation unless they affect the species or one or more of the primary constituent elements in adjacent critical habitat.

Designation of critical habitat in areas occupied by *Cirsium loncholepis* is not likely to result in a regulatory burden substantially above that already in place due to the presence of the listed species. To streamline the regulatory process, the DOT may request section 7 consultation at a programmatic level for ongoing activities that would result in adverse effects to the taxon or its critical habitat.

Issue 2: Economic Issues

(6) *Comment:* We received one comment recommending we use the contingent valuation method (CVM) to determine the hypothetical non-use values for *Cirsium loncholepis* and the other two species for which critical habitat was concurrently proposed.

Our Response: Some economists recognize that in addition to a "use value" that society places on natural resources these goods may also exhibit a "non-use value" by society. For example, while many people may elect to visit a public park and "use" it for a variety of recreational purposes, the presence of this park may provide a variety of benefits to additional members of society even though their enjoyment may not be directly observable. Certain individuals may also derive benefits from the park because of the protection it offers to certain natural resources including a diverse ecosystem that harbors endangered and threatened species. While these members of society may value the park merely for its existence, their behavior is not directly observable and thus economists have developed certain tools, including CVM, for measuring these values.

CVM is an approach used by economists to directly elicit non-use values from individuals through the use of carefully designed survey instruments. A CVM study will provide respondents with a framework wherein they are asked to value the resource given the parameters of the framework. For CVM to work properly, and provide meaningful information on non-use values, considerable resources must be expended to adequately design and administer this tool. We have not employed CVM studies to capture the non-use values certain individuals may place on critical habitat designation.

In conducting our analyses for the La Graciosa thistle, we reviewed economic literature to determine whether or not there are any existing studies that can provide information that would allow us to better describe and accurately quantify such benefits associated with the survival and recovery of the La Graciosa thistle and its habitat. However, even when such studies are identified, they usually do not allow for the separation of the benefits of listing (including the Act's take provisions) from the benefits of critical habitat designation.

While we are often unable to quantify benefits that may be associated with the designation, our analyses do discuss potential benefits in a qualitative manner. This discussion is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general or critical habitat designation in particular. In short, we believe that we are currently best able to express the benefits of critical habitat designation in biological terms that can be weighed against the expected cost impacts of the rulemaking.

Summary of Changes From the Proposed Rule

In preparation for development of our final designation of critical habitat for *Cirsium loncholepis*, we reviewed comments received on the proposed designation of critical habitat. In addition to minor clarifications and incorporation of additional information on the species' biology and taxonomy, we made four changes to our proposed designation, as follows:

(1) We modified two of the three primary constituent elements from the proposed designation by including additional habitats, excluding two plant communities, and refining the plant species associated with *Cirsium loncholepis* habitats. We did not include seeps in our proposed list of *C. loncholepis habitats* for primary constituent element one. Because hillside seeps provide habitat for the species in the Cañada de las Flores critical habitat unit, we have added seeps to the list of habitats. Intermittent streams also provide habitat for the species, specifically where sub-surface water is close to the surface or exposed along such drainages. For this reason, we have also included intermittent streams. In primary constituent element two of the proposed designation, we included coastal dune and coastal scrub as being essential plant communities. However, coastal dune and coastal scrub plant communities do not provide the moist soils considered necessary for habitats occupied by *C. loncholepis*, and therefore we have removed these communities from the final list. Coastal dune ecosystems contain lakes and other wetlands suitable for *C. loncholepis*, and these wetland habitats are not dominated by plant species associated with coastal dune and coastal scrub plant communities. In primary constituent element two, we kept the plant species typically associated with wetland habitats and removed plants that are not obligate wetland species including *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), and *Baccharis pilularis* (coyote brush).

(2) We modified the boundaries of the proposed units to be consistent with other recent critical habitat designations. The boundaries are now defined by points that lie on a 100-meter-by-100-meter grid in the Universal Transverse Mercator (UTM) coordinate system.

(3) When making adjustments to the Pismo-Orcutt unit, we made slight modifications to exclude developed

areas that were missed during assessment of the 2000 aerial photos. Developed areas are generally not considered essential habitats for *Cirsium loncholepis* because of the lack of primary constituent elements in these areas.

(4) We excluded the heavily used off-highway vehicle (OHV) riding area, which is a portion of the Oceano Dunes State Vehicular Recreation Area, because the area is not essential for the conservation of *Cirsium loncholepis*. OHV disturbance in the riding area has inhibited the development of a natural dune structure that includes the formation of wetlands which could support *C. loncholepis*. The riding area consists mostly of shifting, open sand that is unsuitable habitat for *C. loncholepis*. A small number of remnant wetland habitats exist in the riding area that might support the species, but these are fenced off from OHV disturbance and too few to be essential to the conservation of the species. The highly disturbed riding area that we are excluding is only a small part of the much larger Guadalupe Dune complex. The majority of the known extant populations of *C. loncholepis* are restricted to undisturbed wetlands of the Guadalupe Dune complex and the Santa Maria River mouth, and we have therefore retained the vast majority of the dune complex and a large part of the river in the Pismo-Orcutt unit.

As a result of using the 100-meter-by-100-meter grid method for defining the boundaries and the removal of developed areas missed in the original proposed delineation, the Pismo-Orcutt unit decreased in size by 1,468 ac (595 ha) and the Cañada de las Flores unit decreased in size by only 137 ac (56 ha). With the removal of the OHV riding area, the Pismo-Orcutt unit decreased in size by an additional 1,621 ac (656 ha).

Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that are essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat except in those circumstances determined by the Secretary. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

To be included in a critical habitat designation, the Service must also find that habitat may require special management considerations or protections. As discussed in more detail below, with respect to the individual units, the Service finds that the two units designated as critical habitat for the *C. loncholepis* may require special management considerations or protections due to threats to the species and/or its habitat. Such special management considerations or protections may include management of off-highway vehicle activity, irrigation practices, groundwater pumping, invasive, non-native species, and grazing, as well as protecting the composition of native plant and animal communities within critical habitat units. Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, including impacts to National security, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. This policy requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may thus result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation

planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Cirsium loncholepis*. This included information from the California Natural Diversity Data Base (CNDDB 2001), soil survey maps (U.S. Soil Conservation Service 1972), digital versions of the U.S. Geological Survey 7.5′ quadrangles, aerial photography, recent biological surveys and reports, additional information provided by interested parties, and discussions with representatives of California Department of Fish and Game (CDFG), the Santa Barbara County Planning Department, and other botanical experts. We also conducted site visits at several locations managed by local, State, or Federal agencies, including Guadalupe-Nipomo Dunes National Wildlife Refuge, Oceano Dunes State Vehicle Recreation Area, and Pismo Dunes State Preserve. We also visited the portion of Guadalupe Dunes owned by the Unocal Corporation.

We delineated the proposed critical habitat units for *Cirsium loncholepis* by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of the taxon using the information sources described above and aerial photography available through TerraServer (*http://terraserver.homeadvisor.msn.com*). Where possible, we defined the boundaries of proposed critical habitat to conform to roads, known landmarks, and topographic features. To create the legal descriptions of the boundaries, we used the UTM coordinates that defined the proposed boundary.

For the final rule we made several modifications to the boundaries of proposed critical habitat. We overlaid the boundaries of proposed critical habitat on aerial imagery from April 2000 (AirPhoto USA), and an effort was made to exclude developed areas. We excluded from critical habitat the off-highway vehicle (OHV) riding area in the Oceano Dunes State Vehicular Recreation Area (Recreation Area). We used GIS data from Thomas Reid & Associates, a consultant of the Recreation Area, who approximated the perimeter of the OHV riding area. With the exception of the boundary excluding the OHV riding area just described, the boundaries were modified to conform to a UTM coordinate system grid with a cell size of 100-meters by 100-meters. To accomplish this modification, the points defining the boundaries of proposed critical habitat were moved to an adjacent point lying on the UTM grid of 100-meter cells. Defining critical habitat boundaries to be coincident with points on a UTM grid is consistent with current practice and is intended to simplify interpretation of the coordinates while diminishing the number of coordinates necessary to define a boundary. We did not conform the boundary along OHV riding area to the UTM grid of 100-meter cells because the resulting boundary would greatly deviate from the boundary marked for visitors to the Recreation Area; we believe that a boundary coincident with the OHV riding area is easily understood by Recreation Area visitors and simplifies administration for State Parks.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

All areas designated as critical habitat for *Cirsium loncholepis* are within the species' historic range and contain one or more of the physical or biological features (primary constituent elements) identified as essential for the conservation of each species. Much of what is known about the specific physical and biological requirements of *C. loncholepis* is described in the Proposed Designation of Critical Habitat for *C. loncholepis*.

The designated critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Cirsium loncholepis* throughout the species' range, and provide those habitat components essential for the conservation of the species. Habitat components that are essential for *C. loncholepis* are found in wetland communities where physical processes, including the pattern of prevailing coastal winds, support natural dune dynamics in coastal areas, or occasional floodplain depositional events in inland areas.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Cirsium loncholepis* consist of:

(1) Moist, sandy soils associated with dune swales, margins of dune lakes and marshes, seeps, intermittent streams, and river margins from the Guadalupe Dune complex along the coast and inland to Cañada de las Flores;

(2) Plant communities that support associated wetland species, including: *Juncus* spp. (rush), *Scirpus* spp. (tule), and *Salix* spp. (willow); and

(3) Hydrologic processes, particularly the maintenance of a stable groundwater table supporting the soil moisture regime that appears to be favored by *Cirsium loncholepis*.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. The Pismo-Orcutt unit may require special management considerations or protections due to the threats to the species and its habitat posed by erosion or compaction of soils that could threaten wetlands, coastal dunes and swales; changes in surface or subsurface flows upon which *C. loncholepis* depends that may reduce or remove the essential hydrological regime that supports the species; invasions of non-native plants that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; and excessive grazing that can lead to changes in essential habitat conditions (*e.g.*, increases in soil temperature resulting in loss of moisture, decreases in plant cover, and increases in non-native species). Currently, grazing, agriculture conversion, agricultural practices, competition from non-native plant species, off-road vehicle traffic, and oil and gas decommissioning activities are ongoing in the Pismo-Orcutt unit. The Canada de las Flores unit may require special management considerations or protections due to the threats to the species and its habitat posed by erosion or compaction of soils that could threaten wetlands, coastal dunes and swales; changes in surface or subsurface flows upon which *C. loncholepis*

depends that may reduce or remove the essential hydrological regime that supports the species; invasions of non-native plants that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; and excessive grazing that can lead to changes in essential habitat conditions (*e.g.,* increases in soil temperature resulting in loss of moisture, decreases in plant cover, and increases in non-native species). Currently, grazing, agriculture conversion, competition from non-native plant species, and oil and gas decommissioning are ongoing in the Canada de las Flores Unit.

Criteria Used To Identify Critical Habitat

Throughout this designation, when selecting areas of critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Cirsium loncholepis.* However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. loncholepis.* Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements and thus do not constitute critical habitat for the species. Therefore, Federal actions limited to these areas would not trigger a section 7 consultation unless it is determined that such actions may affect the species and/or adjacent designated critical habitat.

During development of this rule, we considered the role of unoccupied habitat in the conservation of *Cirsium loncholepis.* Due to the historic loss of the habitats that supported the taxon, we believe that conservation and recovery of this species depends not only on protecting it in the limited areas that it currently occupies, but also on providing the opportunity to increase its distribution by protecting currently unoccupied habitat within its historic range.

We consider both units designated as critical habitat for *Cirsium loncholepis* to be occupied by the species. Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The methods for mapping the current distributions of *C. loncholepis* can be variable, depending on the scale at which groups of individuals are recorded (*e.g.,* many small groups versus one large group); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the above-ground distributions may either shrink and temporarily disappear, or, as a residual soil seedbank is expressed, enlarge and cover a more extensive area. Therefore, the inclusion of currently unoccupied habitat interspersed with patches of occupied habitat in the critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of the taxon. We have also included a larger area of currently unoccupied habitat in the Pismo-Orcutt unit, extending from the known coastal locations of the species inland to Orcutt. This habitat is essential to the conservation of the species because (1) it provides connectivity between the known locations on the coast and those habitats containing the primary constituent elements for *C. loncholepis* in the more interior portions of the unit including the type locality for the species (The type locality is the geographic location where the primary type was collected. The type specimen (also known as holotype) is the original specimen from which a description of a new species is made.), (2) it contains the primary constituent elements for the species and (3) it provides potentially suitable habitat for introductions needed for recovery of the species.

We considered the status of habitat conservation planning (HCP) efforts during the development of this rule. We may exclude HCPs from critical habitat designation if the benefits of excluding them would outweigh the benefits of including them. Currently, no HCPs include *Cirsium loncholepis* as a covered species.

Critical Habitat Designation

The critical habitat areas described below include one or more of the primary constituent elements described above and constitute our best assessment at this time of the areas needed for the conservation of *Cirsium loncholepis.* Critical habitat includes habitat throughout the species' current range in the United States (Santa Barbara and San Luis Obispo Counties, California). Lands designated as critical habitat are under Federal, State, local, and private ownership. Federal lands include areas owned and managed by the Service. State lands include areas owned and managed by the California Department of Parks and Recreation and the California Department of Fish and Game (CDFG). Local lands include parks owned by the County of Santa Barbara. Private lands include areas that are being managed for conservation by private landowners, as well as those that are being managed for agriculture, ranchlands, or oil field decommissioning. Each of the critical habitat units is considered to be occupied by either seeds as part of the seedbank or standing plants, and to contain habitat that include the specific soils, hydrology, or plant communities that are essential for this taxon.

Critical habitat designated for *Cirsium loncholepis* includes two units, both of which currently sustain the species. Protection of both units is essential for the conservation of the species because the geographic range that *C. loncholepis* occupies has been reduced to so few sites that the species is in danger of extinction. Both units contain habitat components that are essential for the conservation of *C. loncholepis.* The areas being designated as critical habitat contain the appropriate marsh, dune wetland, and riparian habitat that support *C. loncholepis,* including the sandy soils, the associated plant communities, and a groundwater table that maintains wet soil conditions. We are designating approximately 41,089 ac (16,628 ha) of land as critical habitat for *C. loncholepis.* Approximately 5 percent of this area consists of Federal lands, approximately 5 percent are State lands, less than 1 percent are county lands, and approximately 89 percent are private lands (Table 1). Both units maintain the ecological processes that support the habitats containing the primary constituent elements. Within the units, these habitats allow expansion of the existing populations by maintaining connectivity through pollinators and wind dispersal.

A brief description of both critical habitat units is given below:

Pismo-Orcutt Unit

The Pismo-Orcutt Unit consists of coastal dunes, swales, and wetlands extending from Grover City south to Mussel Point, just north of Point Sal, and then extending inland across the Santa Maria Valley to the area of Orcutt. This unit includes a portion of the Pismo Dunes State Preserve, non-OHV riding areas of Oceano Dunes State Vehicular Recreation Area, the Guadalupe-Nipomo Dunes National Wildlife Refuge, Rancho Guadalupe Dunes County Park, and privately owned lands. In the vicinity of Orcutt, some of the private lands included in this unit have been designated as open space by Santa Barbara County (1998). The coastal portion of this unit contains almost all of the known populations of

Cirsium loncholepis, including the largest population known to exist anywhere on privately owned lands, the Unocal parcel near the mouth of the Santa Maria River, as well as numerous smaller populations that are scattered along the coast north to Grover City. Maintaining all of these populations is essential for this species to survive through a variety of natural and human-induced environmental changes as well as stochastic events (*e.g.*, floods). The more interior portions of this unit are primarily within the lower portion of the Santa Maria River Valley (below 80 ft (24 m) in elevation) and have been placed in agricultural production. However, fragments of numerous small marshes, wetlands, and drainages can still be found interspersed with agricultural fields. The prevailing winds from the stretch of coast between Pismo Beach and the mouth of the Santa Maria River blow southeast across the lower Santa Maria River Valley in the direction of Orcutt and beyond to Cañada de las Flores. The prevailing winds cause seed dispersal, which explains the elongated pattern in distribution of individual plants within known coastal populations. Wind dispersal is important for the maintenance and expansion of existing populations of this species. Intervening habitat between the coastal populations and the more interior portions of the Pismo-Orcutt unit is therefore important to maintain connectivity through pollinator activity and seed dispersal mechanisms, and to provide suitable habitat for introduction efforts needed for recovery of the species.

Cañada de Las Flores Unit

The Cañada de Las Flores Unit consists of wetland habitat, in particular seeps, at the head of Cañada de las Flores watershed, northwest of the town of Los Alamos. All of the lands in this unit are privately owned. The two known populations of *Cirsium loncholepis* in this unit encompass the easternmost distribution of the species; consequently they occur under slightly different environmental conditions, specifically at a higher elevation (200 ft (61 m) elev.) and warmer climate than the coastal populations. These are the only known populations that represent the more interior distribution of the species. Preserving plants surviving in these slightly different environmental conditions (*e.g.*, seasonal temperatures, type of wetland habitat, adjacent plant communities) may be important for the long-term survival and conservation of the species because they may contain genetic features different than those in other parts of the range.

TABLE 1.—APPROXIMATE DESIGNATED CRITICAL HABITAT UNIT AREAS FOR *Cirsium loncholepis* IN ACRES (AC) (HECTARES (HA)) BY LAND OWNERSHIP [1]

Unit name	State	Private	County and other local jurisdictions	Federal	Total
Pismo-Orcutt	1,946 ac (787 ha)	33,954 ac (13,741 ha)	29 ac (12 ha)	2,333 ac (944 ha)	38,262 ac (15,484 ha)
Cañada de las Flores	0 ac (0 ha)	2,827 ac (1,144 ha)	0 ac (0 ha)	0 ac (0 ha)	2,827 ac (1,144 ha)
Total	1,946 ac (787 ha)	36,781 ac (14,885 ha)	29 ac (12 ha)	2,333 ac (944 ha)	41,089 ac (16,628 ha)

[1] Approximate hectares have been converted from acres (1 ha = 2.47 ac).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat designated for such a species. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands; require a Federal permit, license, or other authorization; or involve Federal funding.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service, et al.*, 245 F3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry

out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of the listed species or resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation previously has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Cirsium loncholepis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 consultation process. Federal actions not affecting *C. loncholepis* or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultations with respect to this taxon.

Both of the units we are designating are occupied by either above-ground plants or a seedbank of the taxon, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Each unit also contains some areas that are considered unoccupied. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development;

(2) Activities of the U.S. Fish and Wildlife Service on its Refuge lands;

(3) Watershed management activities sponsored by the Natural Resources Conservation Service;

(4) Activities of the Federal Aviation Authority on their lands or lands under their jurisdiction;

(5) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(6) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; and

(7) Construction of communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans.

Where federally listed wildlife species occur on private lands proposed for development and a habitat conservation plan (HCP) is submitted by an applicant to secure a permit to take according to section 10(a)(1)(B) of the Act, our issuance of such a permit would be subject to the section 7 consultation process. In those situations where *Cirsium loncholepis* may occur or its critical habitat is present within the area covered by an HCP that covers a wildlife species, the consultation process would include consideration of the potential effects on all listed species, including plants, of granting the permit authorizing take of threatened or endangered wildlife species addressed by the HCP.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Cirsium loncholepis* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Cirsium loncholepis* include, but are not limited to:

(1) Activities that alter habitat hydrological regimes in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface water needed to maintain the coastal dune swale, seep, marsh, and riparian habitat within the range of *Cirsium loncholepis*. Such activities adverse to *C. loncholepis* could include, but are not limited to, water drawdown or water diversions that lower the water table, agricultural activities that would affect the quality of water through contamination, off-highway vehicle activity that alters vegetation cover and topography, road building and maintenance or modification that alters runoff patterns, oilfield development, oil contamination remediation activities, construction of pipelines and utility corridors, golf course and residential development and certain recreational activities; and

(2) Activities that destroy the attendant native vegetation and make *Cirsium loncholepis* habitats more susceptible to invasion by non-native plant species including, but not limited to activities such as livestock grazing, grading, construction and maintenance of pipeline and utility corridors, off-road vehicle traffic, and other recreational activities.

Several other wildlife species that are listed under the Act occur in the same general areas as *Cirsium loncholepis*. Western snowy plovers (*Charadrius alexandrinus nivosus*), tidewater gobies (*Eucyclogobius newberryi*), California least terns (*Sterna antillarum browni*), California red-legged frogs (*Rana aurora draytonii*), marsh sandwort (*Arenaria paludicola*), Gambel's watercress (*Rorippa gambelii*), and Nipomo lupine (*Lupinus nipomensis*) occur within the coastal portions of the Pismo-Orcutt unit designated as critical habitat for *C. loncholepis;* in addition, critical habitat for Western snowy plover overlaps with that designated for *C. loncholepis*.

California tiger salamanders (*Ambystoma californiense*) (*Santa Barbara DPS*) occur on the more inland portion of the Pismo-Orcutt unit in the vicinity of Orcutt, as well as in the vicinity of the Cañada de las Flores unit.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, Fax 503/231–6243).

Relationship to Habitat Conservation Plans

Currently, no Habitat Conservation Plans include *Cirsium loncholepis* as a covered species.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on May 7, 2002 (67 FR 30641). We accepted comments on the draft analysis until June 6, 2002.

Our proposed critical habitat rule included three species, *Cirsium loncholepis, Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. Therefore, our economic analysis evaluated the potential future effects associated with the listing of all three of those species as endangered under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. In addition, we analyzed costs incurred through consultations and modifications of activities on lands under the Federal jurisdiction of Vandenberg Air Force Base (VAFB), and the following discussion of potential economic effects and the values presented below assumes the inclusion of these lands in the critical habitat designation. However, through section 4(b)(2), in our final critical habitat rule, we excluded lands owned by VAFB from the areas designated as critical habitat for *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. In that rule, we determined that the benefits of excluding lands owned by VAFB outweighed the benefits of inclusion, which finding resulted in the entire removal of three units and modification of two units (67 FR 67968). Therefore, because our economic analysis was based on an analysis of effects from listing and designating critical habitat for three species, not just *C. loncholepis*, and included impacts of areas that were subsequently excluded from the final critical habitat rules, the values presented below and in the economic analysis are likely overestimates of the potential economic effects resulting from this critical habitat rule for *C. loncholepis*.

The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations due to the listing or the critical habitat, including reinitiated consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; and (3) potential offsetting beneficial costs connected to critical habitat including educational benefits.

Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to a perceived increase in the regulatory burden.

Based on our analysis, we concluded that the designation of critical habitat would not result in a significant economic impact, and estimated the potential economic effects over a 10-year period would range from $3.1 to $3.65 million for all three species. The total estimated costs associated with *Cirsium loncholepis* alone over a 10-year period is estimated to range between $641,000 and $802,300, or $64,100 and $80,200 annually. The total consultation costs for *C. loncholepis* attributable exclusively to the critical habitat provision of section 7 may range from $17,200 to $43,600 over 10 years. These costs are small when considered in the context of the economic activity of the region. Given the total value of $1.09 billion in income (over 10 years) from farming, agricultural services, construction, and oil and gas extraction activities in Santa Barbara County alone, the annualized total cost of section 7 implementation represents about 0.07 percent of the total value of affected economic activities, as estimated in the economic analysis. Although we do not find the economic costs to be significant, they were considered in balancing the benefits of including and excluding areas from critical habitat.

We did not receive any comments on the draft economic analysis of the proposed designation. Following the close of the comment period, the economic analysis was finalized. We made no revisions or additions to the draft economic analysis.

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government

jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement. In this rule, we are certifying that the critical habitat designation for *Cirsium loncholepis* will not have a significant effect on a substantial number of small entities. The following discussion explains the factual basis for this certification.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Cirsium loncholepis*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. Since *C. loncholepis* was listed in March 2000, there have only been two formal consultations involving the species. Both consultations were conducted with the Army Corps of Engineers on restoration activities being undertaken by one entity, Unocal, to clean up and restore beach habitat contaminated by oil production activities. In these consultations, restoration of *C. loncholepis* habitat was proposed as part of the project because Unocal was under court order to remediate contamination by the Environmental Protection Agency. Since there have been only two consultations and both involved the same agency and entity, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

Our economic analysis found that private development, oil and gas production (oil and gas decommissioning in the *Cirsium loncholepis* units), and agriculture (particularly. vineyard conversion) are the primary activities anticipated to take place within the area designated as critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. There are approximately 114 development and real estate, 73 oil and gas, and 93 agriculture small companies within the area designated as critical habitat for the three species. Because this final rule does not include the critical habitat designation for the *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* and also differs from the proposed rule upon which the economic analysis was based through the exclusion of proposed units for those species located on Vandenberg Air Force Base, the impacts of this rule on small businesses and total economic costs are likely to be lower than were reflected in the economic analysis. To be conservative (*i.e.*, more likely to overstate impacts than understate them), we assumed in our economic analysis that a unique business entity would undertake each of the projected consultations in a given year. Therefore, the number of businesses affected annually is equal to the total annual number of consultations (both formal and informal).

Based on the economic analysis which looked at the critical habitat for three species, we estimated that in each year there could be between one and two consultations for private development projects. Assuming each consultation involves a different business, approximately less than 1 percent of the total number of small private development companies could be affected annually by the designation of critical habitat for these three species.

Similarly again in analyzing critical habitat for the three species, we estimated that in each year there could be approximately three consultations for oil and gas production activities. Assuming each consultation involves a different business, approximately 3 to 4 percent of the total number of small gas and oil companies could be affected annually by the designation of critical habitat for these three species.

We also estimated that in each year there could be approximately less than one consultation for agriculture (vineyard) activities. Assuming each consultation involves a different business, approximately less than 1 percent of the total number of small agriculture companies could be affected annually by the designation of critical habitat for *Cirsium loncholepis*. Therefore, the economic analysis concluded that the designation of critical habitat for *C. loncholepis* will not result in a significant economic impact on a substantial number of small entities. This conclusion is supported by the low number of consultations on *C. loncholepis* that have occurred since it was listed.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on *Cirsium loncholepis* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or destroy or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are

alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Second, pursuant to section 7(b)(4), if we find that a proposed action adversely affects the species but is not likely to jeopardize the continued existence of a listed animal or plant species or adversely modify its critical habitat, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Cirsium loncholepis* with no consultations that resulted in a jeopardy determination and so no identified reasonable and prudent alternatives, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation.

It is likely that a developer or other project proponent could modify a project or take measures to protect *Cirsium loncholepis*. Based on the types of modifications and measures that have been implemented in the past for plant species, a project proponent may take such steps as installing fencing or re-aligning the project to avoid sensitive areas. It should be noted that a developer likely would already be required to undertake such measures due to regulations in the California Environmental Quality Act. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Cirsium loncholepis* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. City and county governments would only be affected by this designation if their actions were being funded, permitted, or carried out by a federal agency. In that circumstance, the federal agency would need to assure the action it was funding, permitting, or carrying out would not adversely modify critical habitat. For all actions without federal involvement, this designation would not have any affect on such actions.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. In our economic analysis, we did not identify energy production or distribution as being affected by this designation, and we received no comments indicating that the proposed designation could significantly affect energy supplies, distribution, or use. Oil and gas facilities in the designated units of this final rule are decommissioned or in the process of decommissioning. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Cirsium loncholepis* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Cirsium loncholepis* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas

essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Cirsium loncholepis*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Cirsium loncholepis* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The authors of this final rule are Diane Gunderson, Mary Root, and Connie Rutherford, Ventura Fish and Wildlife Office (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. In § 17.12(h) revise the entry for *Cirsium loncholepis* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Cirsium loncholepis	La Graciosa thistle	U.S.A. (CA)	Asteraceae-sunflower.	E	691	17.96(a)	NA
*	*	*	*	*	*	*	*

■ 3. In § 17.96, amend paragraph (a) by adding an entry for *Cirsium loncholepis* under Family Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family—Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)

(1) Critical habitat units are depicted for San Luis Obispo and Santa Barbara Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Cirsium loncholepis* are those habitat components that provide:

(i) Moist sandy soils associated with dune swales, margins of dune lakes and marshes, seeps, intermittent streams, and river margins from the Guadalupe Dune complex along the coast and inland to Cañada de las Flores;

(ii) Plant communities that support associated wetland species, including: *Juncus* spp. (rush), *Scirpus* spp. (tule), and *Salix* spp. (willow); and

(iii) Hydrologic processes, particularly the maintenance of a stable groundwater table supporting the soil moisture regime that appears to be favored by *Cirsium loncholepis*.

(3) Critical habitat does not include existing features and structures, such as buildings, hard-packed roads (*e.g.*, asphalt, pavement), aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing all of the primary constituent elements.

(4) *Critical Habitat Map Units.* Data layers defining map units were mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Cirsium loncholepis.* Pismo-Orcutt Unit; San Luis Obispo and Santa Barbara Counties, California.

(i) From USGS 1:24,000 scale quadrangle maps Pismo Beach and Oceano. Land bounded by the following

UTM 10 NAD 1927 coordinates (E, N): 715600, 3889000; 716100, 3889000; 716100, 3888800; 716200, 3888500; 716600, 3887600; 716500, 3887600; 716600, 3887300; 716400, 3887300; 716400, 3887400; 716300, 3887400; 716300, 3887300; thence southwest to Oceano Dunes State Vehicular Recreation Area "Street Legal" riding area boundary at y-coordinate 3887230; thence north along the "Street Legal" riding area boundary to y-coordinate 3888735; thence northwest, returning to 715600, 3889000.

(ii) From USGS 1:24,000 scale quadrangle maps Pismo Beach, Oceano, Point Sal, Guadalupe, Santa Maria, and Orcutt. Lands bounded by following UTM Zone 10, NAD 1927 coordinates (E, N): 716700, 3886500; 717100, 3886400; 717300, 3886300; 717600, 3886100; 718100, 3886000; 719100, 3885200; 719400, 3884900; 719600, 3884600; 719600, 3884000; 719300, 3883700; 719200, 3883200; 719100, 3883000; 719200, 3882300; 719400, 3881300; 719700, 3880800; 719800, 3880700; 720300, 3880700; 720300, 3880200; 719600, 3880400; 719500, 3880300; 719600, 3879500; 719700, 3879100; 720300, 3878900; 720400, 3879000; 720400, 3879300; 720000, 3879500; 720400, 3879700; 720600, 3880000; 720700, 3880000; 721300, 3879500; 721500, 3880000; 721900, 3880000; 722500, 3879400; 722500, 3878300; 722300, 3877600; 722000, 3876600; 721800, 3876000; 721800, 3875700; 721500, 3875800; 721600, 3875500; 721800, 3875100; 721800, 3873200; 722200, 3873300; 722300, 3873300; 722900, 3873100; 723200, 3873300; 724100, 3873500; 725800, 3873900; 727000, 3874200; 727600, 3870900; 731700, 3870600; 731700, 3869000; 731400, 3869000; 731400, 3868000; 731600, 3868000; 731700, 3867400; 731200, 3867300; 730500, 3867000; 730000, 3867000; 729900, 3866700; 730600, 3866700; 731200, 3867000; 731600, 3867000; 731700, 3864600; 731200, 3863900; 731400, 3863500; 731800, 3863500; 731800, 3861500; 732300, 3861100; 732500, 3861000; 732800, 3861000; 733000, 3860800; 733200, 3860800; 733200, 3860600; 733500, 3860400; 733600, 3860300; 734100, 3860300; 734200, 3860200; 733900, 3860100; 733600, 3860100; 733600, 3859900; 733400, 3859800; 733300, 3859700; 733200, 3859500; 733200, 3859200; 733000, 3859200; 733000, 3859600; 732800, 3860400; 732600, 3860700; 731500, 3861500; 730700, 3861800; 729800, 3862100; 728800, 3862500; 728300, 3862900; 726900, 3864000; 726400, 3864300; 726100, 3864600; 725100, 3865000; 723900, 3866000; 722700, 3867000; 722800, 3867300; 722700, 3867600; 722600, 3867800; 722400, 3867900; 722300, 3868300; 722100, 3868300; 722000, 3868200; 721400, 3868400; 721000, 3868400; 720300, 3868700; 719700, 3868800; 719500, 3868900; 719400, 3869100; 719200, 3869300; 718600, 3869600; 717900, 3869700; 717700, 3869800; 717500, 3869800; 717100, 3869700; 716600, 3869600; 716600, 3870000; 716500, 3870300; 716400, 3870500; 716200, 3870700; 715900, 3870800; 715400, 3870900; 715100, 3870900; 715000, 3871100; 715200, 3872300; 715000, 3872600; 715500, 3875200; 716000, 3878600; thence north to the boundary "Open Riding Area" in Oceano Dunes State Vehicular Recreation Area at y-coordinate 3878700; thence north along the "Open Riding Area" boundary to y-coordinate 3886500; thence east, returning to 716700, 3886500.

(iii) Excluding land bounded by: 727800, 3868100; 727600, 3868100; 727300, 3868000; 727300, 3867800; 727500, 3867600; 727700, 3867600; 727700, 3867800; 727800, 3867800; 727800, 3868100.

(iv) Excluding land bounded by: 729800, 3864700; 729400, 3864700; 729400, 3864000; 730200, 3864000; 730400, 3864100; 730400, 3864500; 729800, 3864700.

(v) Excluding land bounded by: 726400, 3867300; 726200, 3867000; 726200, 3866900; 726900, 3866400; 727300, 3866100; 727600, 3866300; 727600, 3866500; 727200, 3866600; 727300, 3867100; 727100, 3867200; 727000, 3866900; 726400, 3867300.

(vi) Excluding land bounded by: 728400, 3870600; 728400, 3872000; 727700, 3870200; 727500, 3869700; 729200, 3869700; 729200, 3869500; 729400, 3869500; 729400, 3870300; 728900, 3870300; 728500, 3870600; 728400, 3870600.

(vii) Excluding land bounded by: 722100, 3872900; 721800, 3872900; 721600, 3872700; 721400, 3872200; 721300, 3871700; 721100, 3871600; 721000, 3871400; 720800, 3871300; 720600, 3871400; 720200, 3871400; 720000, 3871300; 720000, 3870800; 721100, 3870800; 721100, 3870700; 721400, 3870700; 721400, 3870800; 722200, 3870800; 722200, 3871900; 723000, 3871900; 723000, 3872000; 722300, 3872300; 722300, 3872600; 722100, 3872900.

(6) *Cirsium loncholepis*. Cañada de Las Flores Unit; San Luis Obispo and Santa Barbara Counties, California.

(i) From USGS 1:24,000 scale quadrangle map Sisquoc. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 741100, 3853100; 741300, 3853400; 741300, 3853500; 741100, 3853700; 741200, 3854000; 741300, 3854500; 741300, 3854700; 741200, 3854900; 741300, 3855100; 741300, 3855600; 741400, 3855900; 741600, 3856200; 741800, 3856300; 741900, 3856300; 742700, 3855500; 743200, 3854000; 743300, 3853800; 743600, 3853400; 743700, 3853300; 744000, 3853000; 744200, 3852900; 745000, 3852400; 745200, 3852300; 745600, 3851900; 745200, 3851400; 744600, 3851700; 744500, 3851700; 744200, 3851400; 743700, 3851400; 743400, 3851200; 743300, 3851000; 743200, 3851000; 743200, 3850800; 742500, 3850800; 742100, 3850900; 742300, 3851800; 742400, 3852000; 742200, 3852100; 741600, 3852300; 741200, 3852400; 741100, 3852500; 741100, 3852700; 741000, 3852800; 741000, 3853000; 741100, 3853100.

(ii) **Note:** Map follows:

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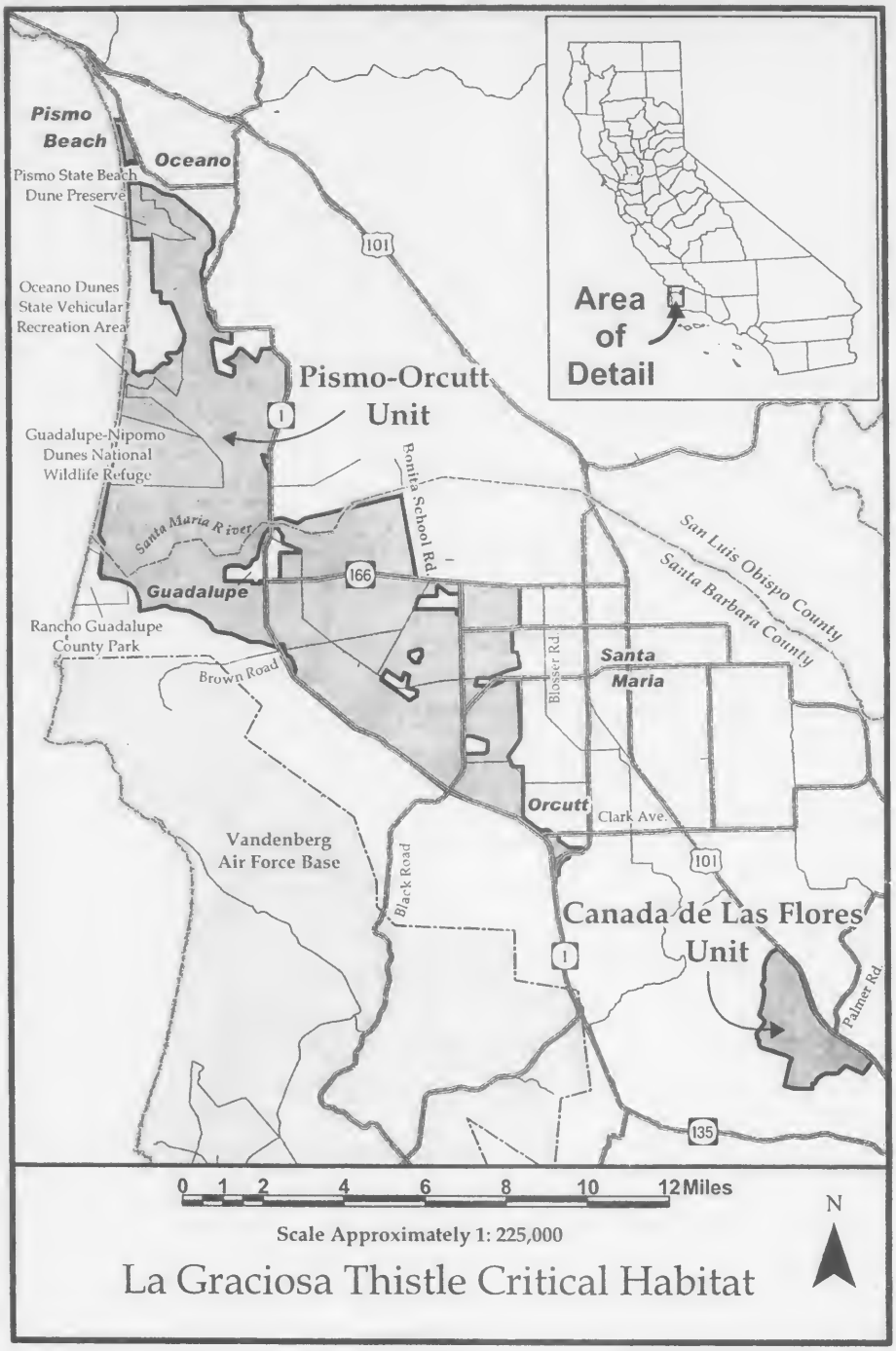
Pismo Beach
Oceano
Pismo State Beach Dune Preserve
Oceano Dunes State Vehicular Recreation Area
Guadalupe-Nipomo Dunes National Wildlife Refuge
Rancho Guadalupe County Park
Brown Road
Santa Maria River
Guadalupe
Pismo-Orcutt Unit
Ronita School Rd.
San Luis Obispo County
Santa Barbara County
Blosser Rd
Santa Maria
Orcutt
Clark Ave.
Vandenberg Air Force Base
Black Road
Canada de Las Flores Unit
Palmer Rd.
Area of Detail
101
166
1
135
0 1 2 4 6 8 10 12 Miles
Scale Approximately 1: 225,000
N
La Graciosa Thistle Critical Habitat

Dated: March 10, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–5925 Filed 3–16–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 031104A]

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

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2004 total allowable catch (TAC) of Pacific cod allocated for catcher/processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 2004, until 1200 hrs, A.l.t., August 15, 2004.

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

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

The 2004 Pacific cod TAC, specified in the 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), allocated to catcher/processor vessels using hook-and-line gear in the BSAI, a directed Pacific cod fishing allowance of 48,558 metric tons for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., June 10, 2004. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2004 Pacific cod TAC allocated as a directed fishing allowance to catcher/processor vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

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 requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod specified for catcher/processor vessels using hook-and-line gear in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 11, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–6028 Filed 3–12–04; 2:59 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 031204B]

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

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allocation of the 2004 total allowable catch (TAC) of Pacific cod specified for catcher/processor vessels using trawl gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 14, 2004, until 1200 hrs, A.l.t., April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

The 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC allocated to catcher/processor vessels using trawl gear in the BSAI for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., April 1, 2004 as 23,422 metric tons (mt). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allocation of the 2004 Pacific cod TAC specified for catcher/processor vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed

fishing allowance of 22,922 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using trawl gear in the BSAI.

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 requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure the A season allocation of Pacific cod specified for catcher/processor vessels using trawl gear in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 12, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–6030 Filed 3–12–04; 3:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 031204A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 2004, through 1200 hrs, A.l.t., August 25, 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.

The B season allowance of the pollock TAC in Statistical Area 610 of the GOA is 3,748 metric tons (mt) as established by the final 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004). In accordance with § 679.20(a)(5)(iii)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the B season pollock TAC by 436 mt, the amount of the A season pollock allowance in Statistical Area 610 that was not previously taken in the A season. The revised B season allowance of pollock TAC in Statistical Area 610 is therefore 4,184 mt (3,748 mt plus 436 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the revised B season allowance of the pollock TAC in Statistical Area 610 will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,784 mt, and is setting aside the remaining 400 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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 requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the B season pollock TAC in Statistical Area 610.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 12, 2004.

Alan D. Risenhoover,

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

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Proposed Rules

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 324

RIN 3064–AC78

Filing Procedures; Transactions With Affiliates

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: Insured State nonmember banks are subject to the restrictions and limitations on transactions by member banks with affiliates found in sections 23A and 23B of the Federal Reserve Act "in the same manner and to the same extent" as though they were member banks. The Board of Governors of the Federal Reserve System (FRB) adopted 12 CFR 223 ("Regulation W") governing sections 23A and 23B. The FDIC is proposing to add a new part to title 12 of the CFR that would cross reference Regulation W to make it clear that insured State nonmember banks are subject to the restrictions and limitations, and may take advantage of the exemptions, contained in Regulation W. FDIC's regulation would also make it clear that the FDIC administers the restrictions and limitations contained in Regulation W as to insured State nonmember banks, may grant case-by-case exemptions from those restrictions and limitations, and is the appropriate agency to make other determinations under Regulation W. The proposal would also amend part 303 of FDIC's regulations governing filing and hearing procedures by adding a new section that would govern requests for exemptions from new part 324 and hearings that are held for the purpose determining whether a shareholder or company exercises a controlling influence over another company.

DATES: Written comments must be received on or before May 3, 2004.

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

- Agency Web Site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- E-mail: *Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6759 or *cvaughn@fdic.gov,* Kenyon T. Kilber, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–8935 or *kkilber@fdic.gov* or Pamela E.F. LeCren, Counsel, Legal Division, (202) 898–3730 or *plecren@fdic.gov,* Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 18(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)(1) ("FDI Act") provides that "Sections 371c and 371c–1 of [title 12] shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank." Sections 371c and 371c–1 of title 12 (12 U.S.C. 371c, 371c–1) are respectively sections 23A and 23B of the Federal Reserve Act (FRA). They establish restrictions and limitations with respect to transactions between member banks and their affiliates. The purpose of those restrictions is to protect member banks from suffering losses when entering into transactions with affiliates.

Section 23A (1) establishes limits on the amount of "covered transactions" between a member bank and its affiliates (any one affiliate and in the aggregate as to all affiliates); (2) requires that all covered transactions between a member bank and its affiliates be on terms and conditions that are consistent with safe and sound banking practices; (3) prohibits the purchase of low quality assets from an affiliate; and (4) requires that extensions of credit by a member bank to an affiliate, and guarantees on behalf of affiliates, be secured by statutorily defined amounts of collateral. Section 23B (1) requires that transactions (covered transactions as well as other identified transactions such as the sale of assets to an affiliate) between a member bank and its affiliates be on market terms (on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with nonaffiliates); (2) prohibits purchases of assets from an affiliate as fiduciary unless one of several exceptions are met; (3) prohibits purchases of securities during the existence of an underwriting or selling syndicate if the principal underwriter of the securities is an affiliate; and (4) prohibits any advertisements or agreements by a member bank suggesting that the bank is responsible for the obligations of an affiliate.

The FDIC interprets and enforces the restrictions and requirements of sections 23A and 23B of the FRA as to FDIC insured State banks that are not members of the Federal Reserve System (insured State nonmember banks) and has done so for many years. Until recently neither the FRB nor the FDIC had adopted, or proposed, a regulation on the restrictions of sections 23A or 23B as applicable to the depository institutions over which each is given responsibility under the FRA and FDI Act respectively. Both agencies relied, rather, upon the language of the FRA and careful coordination of their interpretations of the statutory restrictions. On May 11, 2001, the FRB published a proposed regulation (Regulation W) designed to implement sections 23A and 23B of the FRA if that proposal were adopted in final. (66 FR 24186). The FDIC filed a formal comment on the proposal. On December 12, 2002, the FRB published Regulation W as a final rule. (67 FR 76560). It became effective on April 1, 2003, and is codified at 12 CFR 223. The preamble accompanying Regulation W as adopted in final form indicated that member

banks would be given certain time periods to bring outstanding transactions into compliance with the new regulation.

Regulation W defines terms; restates the statutory prohibitions found in section 23A and 23B; establishes a number of exemptions to those restrictions; explains how to value credit transactions and asset purchases for purposes of complying with the limits on covered transactions; sets out rules on when covered transactions arise for purposes of Regulation W; sets out rules with respect to derivative transactions and how section 23A and 23B apply to foreign branches; defines the term "financial subsidiary" for purposes of Regulation W; and sets out the standards under which the FRB will grant requests for exemptions on a case-by-case basis.

In keeping with section 18(j)(1) of the FDI Act, the FDIC is proposing to add a new part to title 12 of the CFR. The purpose of this new part is to make clear that insured State nonmember banks must comply with the restrictions and limitations contained in Regulation W in order to comply with sections 23A and 23B of the FRA and section 18(j)(1) of the FDI Act. As previously stated, section 18(j)(1) of the FDI Act provides that sections 23A and 23B shall apply to insured State nonmember banks "in the same manner and to the same extent" as if the nonmember banks are member banks. This requirement in the FDI Act means that the substantive requirements and restrictions set out in Regulation W apply equally to insured State nonmember banks. The FDIC has taken those requirements and restrictions into consideration in interpreting and applying sections 23A and 23B to insured State nonmember banks since the adoption of Regulation W. The FDIC is now proposing to add part 324, which will expressly incorporate through cross reference the substantive provisions of Regulation W. The part also identifies the FDIC as the appropriate agency for State nonmember banks in the administration and interpretation of those requirements and in granting exemption requests.

Discussion

Description of Proposal

Proposed part 324 is divided into six sections. Section 324.1 sets out the authority under which the FDIC is proposing to act and describes the purpose and scope of the regulation. Section 324.2 provides that the restrictions and limitations of Regulation W apply to insured State nonmember banks and contains an exemption for certain subsidiary relationships that were entered into prior to the date on which the FDIC's proposed part was published for public comment. Section 324.3 informs insured State banks that they are to follow the FDIC's procedures set forth in part 303 of the FDIC's regulations when requesting a hearing or making any filing under part 324. Section 324.4 makes it clear that "member bank" should be read as "insured State nonmember bank", "Board" should be read as "FDIC" and "appropriate Federal banking agency" should be understood to mean "FDIC" wherever those terms appear in Regulation W. Section 324.4 also contains a definition of "State nonmember bank". Section 324.5 provides that insured State nonmember banks may obtain an exemption from the restrictions and limitations of this part concerning section 23A if the FDIC determines that such an exemption is in the public interest and is consistent with the purposes of section 23A. Procedures for filing exemption requests are proposed in this section and would, if adopted, be added to part 303 of FDIC's regulations (Filing Procedures) as new § 303.251. Finally, § 324.6 provides that determinations that a shareholder or company exercises a controlling influence over another company will only be made after notice and opportunity for hearing. Hearings would be conducted in accordance with the proposed amendments to part 303 that are set out as part of this rulemaking. Proposed part 324, and the accompanying proposed amendments to part 303, are discussed in more detail below.

Section 324.1 Authority, Purpose and Scope

The FDIC derives the authority from section 9 (Tenth) of the FDI Act (12 U.S.C. 1819 (Tenth)) to adopt rules implementing sections 23A and 23B of the FRA as made applicable to insured State nonmember banks. Section 9 (Tenth) of the FDI Act authorizes the FDIC to issue rules and regulations "to carry out the provisions of this chapter or of any other law which it has the responsibility of administering or enforcing".

The FDIC has the responsibility of administering and enforcing section 18(j)(1) of the FDI Act as to state nonmember banks. The language in section 9 (Tenth) of the FDI Act limits the FDIC's authority to adopt regulations governing a particular area only if "authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency". Nothing in the text of section 23A or section 23B or the legislative history of those sections indicates that the FRB has the "exclusive" rulemaking authority with respect to those sections as they apply to institutions other than member banks.[1]

The text of sections 23A and 23B itself bear out the proposition that the FDIC is free to adopt regulations in this area. Sections 23A and 23B do not parcel out responsibility between the FRB and the appropriate Federal banking agencies as is the case with sections 22(g) and 22(h) of the FRA, both of which are also made applicable to insured State nonmember banks by section 18(j) of the FDI Act "in the same manner and to the same extent" as though they were member banks. Section 23A and 23B's silence with respect to what role the other Federal banking agencies are to play shows that the FRA does not operate as a constraint on the authority the FDIC derives from its own statute to establish rules implementing section 23A and 23B and the FDIC's ability to make decisions in applying those sections to insured State nonmember banks. The only restraint placed on the FDIC by the FDI Act is that all of the restrictions and limitations of section 23A and 23B be applied "in the same manner and to the same extent" as those restrictions and limitations are applied to member banks. As discussed below, the FDIC will in fact be applying Regulation W and section 23A and 23B to State nonmember banks in the same way as those provisions apply to member banks.

Section 324.2 Affiliate Transactions

General Requirements—Paragraph (a) of § 324.2 of the proposal cross references Regulation W and restates the requirement found in section 18(j)(1) of the FDI Act that sections 23A and 23B of the FRA apply to insured State nonmember banks as though they were member banks. The purpose of paragraph (a) is to clarify that insured State nonmember banks must comply with the substantive provisions of Regulation W in order to comply with section 18(j)(1) of the FDI Act and part

[1] Congress could have amended the FRA to refer to "bank" rather than "member bank" if it wanted to provide the FRB with exclusive rulemaking authority with regard to sections 23A and 23B but it did not do so. Instead Congress amended the FDI Act, not once but twice, by incorporating a cross reference first to section 23A and then to section 23B after that section was added to the FRA. The fact that Congress chose to amend the FDI Act and not the FRA signals an intent to provide the FDIC with a role in the administration and interpretation of sections 23A and 23B.

324. The effect going forward of the cross reference in § 324.2(a) to Regulation W is that State nonmember banks will automatically be subject to any changes made to Regulation W by the FRB without the need for the FDIC to take any action to amend its own regulation.

Exception to General Requirements—The FDIC is proposing to adopt a regulatory exemption to the general rule set out in paragraph (a) of § 324.2 of the proposal that insured State nonmember banks are subject to the restrictions and requirements of Regulation W.[2] Paragraph (b) of § 324.2 would exempt from the restrictions of part 324 certain subsidiary relationships that were established prior to the date on which the FDIC's proposal is published for comment. If a subsidiary relationship predates that date and that subsidiary relationship was not considered by the FDIC to be subject to section 23A and 23B prior to December 12, 2002 (*i.e.*, the subsidiary was not considered to be an affiliate for purposes of section 23A and 23B as it was interpreted and applied by the FDIC) but is subject to section 23A and 23B after that date (is considered an affiliate relationship under Regulation W) the subsidiary will not be treated as an affiliate for purposes of part 324. Under the exemption, the bank's investment in the company, and its other covered transactions, if any, with the company, will not count toward the quantitative amount limitations that would otherwise apply under part 324 and outstanding transactions with the company do not need to be brought into compliance with part 324. It also means that, going forward, the bank is not subject to the restrictions of part 324 whenever it deals with that subsidiary company, *e.g.*, any future extensions of credit to, or investments in, the subsidiary will not count toward the limits on covered transactions with affiliates to which the bank is subject. The exemption only applies, however, for so long as the subsidiary's activities are limited to those that were approved by the FDIC by regulation or order, or which are covered by an exception in section 24 of the FDI Act (12 U.S.C. 1831a) ("section 24"), and were conducted as of the date on which the FDIC's proposal is published for comment. If, for example, the subsidiary changes its line of business in such a way that under Regulation W a newly established subsidiary of the bank doing the same thing would be considered an affiliate, the subsidiary will be treated as an affiliate from that point forward. The effect of the loss of the exemption is that, going forward, covered transactions between the bank and the subsidiary will be subject to part 324. Although the exemption would no longer apply, the outstanding investment in the subsidiary, any outstanding extensions of credit to the subsidiary and any other prior transactions with the subsidiary would not be affected by the loss of the exemption.

The exemption provided for under the proposal is intended to cover several categories of subsidiaries. The first category is those subsidiaries that, prior to the date on which the FDIC's proposal was issued for comment, were established after the FDIC issued an approval order under section 24 of the FDI Act and 12 CFR 362 ("section 24 subsidiaries"). Such subsidiaries are by definition engaged in activities that are not permissible for a subsidiary of a national bank. The exemption is not limited, however, to State nonmember banks that applied for and obtained consent to establish a subsidiary under 12 CFR 362. It also covers section 24 subsidiaries that were established prior to the date on which the FDIC's proposal was published for comment that were (1) established after filing a notice under part 362,[3] or (2) established pursuant to a provision of part 362 that permits State nonmember banks to establish certain subsidiaries without filing notice or making application to the FDIC.[4] Finally, the exemption also is intended to cover subsidiaries established prior to the relevant date pursuant to a statutory exception in section 24 of the FDI Act which is restated in 12 CFR 362.

As proposed, the subsidiary relationship exemption may be over inclusive to the extent that some of the section 24 subsidiaries described above fall within an exception to the definition of financial subsidiary found in Regulation W and thus are not considered to be affiliates. As it may be possible to construe the exceptions to the definition of financial subsidiary found in Regulation W narrowly, the FDIC has opted to draft the proposed exemption broadly so as to avoid any undue confusion or ambiguity as to how insured State nonmember banks with existing section 24 subsidiaries are affected by the adoption of FRB Regulation W.

The FDIC intends to limit the exemption to the types of section 24 subsidiaries described above. Comment is invited on whether the regulatory text is sufficiently clear as to its scope or has broader effect than intended. In addition, comment is requested on whether the FDIC should consider narrowing the scope of the exemption or making it broader.

It has been the FDIC's practice to include in section 24 approval orders conditions on the manner and extent to which an insured State nonmember bank may interact with its subsidiary that engages in activities that are not permissible for a subsidiary of a national bank.[5] Those conditions are very similar but not identical to the restrictions found in section 23A and 23B and Regulation W. In addition, the FDIC's regulations which provide that a bank may simply file a notice before establishing a certain type of subsidiary require in most instances that a bank must abide by certain affiliate transaction restrictions when interacting with the subsidiary if a bank wants to take advantage of the notice procedure. The affiliate transaction restrictions that apply in the case of a notice are the same restrictions which have been imposed by the FDIC by order on a case-by-case basis. Banks that are eligible for the subsidiary relationship exemption but which are subject by order or regulation to conditions placing restrictions on the bank's transactions with its subsidiary would still be subject to those conditions (*i.e.*, the proposed exemption would not supercede or invalidate those conditions).

As indicated above, the FDIC may, by regulation or order, exempt transactions or relationships from the requirements and restrictions of sections 23A and 23B of the FRA if the FDIC finds that the exemption is in the public interest and consistent with the purposes of the

[2] The FDIC has the authority to adopt by regulation or order exemptions from the restrictions of section 23A if the FDIC determines that the exemption is in the public interest and is consistent with the purposes of the section 23A of the FRA.

[3] 12 CFR 362 permits state nonmember banks to establish certain subsidiaries after filing a notice with the FDIC provided that certain conditions and requirements are met. In each such instance the conditions include affiliate transaction restrictions.

[4] 12 CFR 362 permits an insured state nonmember bank to establish a subsidiary that invests in bank stock (§ 362.4(b)(4)(ii)); engages in certain leasing activities (§ 362.4(b)(6)); invests in adjustable rate preferred stock, money market preferred stock and similar instruments (§ 362.4(b)(7)); and holds a control interest in a company that engages in insurance agency activities, any national bank permissible activity, real estate leasing, or that invests in adjustable rate and money market preferred stock (§ 362.4(b)(3)(ii)) without filing an application or a notice.

[5] Section 24 of the FDI Act requires the FDIC to determine that the activities to be engaged in by the subsidiary do not present a significant risk to the fund. The FDIC can, and typically has, determined that a particular activity does not present a significant risk to the fund provided that the activity is conditioned in such a way as to make any risk associated with the conduct of that activity by the subsidiary acceptable.

FRA. The proposed subsidiary relationship exemption should not have an adverse impact on the public interest or be inconsistent with the purposes of section 23A and 23B as most banks that have subsidiaries that are eligible for the exemption are already subject to affiliate transaction conditions very similar to those found in Regulation. The exemption would not affect those conditions. The majority of the section 24 subsidiaries which have been approved by the FDIC involved either real estate subsidiaries or subsidiaries that invest in equity securities.[6] The majority of the real estate subsidiaries are subject to affiliate transaction restrictions similar to those found in Regulation W and many of those that are not subject to such restrictions are approvals to hold certain real estate investments pending their liquidation. The FDIC carefully reviewed the requests for consent to engage in equity securities investments through a subsidiary. Although many of the equity securities applications were not made subject to affiliate transaction restrictions, the applications that were approved were made subject to whatever conditions the Board found necessary in its best judgment to protect the deposit insurance funds from risk given the facts and circumstances of each application. (Section 24 requires the FDIC to determine that the conduct of business by subsidiaries such as these does not present a significant risk before the FDIC may give its consent to acquisition or establishment of the subsidiary.) The majority of the equity subsidiaries that were approved involved small investments (less than 10% of tier one capital) and in many cases the equities in which those subsidiaries sought consent to invest were bank holding companies and other similar firms. Most of the approvals were conditioned in such a way as to limit lending to the subsidiaries and to limit the amount of the investments that the subsidiaries may in turn make. Given the Board's initial review and determination and the conditions to which the approvals are subject, the FDIC does not believe that grandfathering these subsidiaries will be contrary to the public interest. What is more, the FDIC notes that these equity investment securities are in many ways similar to private equity funds (the vehicle through which financial holding companies may invest in equity securities) which are provided special treatment under Regulation W.

Section 324.2(b) of the proposal does not exempt transactions entered into by a State nonmember bank prior to the publication date of the proposal from compliance with Regulation W and part 324. All transactions with affiliates, regardless of when entered into, are governed by Regulation W and the phase-in periods adopted by the FRB in the case of member banks. Transactions entered into after December 12, 2002, but before April 1, 2003, by member banks with their affiliates were required to comply with Regulation W as of April 1, 2003. Transactions entered into prior to December 12, 2002, were required to comply with Regulation W no later than July 1, 2003. State nonmember banks that entered into transactions with affiliates that would have been required to be in compliance with Regulation W by either April 1, 2003, or July 1, 2003, if entered into by a member bank and which are not in compliance at this time will be cited for a violation of section 23A and 23B and section 18(j)(1) of the FDI Act as appropriate. Comment is invited as to whether the FDIC should consider adopting some other treatment in part 324. For example, should the FDIC grant an additional compliance period or perhaps grandfather pre-existing transactions?

Section 324.3 Submissions and Requests for Hearing

Section 324.3 informs insured State nonmember banks that all filings, submissions, requests for hearings and other requests made under this part are to be made in accordance with the procedures set out in 12 CFR 303. The intent of the provision is to eliminate any confusion that might arise as to the procedures to be followed by insured State nonmember banks (procedures found in Regulation W or elsewhere in FRB regulations or procedures found in the FDIC's regulations which might differ from those used by the FRB). This rulemaking would add a new § 303.251 to 12 CFR 303 that would set out the applicable procedures for submissions, filings, and requests for hearing that are made under §§ 324.5 and 324.6 of the proposal. The proposed procedures are discussed in more detail below.

Section 324.4 Definitions and Usage of Terms

Section 324.4 of the proposal substitutes appropriate terminology for that found in Regulation W to make it clear that, for the purposes of compliance with section 18(j)(1) of the FDI Act and this part, "member bank" should be understood to mean "insured State nonmember bank"; "Board" should be understood to mean "FDIC"; and "appropriate Federal banking agency" should be understood to mean "FDIC" wherever those words or phrases are used in Regulation W. The section also defines "State nonmember bank" by cross referencing the definition found in section 3 of the FDI Act (12 U.S.C. 1813(e)).

Sections 324.2(a), 324.3 and 324.4 together accomplish two important things. They make clear that (1) the FDIC, as the Federal supervisor of insured State nonmember banks, is the appropriate party to whom insured State nonmember banks must look for guidance in interpreting the requirements of sections 23A and 23B of the FRA as they apply to insured State nonmember banks through section 18(j) of the FDI Act, and (2) it is the FDIC which exercises discretion in applying the restrictions and limitations found in Regulation W in those instances in which Regulation W provides for relief, calls for determinations, or provides for the exercise of discretion by the FRB. In short, by adopting the cross reference to Regulation W the FDIC is satisfying its obligation to ensure that insured State nonmember banks are subject to sections 23A and 23B as though they were member banks. It is only appropriate, and is in fact necessary to the effective accomplishment of the FDIC's charge to oversee the safety and soundness of insured State nonmember banks, for the FDIC to exercise the authority to make decisions with respect to particular insured State nonmember banks and their transactions with affiliates in the context of the overall facts and circumstances affecting those banks. The FDIC is the supervisor of these particular institutions and the Federal supervisory agency that is in the best position to evaluate the need for relief.

As indicated above, part 324 makes it clear that the reference to the "appropriate Federal banking agency" as found in Regulation W means the FDIC. References to the FDIC in FDIC's regulations will normally be understood to refer to the FDIC's Board of Directors unless the Board of Directors has delegated the matter to some other individual within the agency. Regulation W contains several provisions that permit the "appropriate Federal Banking agency" to make certain decisions. For example, section 223.15(b)(3) of Regulation W provides that the appropriate Federal banking agency may set the amount by which a bank's share of a participation in a loan originated by an affiliate which is now a problem loan and which is being

[6] A summary of requests approved by the FDIC's Board of Directors can be viewed at *http://www.fdic.gov/regulations/resources/approved/index.html.*

renewed (or for which additional funds are extended) may exceed 5% of the bank's original exposure without the renewal constituting a purchase of a low quality asset. Insured State nonmember banks should note that it is the FDIC's present intent that the authority to make determinations under Regulation W that are to be made by the "appropriate Federal banking agency" will be delegated to the Director of the Division of Supervision and Consumer Protection and the Director's designee.

Section 324.5 Exemption Requests

Section 223.43 of Regulation W (12 CFR 223.43) provides that the FRB may, by regulation or order, at its discretion, exempt transactions or relationships from the requirements of section 23A if the FRB determines that the exemption is in the public interest and is consistent with the purposes of section 23A. FDIC's proposed § 324.5 provides that insured State nonmember banks may request an exemption from the requirements and restrictions of section of 23A, as implemented by Regulation W, by filing a written request with the FDIC. The FDIC may, in its discretion, grant an exemption if the FDIC determines that it is in the public interest to do so and the FDIC determines that granting the exemption is consistent with the purposes of section 23A. This provision is similar in purpose to §§ 324.2, 324.3 and 324.4 in that it makes clear that it is the FDIC which is the appropriate agency to grant relief in the case of an insured State nonmember bank.

Exemptions from the restrictions of Regulation W are available for insured State nonmember banks under the same standards that apply to member banks, *i.e.*, if the exemption is in the public interest and it is consistent with the purposes of section 23A. Exemptions are thus available to member and nonmember banks "in the same manner" (after filing a request for an exemption) and "to the same extent" (after the bank's request is evaluated based upon the same standards). The only difference is that it is the FDIC which, based on its unique supervisory perspective and familiarity with the institution in question, evaluates whether those standards are met and whether it is appropriate to grant an exemption.

Past practice has been for insured State nonmember banks to apply to the FRB to obtain exemptions from the restrictions of section 23A. Usually the FRB consults with the FDIC prior to granting exemptions. Absent unusual circumstances, if the FDIC objects to the exemption request, it is not granted. Rather than continue the practice of allowing insured State nonmember banks to file exemption requests with the FRB, the FDIC is proposing to instruct insured State nonmember banks to file all exemption requests with the FDIC. Since FDIC is the primary Federal banking supervisor of insured State nonmember banks and is more familiar with the condition and overall management of those banks than the FRB, it is more appropriate for the FDIC to review and act on exemption requests from insured State nonmember banks. It is not only more appropriate to do so, but the FDIC expects that following this new procedure will result in more efficiency in the review of the requests which will in turn benefit banks. We anticipate that individual reviews will take less time even though it is the FDIC's intent to continue to coordinate with the FRB to ensure that the standards under which exemption requests are evaluated are consistently applied by the FDIC and the FRB. If adopted, the regulation would not have any effect on exemptions previously granted by the FRB. Those exemptions will continue to be valid and there would be no need for an insured State nonmember bank to seek an order from the FDIC affirming the prior exemption granted by the FRB.

Procedures for filing exemption requests are proposed for comment and are discussed below under the heading "Section 303.251 Affiliate Transactions". If adopted, those procedures would be set out in a new § 303.251.

Section 324.6 Controlling Influence Determinations

Section 23A of the FRA requires a shareholder or a company to be given notice and opportunity for a hearing before the shareholder or company is determined to directly or indirectly exercise a controlling influence over the management or policies of another company. The impact of a determination that such influence is found to exist is that the shareholder or company is considered to control the other company, thus making the companies affiliates for the purposes of section 23A.

Section 324.6 of the proposed regulation restates the statutory obligation for opportunity for a hearing prior to the control determination being made. It also makes it clear that the FDIC and not the FRB is the agency that affords the opportunity for a hearing and makes the final determination on the control issue when an insured State nonmember bank is involved. (See, *Roque De La Feunte II* v. *FDIC*, 332 F.3d 1208 (9th Cir. 2003) (FDIC has the authority and obligation to afford opportunity for hearing and to conduct a control hearing). The standard under the proposal for determining if control exists is whether the shareholder or company has a controlling influence over the management or policies of the other company. This standard is identical to that found in section 23A of the FRA and is the same standard in FRB Regulation W.[7]

If a hearing is requested by an insured State nonmember bank, or one of its shareholders, the hearing will be conducted in accordance with the procedures set out in 12 CFR 303. (See discussion below under the heading "Section 303.251 Affiliate transactions" for information regarding the hearing procedures that are proposed for comment.)

Proposed Amendments to 12 CFR 303

Section 303.251 Affiliate Transactions

FDIC is proposing to amend part 303 governing filing procedures and certain hearings. Under the proposal, a new section would be added to subpart M—"Other Filings" that would (1) set out the procedures for filing a request for an exemption from section 23A, and (2) set out the procedures governing hearings to determine whether or not a shareholder or company exercises a controlling influence over another company.

Exemption requests—As proposed in §303.251(a), the procedures governing requests for an exemption from the restrictions of section 23A would require the requesting bank to file a letter with the appropriate FDIC office that (1) describes in detail the relationship or transaction for which the bank is seeking an exemption, (2) identifies the requirements or restrictions from which the bank is seeking relief, and (3) sets out an explanation of why the exemption is in the public interest and is consistent with the purposes of section 23A. The FDIC may request any additional information that is, in its opinion, necessary to properly evaluate the request. Banks that file exemption requests will receive written notification of the FDIC's decision. The proposed exemption procedures are substantially

[7] The FDIC recognizes that it will be necessary to coordinate with the FRB to assure consistency as between the application of the standard to member banks and state nonmember banks. We note, however, that to date the FRB has never had a control hearing under the relevant provisions of section 23A of the FRA. At this time there is no existing prior FRB precedent resulting from a control hearing for the FDIC to take into consideration.

the same as those adopted by the FRB in Regulation W for member banks with the exception that, unlike member banks, State nonmember banks would file requests with an FDIC regional office rather than with the agency's General Counsel. At the present time it is anticipated that the FDIC's Board of Directors will retain the authority to grant exemptions and will not delegate that responsibility.

Controlling influence hearing requests—Procedures governing requests for hearings and the actual conduct of hearings to determine control are set out in proposed § 303.251(b). Under the proposed procedures the FDIC is required to provide a shareholder or company written notice of an opportunity for hearing before the agency makes a determination that there is an affiliation based on the ability to exercise a controlling influence over the management or policies of another company. A company or shareholder that wants a hearing must respond to that effect no later than 10 days after receiving the written notice of opportunity for hearing by filing a request for a hearing with the "appropriate FDIC office" as that term is defined in 12 CFR 303. Which FDIC office is the "appropriate FDIC office" is dependent upon whether the institution that is the subject of a filing is *not* part of a group of related institutions. If that is the case, the appropriate regional office for that institution, and any individual associated with the institution, is the FDIC region in which the institution is located. (See § 303.2(g)(1) of current part 303). If the institution that is the subject of a filing is part of a group of related institutions, the appropriate FDIC regional office for that institution, and any individual associated with that institution, is the FDIC region in which the group's major policy and decision makers are located (or any other region the FDIC designates on a case-by-case basis). (See § 303.2(g)(2) of current part 303).

Requests for a control hearing will be acknowledged in writing. The date and time for hearings will be set by the FDIC solely in its discretion ("such time as FDIC determines to be reasonable"). In setting the date for the hearing the FDIC will take care to consider the convenience of the participants in addition to other factors such as the complexity of the issues and the potential effects of the timing of the hearing on associated matters such as a pending examination. The presiding officer will be the Director of the Division of Supervision and Consumer Protection or the Director's designee. The presiding officer is responsible for conducting the hearing, determining any procedural question that is not specifically addressed by § 303.251(b), and rendering a final determination within 20 days of the date on which the hearing record is closed. The participants will be notified in writing of the final disposition which will contain an explanation of the reasons for the final decision.

The final determination may be appealed to the Board of Directors of the FDIC. To do so a request for review must be filed the Executive Secretary of the FDIC within 15 days of the date on which notification of the final decision is received.

The proposal indicates that the procedures currently set out in §§ 303.10(f) through 303.10(i), 303.10(k) and 303.10(m) will govern the conduct of the hearing. Section 303.10 is titled "Hearings and other meetings". Paragraph (f) governs participation in hearings. Paragraph (g) governs transcripts. Paragraph (h) governs presentations and information that may be submitted. It also identifies federal laws that are not applicable to hearings. Paragraph (i) governs the closing of the hearing record. Paragraph (k) governs the computation of time. Paragraph (m) provides that the Board of Directors may delegate by resolution to the presiding officer the authority to adopt different procedures in individual matters.

Request for Comments

In addition to any other comments on the proposal, the FDIC specifically requests comment on the following.

1. Is it advisable for the FDIC to adopt separate rules implementing section 18(j)(1) of the FDI Act and section 23A and 23B of the FRA as they apply to insured State nonmember banks?

2. If the FDIC does adopt separate regulations, should the regulation set out the full text of Regulation W rather than adopt the proposed cross reference? If the FDIC adopted a full text version it would be identical to Regulation W with the exception that "insured State nonmember bank" would be substituted for "member bank'; "FDIC" would be substituted for "Board'; "FDIC" would be substituted for "appropriate Federal banking agency"; the definition of "member bank" would be replaced with a definition of "State nonmember bank" (definition would be the same as currently proposed) and the authority, purpose and scope paragraph as found in Regulation W would be modified to read as those paragraphs are proposed for comment.

3. Should the FDIC continue its past practice of allowing the FRB to act on exemption requests by insured State nonmember banks or adopt the proposed change in practice which would direct insured State nonmember banks to file such requests with the FDIC, which would then grant or deny the request?

4. If the FDIC adopts the practice of acting on exemption requests, are the proposed procedures for exemption requests sufficiently clear? Is the information that is required to be presented in an exemption request burdensome? Should the regulation require that additional, specifically identified information be included in the request? Should the regulation provide specifics on the time in which the FDIC will act on exemption requests?

5. Are the proposed hearing procedures adequate? What additional procedures if any should be included? Should the regulation specify that the hearing will take place no later than a certain specified period of time after the request for hearing is submitted to the FDIC? Is it appropriate to apply the procedures found in §§ 303.10(f) through 303.10(i), 303.10(k) and 303.10(m) to a controlling influence hearing?

6. Should the Board of Directors delegate the authority to grant exemptions under the regulation or retain the authority to grant exemptions at the Board level?

7. Should the Board of Directors delegate the authority to make a final control determination or should that authority be retained only at the Board level?

8. If decision making authority with respect to control determinations is delegated, is it appropriate to allow an appeal of the decision and if so, to whom?

9. Is the FDIC correct in its initial view that the proposed exemption for section 24 subsidiaries that were established prior to the publication of this proposal from part 324 will not adversely impact the public or be inconsistent with the purposes of section 23A and 23B?

10. Should the FDIC draft the subsidiary exemption more narrowly? If so, why? Should the exemption be broader in scope? If so, why?

11. Should the FDIC consider additional exemptions at this time?

12. Should the FDIC consider granting a phase-in period for transactions that were entered into prior to the publication of the proposal? If so, should the phase-in period mirror the phase-in period the FRB adopted for

member banks (*i.e.*, three months from the effective date of the rule) or would some other period be more appropriate?

13. Should the FDIC consider exempting from part 324 transactions that were entered into prior to the publication of the proposal? If so, why? Would such an exemption pose safety and soundness issues?

14. FDIC's view is that insured State branches, agencies, and commercial lending companies of foreign banks are subject to the substantive provisions of Regulation W and this part. Comment is requested on whether the proposed regulation is sufficiently clear in that regard and whether or not the FDIC is justified in its view.

15. Are the proposed amendments to the FDIC's regulations written clearly and in "plain language"? If not, what changes should be made to the proposed language to make it clearer and easier to understand?

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this rule has been submitted to OMB for review.

Written comments on the collection of information should be sent to the Joseph F. Lackey, FDIC desk officer: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20503. Copies of comments should also be sent to: Thomas Nixon, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898–8766. For further information on the Paperwork Reduction Act aspect of this rule, contact Thomas Nixon at the above address.

Comment is solicited on:

1. Whether the collection of information is necessary for the proper performance of FDIC functions, including whether the information will have practical utility;

2. The accuracy of our estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected;

4. Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses; and

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Title of the collection: Transactions with affiliates.

Summary of the collection: As discussed more fully in the preamble, the FDIC's 12 CFR part 324 will make clear that insured State nonmember institutions must conform to the standards of FRB's Regulation W and that the FDIC is responsible for administering Regulation W as it applies to such institutions, including receiving and acting on notices required by Regulation W.

The notices required in this collection are required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and section 18(j)(1) of the Federal Deposit Insurance Act ("FDI Act"). The respondents for part 324 will be insured State nonmember institutions.

Regulation W established four notices at (12 CFR) sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2) and 223.43(b). The FDIC will require insured state nonmember institutions to provide the first three of these notices to the FDIC by the part 324's cross-reference to Regulation W. The fourth Regulation W notice (223.43(b)) will not be required through the part 324 cross-reference. Instead, the FDIC equivalent of that notice will be required through 12 CFR 303.251.

The first notice requirement, described in Regulation W's section 223.15(b)(4), is a condition to an exemption for renewals of loan participations involving problem loans. Regulation W requires the participating depository institution to provide its appropriate Federal banking agency with written notice of the renewal or extension of additional credit not later than 20 days after consummation. The FDIC is the appropriate Federal banking agency to which insured State nonmember institutions are to provide this notice. There will be no reporting form associated with this information collection. The FDIC estimates that approximately three insured State nonmember institutions will file this notice annually and that it will take approximately two hours to prepare the notice.

The second notice requirement, described in Regulation W's section 223.31(d)(4), is a condition to an exemption for a depository institution's acquisition of an affiliate that becomes an operating subsidiary of the institution after the acquisition. Regulation W requires the institution to provide its appropriate Federal banking agency and the FRB with written notice of its intention to acquire the company at or before the time that the company becomes an affiliate of the institution. Through part 324's cross-reference, insured State nonmember institutions will provide that notice to the FDIC. There will be no reporting form associated with this information collection. The FDIC estimates that approximately three insured State nonmember institutions will file this notice annually and that it will take approximately six hours to prepare the notice.

The third notice requirement, described in Regulation W's section 223.41(d)(2), is a condition to an exemption for internal corporate reorganization transactions. Regulation W requires the depository institution to provide its appropriate Federal banking agency and the FRB with written notice of the transaction before consummation. Insured State nonmember institutions will provide notice to the FDIC. The notice must describe the primary business activities of the affiliate and indicate the proposed date of the reorganization. There will be no reporting form associated with this information collection. The FDIC estimates that approximately seven insured state nonmember institutions will file this notice annually and that it will take approximately six hours to prepare a notice.

Finally, part 324 will not require insured state nonmember institutions to send a notice to the FDIC through a cross-reference to Regulation W's section 223.43(b). Instead, pursuant to § 303.251, they must submit a request to the appropriate FDIC regional office. The request must describe in detail the transaction or relationship for which the institution seeks exemption; explain why the FDIC should exempt the transaction or relationship; and explain how the exemption would be in the public interest and consistent with the purposes of section 23A. There will be no reporting form associated with this information collection. The FDIC estimates that approximately two insured State nonmember institutions will file these requests annually and that it will take approximately 10 hours to prepare a request.

Burden estimate: The total estimated annual burden for insured State nonmember institutions that must comply with the above-mentioned requirements is 86 hours. Based on a rate of $50 per hour, the total annual

cost to the public for these collections of information is estimated to be $4,300.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the FDIC must publish an initial regulatory flexibility analysis with this rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For the purposes of the required analysis or certification, financial institutions with total assets of $150 million or less are considered to be "small entities". For the reasons set out below the FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Sections 23A and 23B of the FRA limit transactions between a member bank and its affiliates. The FDIC enforces sections 23A and 23B of the FRA as to insured State nonmember banks under section 18(j)(1) of the FDI Act which provides that insured State nonmember banks are subject to sections 23A and 23B of the FRA as though they were member banks. Section 9 (Tenth) of the FDI Act authorizes the FDIC to issue such regulations as may be necessary to administer and carry out the purposes of those sections. The proposed rule would make clear to insured State nonmember banks that in order to comply with section 18(j)(1) of the FDI Act they must comply with the substantive provisions of FRB Regulation W which was adopted in final by the FRB on December 12, 2002 to implement the requirements and restrictions of sections 23A and 23B of the FRA as they apply to member banks. Regulation W is codified at 12 CFR 223. It appeared in volume 67 of the **Federal Register** at page 76560 (67 FR 76560). A full description of the reasons why the FRB considered and adopted Regulation W are set out in the **Federal Register** document which contained Regulation W as originally proposed for comment (66 FR 24186, May 11, 2001) and in Regulation W as adopted in final form. The FRB describes Regulation W as a regulation which, although designed to comprehensively implement sections 23A and 23B of the FRA, is a regulation that in large measure simply codifies the FRB's past practice and interpretations with respect to sections 23A and 23B. The reasons the FDIC is proposing to adopt a cross reference to Regulation W in its regulations and, is further proposing to amend its regulations to make clear that the FDIC is the appropriate agency to grant exemptions from sections 23A and 23B to insured State nonmember banks as well as to make other determinations under Regulation W, are set out more fully under the supplementary information section of this document. The proposed rule would apply to all insured State nonmember banks regardless of their size.

Regulation W largely codifies the application of section 23A and 23B of the FRA as to member and State nonmember banks as interpreted and applied before that rule's adoption. In most instances the differences between what a bank needed to do to comply with section 23A or 23B previously and what is required to be done in order to comply with section 23A or 23B post Regulation W are minimal. In many instances Regulation W actually grants relief from restrictions contained in the statute. Regulation W does contain some new notice requirements and sets out specifics as to filing requirements if a bank wishes to obtain an exemption from section 23A as to a particular transaction or relationship. Those requirements are discussed above under the heading "Paperwork Reduction Act". Of the requirements discussed under that heading, the requirements necessary to obtain an exemption are the most onerous. Based on FDIC's experience as to the number and size of State nonmember banks that have sought such exemptions in the past, we anticipate very few such requests and the institutions most likely to file an exemption request can be expected to be larger than $150 million in total assets. In 2003 only three insured State nonmember banks requested exemptions from section 23A. Only one of the three institutions was under $150 million in total assets. Regulation W also requires a notice in connection with corporate reorganizations that are exempted from some of the restrictions of section 23A and 23B without need of a case-by-case determination. Again based on our past experience we anticipate that banks that will take advantage of this exemption are likely to be larger than $150 million in total assets. Over the years, exemption requests have typically involved reorganization transactions and as stated above, banks that file exemption requests are more likely to be banks in excess of $150 million in total assets. Although we cannot come to the same conclusion with respect to the final two categories of notices described under the Paperwork Reduction Act heading, those notice requirements are minimal in terms of the information required to be filed. Banks will not require the services of attorneys, consultants, appraisers, accountants or other professionals to prepare and submit the notices nor do these notices require the use of sophisticated computer programs, statistical analysis, or other complex tracking or recordkeeping systems. While some aspects of Regulation W may require tracking or other compliance systems in order for a bank to comply with the requirements of the rule or to take advantage of certain exemptions contained in the rule, those systems as well as any burden arising out of FDIC's proposed rule would be present for State nonmember banks regardless of whether the FDIC adopts the proposal or not. The impact of the proposed rule is largely procedural in that its purpose is to clarify for State nonmember banks that it is the FDIC that administers the requirements of Regulation W as to insured state nonmember banks. The rule does not impose any new or different substantive requirement. In short, proposed part 324 does not itself impose any burden on small institutions that is not already imposed under Regulation W.

Impact on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 324

Banks, banking, Safety and Soundness, Transactions with affiliates.

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Foreign investments, Gold parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to add a new part 324 to title 12 of the Code of Federal Regulations and amend part 303 of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 324 reads as follows:

Authority: 12 U.S.C. 1819(tenth), 1828(j)(1).

2. New part 324 is added to read as follows:

PART 324—TRANSACTIONS WITH AFFILIATES

Sec.

§ 324.1 Authority, purpose and scope.

(a) *Authority.* This part is issued under the authority of sections 9 (tenth) and 18(j)(1) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1819 (tenth), 1828(j)(1)).

(b) *Purpose.* This part implements section 18(j)(1) of the FDI Act and sections 23A and 23B of the Federal Reserve Act (FRA) (12 U.S.C. 371c, 371c–1) as to insured State nonmember banks. Section 18(j)(1) of the FDI Act makes insured State nonmember banks subject to the restrictions of sections 23A and 23B of the FRA in the same manner and to the same extent as if insured State nonmember banks are member banks of the Federal Reserve System. Section 23A and 23B of the FRA establish certain quantitative limits and other prudential requirements for loans, purchases of assets, and certain other transactions between a member bank and its affiliates. Federal Reserve Board (FRB) Regulation W (12 CFR 223) implements sections 23A and 23B of the FRA as to member banks by defining terms used in sections 23A and 23B, explaining the requirements of those statutory provisions and exempting certain transactions from the restrictions and limitations of the FRA.

(c) *Scope.* This part applies to insured State nonmember banks.

§ 324.2 Affiliate transactions.

(a) *General.* Insured State nonmember banks are subject to the restrictions and limitations contained in section 23A and 23B of the FRA and FRB Regulation W on transactions by member banks with affiliates in the same manner and to the same extent as if they were member banks of the Federal Reserve System.

(b) *Exception.* Any subsidiary relationship that predates March 17, 2004, is exempt from the requirements and restrictions of this part that would otherwise apply if such relationship would not have been subject to section 23A and 23B of the FRA prior to December 12, 2002, because the subsidiary would not have at that time been considered to be an affiliate.

§ 324.3 Filings, submissions, requests and hearings.

Filings, submissions, and requests made under section 324.5 and section 324.6 of this part are governed by 12 CFR 303.251. All other filings, submissions or requests under this part are governed by subpart A of 12 CFR 303. Procedures to which member banks are subject under FRB Regulation W for filings, submissions, requests and hearings do not apply in the case of a State nonmember bank.

§ 324.4 Definitions and usage of terms.

For purposes of compliance with this part insured state nonmember banks should substitute "insured State nonmember bank" for "member bank" and "FDIC" for "Board" wherever those terms appear in Federal Reserve Board Regulation W. The phrase "appropriate Federal banking agency" as used in Federal Reserve Board Regulation W should in all instances be read to mean "FDIC". "State nonmember bank" has the same meaning as in 12 U.S.C. 1813(e)(2).

§ 324.5 Exemptions.

An insured State nonmember bank may request that the FDIC exempt transactions or relationships from the requirements of section 23A of the FRA as implemented by this part. Exemption requests may be granted by the FDIC in its discretion if it finds such exemption to be in the public interest and to be consistent with the purposes of section 23A.

§ 324.6 Controlling influence determinations.

Determinations by the FDIC that a shareholder or company directly or indirectly exercises a controlling influence over the management or policies of another company will only be made after notice and opportunity for hearing. Hearings will be conducted in accordance with 12 CFR 303.251.

3. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

4. Sections 303.251 and 303.252 of subpart M of part 303 are redesignated as §§ 303.252 and 303.253.

5. Section 303.251 is added to subpart M of part 303 to read as follows:

Subpart M—Other Filings

* * * * *

§ 303.251 Affiliate transactions.

(a) *Exemption requests.* (1) *Scope*—This paragraph contains the procedures to be followed by an insured state nonmember bank that wants to obtain an order from the FDIC exempting affiliate transactions or relationships from the requirements of part 324 (12 CFR 324) and section 23A of the Federal Reserve Act (12 U.S.C. 371c) as made applicable to insured state nonmember banks by section 18(j)(1) of the FDI Act (12 U.S.C. 1828(j)(1)).

(2) *Where to File.* Applicants shall submit a letter application to the appropriate FDIC office.

(3) *Content of Filing.* The application shall contain the following:

(i) A detailed description of the relationship or transaction for which the applicant is seeking an exemption,

(ii) An identification of the requirements or restrictions from which the applicant is seeking relief, and

(iii) A statement of why the requested relief is in the public interest and consistent with the purposes of section 18(j)(1) of the FDI Act.

(4) *Additional information.* The FDIC may request additional information at any time during the processing of the filing.

(5) *Processing.* The FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(b) *Controlling influence determinations.* (1) *Scope*—This paragraph contains the procedures the FDIC will follow when determining for the purposes of part 324 whether a company or shareholder controls another company as a result of directly or indirectly exercising a controlling influence over the management or policies of such company.

(2) *Opportunity for hearing.* Prior to determining that a shareholder or a company has a controlling influence over the management or policies of another company, the shareholder or company will be provided written notice of an opportunity for hearing.

(3) *Hearing requests.* Requests for a hearing must be received by the FDIC no later than 10 days after a written notice of opportunity for a hearing is received.

(4) *Where to File.* Requests for a hearing must be submitted by letter to the appropriate FDIC office.

(5) *Timing of hearing.* Upon receipt of a request for hearing, the FDIC will acknowledge the request in writing and set such date for the hearing as is determined by the FDIC to be reasonable.

(6) *Hearing Procedures.* The presiding officer shall be the Director of the Division of Supervision and Consumer

Protection or the Director's designee. Hearings will be conducted in accordance with sections 303.10(f)–section 303.10(i), section 303.10(k) and section 303.10(m). The presiding officer is responsible for conducting the hearing, determining all procedural questions not governed by paragraph (b) of this section and making the final determination within 20 days of the date on which the hearing record is closed. Participants will be notified in writing of the final disposition and provided an explanation of the reasons for the final decision.

(7) *Review of final decision.* Final decisions resulting in a determination that control exists may be appealed to the Board of Directors of the FDIC by filing a request for review with the Executive Secretary of the FDIC no later than 15 days after the date on which written notification of the final decision is received.

Dated at Washington, DC, this 10th day of March, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–5928 Filed 3–16–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–251–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 series airplanes. This proposal would require inspection of cables installed on certain contactors in the electrical power center (EPC) for proper installation of wires, and reinstallation of wires if necessary. These actions are necessary to prevent a short circuit in the EPC, possibly leading to a fire in the main cabin and damage to the airplane, or injury to passengers and flightcrew. These actions are intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–251–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., PO Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–251–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—the Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 series airplanes. The CAA–NL advises that an operator reported an occurrence of a short circuit between two cables attached to a contactor in the electrical power center (EPC) while an airplane was on the ground and powered by external power only. The short circuit occurred due to incorrect installation of the wires on the contactor, which left minimal clearance between the cable terminals. The operator also discovered the same condition on another airplane. This condition, if not corrected, could result in a short circuit in the EPC, possibly leading to a fire in the main cabin and damage to the airplane or injury to passengers and flightcrew.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–24–035, dated May 27, 2002, which describes procedures for inspection of cables installed on certain contactors in the EPC for proper installation of wires, and reinstallation of wires, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2002–112, dated

July 31, 2002, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Among the Proposed AD, the Service Bulletin and the Dutch Airworthiness Directive

Operators should note that, although the referenced service bulletin and the Dutch Airworthiness Directive include instructions for reporting the results of all inspections to Fokker Services. B.V., this proposed AD would not require those actions.

Clarification of Inspection Terminology

Although the Dutch Airworthiness Directive and the referenced service bulletin do not specify the type of inspection for the affected cables, this proposed AD describes the inspection as a "general visual inspection." Note 1 of this proposed AD has been included to define this type of inspection.

Cost Impact

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

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Fokker Services B.V.: Docket 2002–NM–251–AD.

Applicability: Model F.28 Mark 0070 series airplanes, serial numbers 11521, and 11528 through 11585 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit in the electrical power center (EPC), possibly leading to a fire in the main cabin and damage to the airplane, or injury to passengers and flightcrew, accomplish the following:

Inspection, and Reinstallation If Necessary

(a) Within 6 months after the effective date of this AD, perform a general visual inspection of the 4 contactors having part number 9124–9283 located in the EPC for proper installation of the wires; in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–24–035, dated May 27, 2002.

(1) If the installation is correct, no further action is required by this AD.

(2) If the installation is incorrect, prior to further flight, reinstall the wires in accordance with the Accomplishment Instructions of the service bulletin.

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

Exception to Service Bulletin Reporting

(b) Although Fokker Service Bulletin SBF100–24–035, dated May 27, 2002, specifies that all inspection results be reported to Fokker Services. B.V., this proposed AD does not include such a requirement.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 2002–112, dated July 31, 2002.

Issued in Renton, Washington, on March 5, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5942 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–162–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0100 series airplanes, that currently requires repetitive inspections of certain main landing gear (MLG) main fittings to detect forging defects, and rework of the main fittings if necessary. This action would require either replacement of each MLG with a MLG that has main fittings that have been inspected and reworked, or various one-time inspections of the main fittings and rework if necessary. Either of these actions would constitute terminating action for the repetitive inspections. This action would also revise the applicability by adding airplanes. The actions specified by the proposed AD are intended to detect forging defects of the MLG main fittings, which could lead to cracking and result in significant structural damage to the airplane and possible injury to the occupants. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–162–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., PO Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–162–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 26, 2001, the FAA issued AD 2001–24–10, amendment 39–12527 (66 FR 63159, December 5, 2001), applicable to certain Fokker Model F.28 Mark 0100 series airplanes. That AD requires repetitive inspections of certain main landing gear (MLG) main fittings to detect forging defects, and rework of the main fittings if necessary. The requirements of that AD are intended to detect forging defects of the MLG main fittings, which could lead to cracking and result in significant structural damage to the airplane and possible injury to the occupants.

Actions Since Issuance of Previous AD

Since the issuance of that AD, the airplane manufacturer has advised us that additional airplanes (Model F.28 Mark 0070 series airplanes) may be equipped with the same Messier-Dowty MLG units that are subject to the identified unsafe condition.

Also, the preamble to AD 2001–24–10 specified that we considered the requirements "interim action" and that the manufacturer was developing rework procedures to address the unsafe condition. The manufacturer now has developed such rework procedures, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–32–134, dated March 24, 2003. Part 1 of the service bulletin describes procedures for removing the MLGs from the airplane; doing a detailed inspection of the MLG pintle pins, side stay attachment pins, and MLG retract actuator attachment bolts; and installing MLGs with main fittings that were reworked.

Part 2 of Fokker Services B.V. Service Bulletin SBF100–32–134 describes procedures for doing eddy current and etch penetrant inspections on MLG main fittings and identifying MLGs that have been inspected. For discrepancies (*e.g.*, cracking or detected flaws of up to 50% of the calibration amplitude of the eddy current flaw detector) found during the inspections, Part 2 also includes procedures for reworking certain discrepancies and contacting the part manufacturer for discrepancies that are outside the permitted rework areas,

or that cannot be removed within the limits specified in the service bulletin.

Both Parts 1 and 2 of Service Bulletin SBF100–32–134 refer to Messier-Dowty Ltd. Service Bulletin F100–32–102, including Appendices A, B, and C, dated February 24, 2003, as an additional source of information for reworking the main fittings of the MLGs, doing the eddy current and etch penetrant inspections, and identifying MLGs that have been inspected.

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, classified Fokker Service Bulletin SBF100–32–134 and Messier-Dowty Ltd. Service Bulletin F100–32–102 as mandatory and issued Dutch airworthiness directive 2003–040, dated March 31, 2003, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–24–10 to continue to require repetitive inspections of certain MLG main fittings to detect forging defects, and rework of the main fittings if necessary. The proposed AD also would require either replacement of the MLG with a MLG that has main fittings that have been inspected and reworked, or various one-time inspections of the main fittings, and rework if necessary. Either of these actions would constitute terminating action for the repetitive inspections. This action would also revise the applicability by adding airplanes. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Among the Proposed AD, Service Bulletins, and Dutch Airworthiness Directive

The Dutch airworthiness directive and Fokker Service Bulletin SBF100–32–134 recommend that the actions which terminate the repetitive inspections be accomplished prior to or during the next scheduled overhaul of the affected MLG main fitting. Because overhaul schedules vary among operators, this proposed AD would require accomplishment of the terminating actions prior to the accumulation of 16,000 total landings on a new MLG. This compliance time represents the life limit for the MLG main fitting.

Operators should note that, although the Dutch airworthiness directive describes procedures for reporting inspection results to Messier-Dowty and Fokker B.V. Services, this proposed AD would not require those actions.

Although Fokker Service Bulletin SBF100–32–134 and Messier-Dowty Ltd. Service Bulletin F100–32–102 both specify that the parts manufacturer may be contacted for disposition of certain discrepancies, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or CAA–NL (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or CAA–NL (or its delegated agent) would be acceptable for compliance with this AD.

Change to Requirements of Existing AD

AD 2001–24–10 included a reporting requirement to enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and to develop final action to address the unsafe condition. This proposed AD includes such final action; therefore, the reporting requirement is not included in the requirements of this proposed AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR Part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore, paragraph (g) and Note 1 of AD 2001–24–10 are not included in this proposed AD.

Cost Impact

There are approximately 70 airplanes of U.S. registry that would be affected by this proposed AD.

The repetitive inspections currently required by AD 2001–24–10 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $9,100, or $130 per airplane, per inspection cycle.

Should an operator rework a MLG per Part 1 of Fokker Service Bulletin SBF100–32–134, it would take approximately 44 work hours per airplane at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed modification is estimated to be $2,860 per airplane.

Should an operator do the inspections specified in Messier-Dowty Service Bulletin F100–32–102, it would take approximately 2 work hours per airplane at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspections is estimated to be $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12527 (66 FR 63159, December 5, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Fokker Services B.V.: Docket 2003–NM–162–AD. Supersedes AD 2001–24–10, Amendment 39–12527.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category, equipped with a Messier-Dowty main landing gear (MLG) unit having a part number (P/N) with a main fitting sub-assembly, as listed in Table 1 of this AD.

TABLE 1.—APPLICABILITY

P/N—	Which includes a main fitting sub-assembly P/N—
201072011	201072283, 201072284, or 201251258 (main fitting P/N 201072383, 201072384, or 201072389)
201072012	201072283, 201072284, or 201251258 (main fitting P/N 201072383, 201072384, or 201072389)
201072013	201072283, 201072284, or 201251258 (main fitting P/N 201072383, 201072384, or 201072389)
201072014	201072283, 201072284, or 201251258 (main fitting P/N 201072383, 201072384, or 201072389)
201072015	201072283, 201072284, or 201251258 (main fitting P/N 201072383, 201072384, or 201072389)
201072016	201072283, 201072284, or 201251258 (main fitting P/N 201072383, 201072384, or 201072389)

Compliance: Required as indicated, unless accomplished previously.

To detect forging defects of the MLG main fittings, which could lead to cracking and result in significant structural damage to the airplane and possible injury to the occupants, accomplish the following:

Restatement of the Requirements of AD 2001–24–10: Initial and Repetitive Inspections

(a) For Fokker Model F.28 Mark 0100 series airplanes: Before the accumulation of 1,000 total landings on a new MLG, or within 30 days after December 20, 2001 (the effective date of AD 2001–24–10, amendment 39–12527), whichever occurs later, do an initial eddy current inspection on all MLG main fittings to detect forging defects, per Messier-Dowty Ltd. Service Bulletin F100–32–101, including Appendices A and B, dated October 25, 2001. After accomplishment of the initial inspection, repeat the eddy current inspection thereafter at intervals not to exceed 500 landings or 6 months, whichever occurs first, per the service bulletin. Accomplishment of the actions required by paragraph (f) of this AD terminates the repetitive inspections. Although this service bulletin specifies to submit certain information to the part manufacturer, this AD does not include such a requirement.

Rework

(b) For Fokker Model F.28 Mark 0100 series airplanes: After any inspection required by paragraph (a) of this AD, before further flight, accomplish the applicable actions required by paragraph (b)(1) or (b)(2) of this AD.

(1) If any cracking is found within the limits specified in Messier-Dowty Ltd. Service Bulletin F100–32–101, including Appendices A and B, dated October 25, 2001: Rework the MLG main fitting per the service bulletin.

(2) If any cracking is found that exceeds the limits specified in Messier-Dowty Ltd. Service Bulletin F100–32–101, including Appendices A and B, dated October 25, 2001: Rework the MLG main fitting per a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

Exception to Service Information

(c) During any action required by this AD, if the service bulletin specifies to contact Messier-Dowty Ltd. for an appropriate action: Before further flight, repair per a method approved by the Manager, International Branch, ANM–116; or the CAA–NL (or its delegated agent).

New Actions Required by This AD

Initial and Repetitive Inspections

(d) For Fokker Model F.28 Mark 0070 series airplanes: Before the accumulation of 1,000 total landings on a new MLG, or within 30 days after the effective date of this AD, whichever occurs later, do an initial eddy current inspection on all MLG main fittings to detect forging defects, per Messier-Dowty Ltd. Service Bulletin F100–32–101, including Appendices A and B, dated October 25, 2001. After accomplishment of the initial inspection, repeat the inspection thereafter at intervals not to exceed 500 landings or 6 months, whichever occurs first, per the service bulletin. Accomplishment of the actions required by paragraph (f) of this AD terminates the repetitive inspections.

Rework

(e) For Fokker Model F.28 Mark 0070 series airplanes: After any inspection required by paragraph (d) of this AD, before further flight, accomplish the applicable actions required by paragraph (e)(1) or (e)(2) of this AD.

(1) If any cracking is found within the limits specified in Messier-Dowty Ltd. Service Bulletin F100–32–101, including Appendices A and B, dated October 25, 2001: Rework the MLG main fitting per the service bulletin.

(2) If any cracking is found that exceeds the limits specified in Messier-Dowty Ltd. Service Bulletin F100–32–101, including Appendices A and B, dated October 25, 2001: Rework the MLG main fitting per a method approved by the Manager, International Branch, ANM–116; or the CAA–NL (or its delegated agent).

Terminating Actions

(f) For all airplanes: Before the accumulation of 16,000 total landings on a new MLG, do the actions in paragraph (f)(1) or (f)(2) of this AD. Accomplishment of paragraph (f)(1) or (f)(2) of this AD constitutes terminating action for the repetitive inspections required by paragraphs (a) and (d) of this AD.

(1) Replace the main fitting of the MLG with a main fitting that has had a detailed inspection to detect forging defects and has been reworked, per paragraph 2.B., Part 1, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–134, dated March 24, 2003. Any discrepancy found during the detailed inspection must be repaired before further flight per the Fokker 100 Aircraft Maintenance Manual and Messier-Dowty Ltd. Component Maintenance Manual 32–11–04; or per a method approved by the Manager, International Branch, ANM–116, or the CAA–NL (or its delegated agent).

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or

irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 2: Fokker Service Bulletin SBF100–32–134, dated March 24, 2003, references Messier-Dowty Ltd. Service Bulletin F100–32–102, including Appendices A, B, and C, dated February 24, 2003, as an additional source of service information for reworking the main fitting of each MLG.

(2) Do eddy current and etch penetrant inspections, as applicable, to detect forging defects; and rework the main fitting of each MLG, as applicable; by accomplishing all of the actions in paragraph 3.C. of the Accomplishment Instructions of Messier-Dowty Ltd. Service Bulletin F100–32–102, including Appendices A, B, and C, dated February 24, 2003. Do all of the actions per the service bulletin. Any rework must be done before further flight.

Parts Installation

(g) As of the effective date of this AD, no person may install a MLG, MLG main fitting sub-assembly, or MLG main fitting having a P/N listed in Messier-Dowty Ltd. Service Bulletin F100–32–102, including Appendices A, B, and C, dated February 24, 2003, on any airplane unless the part has been inspected and reworked, as applicable, per that service bulletin.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 2003–040, dated March 31, 2003.

Issued in Renton, Washington, on March 5, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5943 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–343–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes equipped with Pacific Scientific engine fire extinguisher bottles. This proposal would require a one-time inspection to detect discrepancies in the wiring installation of the engine fire extinguisher bottles, and related investigative/corrective actions as necessary. This action is necessary to prevent the inability of the left-hand fire extinguisher on one or more engines to discharge, and consequent inability to control or suppress an engine fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–343–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–343–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

- Submit comments using the following format:
- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–343–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–343–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes equipped with Pacific Scientific engine fire extinguisher bottles. The CAA advises that an operator has reported that it is possible to incorrectly wire the left-hand engine fire extinguisher circuits on each engine. If left undetected, such incorrect wiring could result in the inability of the left-hand fire extinguisher on one or more engines to

discharge, and consequent inability to control or suppress an engine fire.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin 26–065, dated September 16, 2002. This service bulletin describes procedures for visually inspecting the wiring installation for Pacific Scientific engine fire extinguisher bottles. The procedures for the visual inspection include a one-time test of the wiring for the indicating system of the engine fire extinguishing system, and related investigative/corrective actions. The related investigative action is a function test of the left-hand fire extinguishing and cartridge firing unit system. The function test is necessary only if each engine does not pass the wiring test for the indicating system. The function test includes examining the wiring installation to determine if the correct wires are connected to the firing cartridge, testing correct loop resistance, and testing for correct voltage. The corrective actions include disconnecting and reconnecting the wiring for the left-hand engine fire extinguishing and cartridge firing unit system per the applicable BAE Systems (Operations) Limited wiring manual and Drawing 2 of the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 003–09–2002 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Service Information and This Proposed AD

The effectivity of the service bulletin states that airplanes with BAE Systems (Operations) Limited Modification HCM01582B installed are exempt from the inspection/test if BAE Systems (Operations) Limited Service Bulletin 26–060 (Inspection for Cross Connection of Wiring on Pacific Scientific Fire Extinguishers) has been accomplished on each engine. This information is not included in the applicability of this proposed AD, but it is included in paragraph (b) of this proposed AD.

The service bulletin specifies to submit certain information to the manufacturer. This proposed AD does not include such a requirement.

Clarification of Requirements

The British airworthiness directive requires a test of the left-hand fire extinguisher bottle wiring on all four engines. The Accomplishment Instructions of the service bulletin specify that the fire bottle wiring test includes a visual inspection of the wiring. This proposed AD specifies that both a detailed inspection of the fire extinguisher bottle wiring and a test of the left-hand engine fire extinguishing system will be required.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,530, or $195 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–343–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, equipped with Pacific Scientific engine fire extinguisher bottles, and having BAE Systems (Operations) Limited Modification HCM01688A, and either HCM01582A or HCM01582B installed; certificated in any category;

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the left-hand fire extinguisher bottle on one or more engines to discharge, and consequent inability to control or suppress an engine fire, accomplish the following:

Inspection, Test, and Related Investigative/Corrective Actions

(a) Within 6 months after the effective date of this AD: Do a one-time detailed inspection to detect discrepancies in the wiring installation of the fire extinguisher bottles for the engines, a one-time test of the wiring for the indicating system of the engine fire extinguishing system, and all applicable related investigative/corrective actions, per the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.26–065, dated September 16, 2002. Do all of the actions per the service bulletin. Any corrective actions must be done before further flight. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

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

Credit for Actions Done Per Other Service Information

(b) For airplanes with BAE Systems (Operations) Limited Modification HCM01582B installed: Accomplishment of BAE Systems (Operations) Limited Service Bulletin 26–060 (Inspection for Cross Connection of Wiring on Pacific Scientific Fire Extinguishers) on each engine is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in British airworthiness directive 003–09–2002.

Issued in Renton, Washington, on March 5, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5944 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposal would require repetitive detailed and eddy current inspections on the main fittings of the main landing gears (MLG) to detect discrepancies, and related investigative/corrective actions if necessary. This proposal also would require servicing the shock strut of the MLGs; inspecting the shock strut of the MLGs for nitrogen pressure, visible chrome dimension, and oil leakage; and servicing any discrepant strut. This action is necessary to detect and correct premature cracking of the main fittings of the MLGs, which could result in failure of the fittings and consequent collapse of the MLGs during landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–149–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7312; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–149–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that the results of a stress analysis revealed that certain main fittings of the main landing gears (MLG) are susceptible to premature cracking, starting in the radius of the upper lug. This condition, if not corrected, could result in failure of the main fittings of the MLGs and consequent collapse of the MLGs during landing.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–32–088, including Appendices A, B, and C, dated February 20, 2003, which describes, among other actions, the following procedures:

- Performing repetitive detailed inspections on the main fittings of the MLGs to detect discrepancies (*e.g.*, linear paint cracks or lack of paint (paint peeling), any other paint damage, adhesion, paint bulging, or corrosion), and related investigative/corrective actions if necessary. The related investigative actions include either an eddy current or fluorescent penetrant inspection of the main fittings of the MLGs for discrepancies. The corrective action includes replacing the MLGs or main fittings of the MLGs with new parts and repainting, repairing, and/or reworking any paint damage; as applicable.
- Performing repetitive eddy current inspections on the main fittings of the MLGs to detect cracks, and replacement of the main fittings of the MLGs with new or serviceable fittings if necessary.
- Servicing the shock strut of the MLGs.
- Inspecting the shock strut of the MLGs for nitrogen pressure, visible chrome dimension, and oil leakage, and servicing the affected shock strut of the MLGs if necessary.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2003–09, effective June 6, 2003, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Canadian Airworthiness Directive/ Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a comment sheet related to service bulletin quality and a sheet recording compliance to the airplane manufacturer bulletin, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 288 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $74,880, or $260 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–149–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, equipped with main fittings, part numbers (P/N) 601R85001–81 and 601R85001–82 (Messier Dowty Incorporated P/N 17064–105 and 17064–106), of the main landing gears (MLG); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct premature cracking of the main fittings of the MLGs, which could result in failure of the fittings and consequent collapse of the MLGs during landing, accomplish the following:

Note 1: Where this AD differs from the referenced service bulletin, the AD prevails.

Detailed Inspection of Main Fittings of the MLGs

(a) Before the accumulation of 2,500 total flight cycles on the MLGs, or within 250 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection on the main fittings of the MLGs to detect discrepancies (*i.e.*, linear paint cracks or lack of paint (paint peeling), any other paint damage, adhesion, paint bulging, or corrosion), in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin (ASB) A601R–32–088, dated February 20, 2003. Repeat the inspection thereafter at intervals not to exceed 100 flight cycles.

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

Related Investigative/Corrective Actions

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD, before further flight, do the related investigative/corrective actions in accordance with Part B or F of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendices A and C, dated February 20, 2003. If an eddy current inspection (a related investigative action specified in Part B) is used to confirm the detailed inspection findings, the next eddy current required by paragraph (c) of this AD must be conducted within 500 flight cycles after the eddy current inspection specified in this paragraph, and thereafter at intervals not to exceed 500 flight cycles.

Eddy Current Inspection of Main Fittings of the MLGs

(c) At the time specified in paragraph (a) of this AD, do an eddy current inspection on the main fittings of the MLGs to detect cracks in accordance with Part B of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendix A, dated February 20, 2003. Repeat the eddy current inspection thereafter at intervals not to exceed 500 flight cycles. If any crack is found, before further flight, replace the affected main fittings of the MLGs with new or serviceable fittings in accordance with paragraph E.(5) of Part B of the Accomplishment Instructions of service bulletin.

Servicing of Shock Struts and Serving If Necessary

(d) Before the accumulation of 2,500 total flight cycles on the MLGs, or within 500 flight cycles after the effective date of this AD, whichever occurs later, service the shock strut of the MLGs in accordance with Part C or D, as applicable, of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendix B, dated February 20, 2003.

Shock Strut Inspection

(e) Within 500 flight cycles after completing the servicing required by paragraph (d) of this AD, inspect the shock strut of the MLGs for nitrogen pressure, visible chrome dimension, and oil leakage in accordance with Part E of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendix B, dated February 20, 2003. Repeat the inspection thereafter at intervals not to exceed 500 flight cycles. If the nitrogen pressure and visible chrome dimensions are found outside the limits (the service bulletin refers to the airplane maintenance manual as the source of defined limits) and/or oil leakage is found, before further flight, service the affected shock strut of the MLGs in accordance with Part C or D, as applicable, of the Accomplishment Instructions of the service bulletin.

Reporting

(f) Submit a report of all findings (both positive and negative) after each inspection and servicing required by this AD to Bombardier Aerospace, In-Service Engineering, attention Jean Gauthier, fax (524) 855–7708, e-mail *jean.gauthier@notes.canadair.ca*, at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If any inspection or servicing is done after the effective date of this AD: Submit the report within 30 days after the applicable inspection or servicing.

(2) If any inspection or servicing was accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(g) Although the Accomplishment Instructions of the service bulletin referenced in this AD specifies to submit a comment sheet related to service bulletin quality and a sheet recording compliance to the airplane manufacturer bulletin, this AD does not include such a requirement

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–09, dated April 23, 2003.

Issued in Renton, Washington, on March 5, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5947 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–301–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 and ATR72–212A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–500 and ATR72–212A series airplanes. This proposal would require repetitive inspections for cracking of the upper closing rib of the vertical fin, related investigative actions, and corrective actions if necessary. This action is necessary to prevent interference between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–301–AD" in the subject line and need not be submitted

in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–301–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

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 Aerospatiale Model ATR42–500 and ATR72–212A series airplanes. The DGAC advises that rudder operation difficulties occurred on a Model ATR42–500 series airplane while the airplane was on the ground. Investigation revealed interference between the rudder and the upper closing rib of the vertical fin. This interference was subsequently attributed to failure of parts of the upper closing rib of the vertical fin due to fatigue cracking induced by installation stress. This condition, if not corrected, could result in a rudder jam and consequent reduced controllability of the airplane.

The subject area on certain Model ATR72–212A series airplanes is almost identical to that on the affected Model ATR42–500 series airplanes. Therefore, those Model ATR72–212A series airplanes may be subject to the unsafe condition revealed on the Model ATR42–500 series airplanes.

Explanation of Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Bulletin ATR42–55–0011, dated September 26, 2002 (for Model ATR42–500 series airplanes); and Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, dated November 13, 2002 (for Model ATR72–212A series airplanes). These service bulletins describe procedures for repetitive detailed visual inspections for cracking of the upper closing rib of the vertical fin, and related investigative actions.

The related investigative actions involve measuring the planarity of the upper closing rib and measuring the gap between the rudder horn and the upper closing rib of the vertical fin. If any crack, wave, or anomaly is found, or if any measurement is outside the limits specified in the service bulletin, the service bulletin specifies further actions, which include:

- Removing the fairing of the vertical fin.
- Performing an internal detailed visual inspection of the fin tip closure rib in the area of the fairing, to detect and determine the extent of any cracking.
- Performing a measurement of the fin tip closure rib position.
- Performing an additional measurement of the planarity of the fin tip closure rib.
- Contacting the manufacturer for repair information.

Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–506(B) R1, dated December 24, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 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. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletins

Although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would

be acceptable for compliance with this proposed AD.

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting inspection results to the manufacturer, this proposed AD would not require that action.

Interim Action

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

Cost Impact

The FAA estimates that 2 Model ATR42–500 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $260, or $130 per airplane.

Currently, there are no affected Model ATR72–212A series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it would be subject to the same per-airplane cost specified above for the Model ATR42–500 series airplanes.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Aerospatiale: Docket 2002–NM–301–AD.

Applicability: Model ATR42–500 and ATR72–212A series airplanes; certificated in any category; on which Aerospatiale Modification 4440 has been accomplished; except those Model ATR42–500 series airplanes having serial numbers (S/Ns) 618 and subsequent; and except those Model ATR72–212A series airplanes having S/Ns 682, 683, 684, 687, and 694 and subsequent.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–55–0011, dated September 26, 2002 (for Model ATR42–500 series airplanes); and Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, dated November 13, 2002 (for Model ATR72–212A series airplanes); as applicable.

(1) For Model ATR72–212A series airplanes: Actions accomplished before the effective date of this AD per Avions de Transport Regional Service Bulletin ATR72–55–1003, dated October 11, 2002, are acceptable for compliance with the corresponding actions required by this AD.

(2) Where the service bulletins specify to report inspection results to the manufacturer, this AD does not require such reporting.

Repetitive Inspections

(b) Within 500 flight hours after the effective date of this AD: Perform a detailed inspection for cracking of the upper closing rib of the vertical fin, per the Accomplishment Instructions of the applicable service bulletin. Repeat this inspection thereafter at intervals not to exceed 500 flight hours.

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

Note 2: There is no terminating action available at this time for the repetitive inspections required by paragraph (b) of this AD.

One-Time Follow-On Inspections

(c) Before further flight following the initial detailed inspection for cracking required by paragraph (b) of this AD, measure the planarity of the upper closing rib and measure the gap between the rudder horn and the upper closing rib of the vertical fin; per paragraphs 2.C.(2) and 2.C.(3) of the Accomplishment Instructions of the applicable service bulletin.

Repair

(d) If any crack is found during any inspection required by paragraph (b) of this AD; or if any wave, anomaly, or measurement is found that is outside the limits specified in the applicable service bulletin: Before further flight, do all applicable actions in and per paragraph 2.C.(4) of the applicable service bulletin; except, where the applicable service bulletin says to contact the manufacturer for an approved repair solution, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (or its delegated agent).

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in French airworthiness directive 2002–506(B) R1, dated December 24, 2002.

Issued in Renton, Washington, on March 5, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5946 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–171–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 series airplanes. This proposal would require repetitive detailed inspections for heat damage to any in-line splice in the auxiliary power unit (APU) and integrated drive generator (IDG) feeder cable circuits, and corrective action if necessary. This proposed AD also would provide for optional terminating action for the repetitive inspections. This action is necessary to prevent overheating of the in-line splices of the APU and IDG feeder cables, which can lead to smoke, fumes, and possible fire in the flight deck and cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–171–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA–public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–171–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 series airplanes. The CAA advises that it received reports of in-line splices in the auxiliary power unit (APU) feeder cables being damaged by overheating. The CAA considers that splices in the integrated drive generator (IDG) feeder cables could also be subject to overheating. Poor joint splicing of electrical cables can lead to overheating that involves conductor melting. These failures can result in open APU generator or IDG circuits, followed by the associated generator tripping off-line. Overheating of the in-line splices of the APU or IDG feeder cables, if not corrected, can lead to smoke, fumes, and possible fire in the flight deck and cabin.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.24–139, dated April 2, 2003, which describes procedures for repetitive detailed inspections for heat damage to any in-line splice in the APU and IDG feeder cable circuits, and corrective action if necessary. The service bulletin refers to additional service bulletins for corrective and terminating actions, as follows:

- BAE Systems (Operations) Limited Modification Service Bulletin SB.24–82–36097A&B, Revision No. 2, dated September 23, 1992, which describes procedures for modification of the APU feeders involving installation of an improved splice, and installation of continuous size 6 cables without splices.
- BAE Systems (Operations) Limited Modification Service Bulletin SB.24–85–01253A, Revision No. 1, dated March 15, 1991, which describes procedures for modification of the IDG feeders involving installation of an improved splice.
- BAE Systems (Operations) Limited Modification Service Bulletin SB.24–98–01253B, dated October 30, 1992, which describes procedures for modification of the IDG feeders involving installation of continuous size 6 cables without splices.
- BAE Systems (Operations) Limited Modification Service Bulletin SB.24–92–01203C, Revision 1, dated August 27, 2002, which describes procedures for modification of the IDG feeders involving installation of size 4 cables

that have terminal blocks instead of splices.

Per BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, accomplishment of any of the modifications described previously eliminates the need for the repetitive inspections of the APU or IDG feeders, as applicable.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, as mandatory and issued British airworthiness directive 005–04–2003 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, except as discussed below under "Difference Between Proposed Rule and Certain Referenced Service Bulletin."

This proposed AD also would provide for optional terminating action for the repetitive inspections. Consistent with the findings of the CAA, the proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections of in-line splices in the APU and IDG feeder cables to detect heat damage before it represents a hazard to the airplane.

Difference Between Proposed Rule and Certain Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, describes procedures for reporting inspection findings to the airplane manufacturer, this proposed AD would not require that action.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,630, or $390 per airplane, per inspection cycle.

The optional terminating action, if done, would take approximately between 5 and 30 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost approximately between $744 and $1,379 per airplane. Based on these figures, we estimate the cost of the optional terminating action to be between $1,069 and $2,847 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2003–NM–171–AD.

Applicability: Model BAE 146 series airplanes, as identified in BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the in-line splices of the auxiliary power unit (APU) and integrated drive generator (IDG) feeder cables, which can lead to smoke, fumes, and possible fire in the flight deck and cabin, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, do a detailed inspection for heat damage to any in-line splice in the APU and IDG feeder cables, per the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003. If no heat damage is found, repeat the inspections thereafter at intervals not to exceed 12 months. Although the service bulletin specifies to report inspection findings to the airplane manufacturer, this AD does not include such a requirement.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or

irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If any heat damage is found during any inspection done per paragraph (a) of this AD: Prior to further flight, modify the damaged in-line splices in the APU and/or IDG feeder cable circuits, per paragraph 2.F., "Terminating Action," of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, as applicable.

Optional Terminating Action

(c) Modifying the in-line splices in the APU and/or the IDG feeder cable circuits, per the Terminating Action instructions of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, constitutes terminating action for this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in British airworthiness directive 005–04–2003.

Issued in Renton, Washington, on March 5, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5945 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–300 series airplanes. This proposal would require various one-time inspections for discrepancies of the ground spoiler assemblies and the flap of each wing, and related investigative and corrective actions. This action is necessary to prevent failure of certain ground spoiler support arms due to interference between the ground spoiler assemblies and the wing flaps, which could result in loss of function of affected ground spoiler assemblies and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–121–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–300 series airplanes. The LBA advises that there may be insufficient clearance between the bottom of the trailing edges of the ground spoilers and the upper surfaces of the wing flaps, which places higher loads on support arms #3 and #8 of the ground spoiler assemblies. Higher loads may result in premature cracking of the support arms. This condition, if not corrected, could result in loss of function of the affected ground spoiler assemblies, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328J–57–180, Revision 1, dated March 10, 2003, which describes procedures for a visual inspection, contour inspection, and clearance

inspection of the ground spoilers and the flap of each wing for discrepancies, and the following related investigative and corrective actions:

- A visual inspection of the flap protection strip for chafing marks, reporting inspection results to the manufacturer, and inspecting the bottom surface of the ground spoiler and the mating upper surface of the flap of each wing for surface damage (chafing marks or paint damage), and repair if necessary.
- A contour inspection of the ground spoiler and the flap of each wing to determine if they are within the tolerances specified in Table 1 of the service bulletin, adjusting the ground spoiler actuator if out of tolerance, and repeating the inspection one time if the ground spoiler actuator is adjusted.
- A clearance inspection between the bottom of the trailing edge of the ground spoiler and the upper surface of the flap of each wing. If there is a notable deflection (spring back effect) between the ground spoiler and the surface, the service bulletin recommends writing down and reporting the results of the clearance and contour inspections to the manufacturer. If there is no notable deflection (spring back effect) between the ground spoiler and the surface, the service bulletin recommends adjusting the ground spoiler actuator and repeating the contour inspection one time.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2003–120/2, dated July 24, 2003, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed AD, German Airworthiness Directive, and Service Information

Operators should note that the service bulletin recommends doing the specified actions "as soon as possible, or at the latest, at the next A-Check or equivalent." The German airworthiness directive recommends doing the actions "as soon as possible, but not later than the next A-Check." Because "A-Check" schedules vary among operators, this proposed AD would require accomplishment of the actions within 400 flight cycles after the effective date of this proposed AD. We find that a compliance time of within 400 flight cycles after the effective date of this AD is appropriate for affected airplanes to continue to operate without compromising safety.

Whereas the service bulletin specifies a visual inspection of the flap protection strip for chafing marks, this proposed AD requires a general visual inspection. A note has been added to define that inspection.

The service bulletin also specifies to submit information to the manufacturer, however, this proposed AD does not include such a requirement.

Cost Impact

We estimate that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,240, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Fairchild Dornier Gmbh (Formerly Dornier Luftfahrt GmbH): Docket 2003–NM–121–AD.

Applicability: All Model 328–300 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain ground spoiler support arms due to interference between the ground spoiler assemblies and the wing flaps, which could result in loss of function of affected ground spoiler assemblies and consequent reduced controllability of the airplane, accomplish the following:

General Visual, Contour, and Clearance Inspections of Ground Spoilers, and Related Investigative/Corrective Actions

(a) Within 400 flight cycles after the effective date of this AD: Do one-time general visual, contour, and clearance inspections for discrepancies of the ground spoiler assemblies and the wing flaps by doing all the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328J–57–180, Revision 1, dated March 10, 2003. Any applicable related investigative and corrective actions must be done before further flight per the service bulletin.

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

Submission of Inspection Results Not Required

(b) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in German airworthiness directive 2003–120/2, dated July 24, 2003.

Issued in Renton, Washington, on March 11, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5967 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–211, –212, –214, –232 and –233 Series Airplanes and Model A321–211, –231 and –232 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–211, –212, –214, –232 and –233 series airplanes and Model A321–211, –231 and –232 series airplanes. This proposal would require a one-time ultrasonic inspection of certain floor crossbeams to determine if they are of nominal thickness; and a structural modification to reinforce any crossbeam that is not of nominal thickness. This action is necessary to prevent reduced structural integrity of the floor in the event of rapid depressurization or rapid vertical acceleration. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–224–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–224–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

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 A320–211, –212, –214, –232 and –233 series airplanes and Model A321–211, –231 and –232 series airplanes. The DGAC advises that an Airbus quality check revealed that, due to a process discrepancy during production, certain floor structural crossbeams were manufactured that were not of nominal thickness and were installed in certain airplanes before the discrepancy was discovered. This condition, if not corrected, could result in reduced

structural integrity of the floor in the event of rapid depressurization or rapid vertical acceleration.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53A1162, including Appendix 01 and Appendix 02, dated June 25, 2002, which describes procedures for a one-time ultrasonic inspection of certain floor crossbeams for nominal thickness. Airbus has also issued Service Bulletin A320–53A1163, dated June 25, 2002, which describes procedures for reinforcement of crossbeams found not at nominal thickness. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–418(B), on August 7, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 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. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously, except as described below.

Difference Between Proposed Rule and Referenced Service Bulletins

Operators should note that, although Airbus Service Bulletin A320–53A1162, including Appendix 01 and Appendix 02, dated June 25, 2002, describes procedures for submitting inspection results to the manufacturer, this proposed AD would not require that action.

Cost Impact

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD.

The ultrasonic inspection required by this proposed AD would take approximately 1 work hour per airplane to accomplish at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $1,625, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Airbus: Docket 2002–NM–224–AD.

Applicability: This AD applies to the airplanes specified in Table 1 of this AD; certificated in any category.

TABLE 1

For model	Manufacturer's Serial Number (MSN)	Except for MSN
A320–211, –212, –214, –232, and –233 series airplanes	1516 to 1754 inclusive	1624, 1655, 1665, 1676, 1694, 1697, 1708, 1730, 1732 and 1736
A321–211, –231 and –232 series airplanes	1572 to 1711 inclusive	1675 and 1681

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the floor in the event of rapid depressurization or rapid vertical acceleration, accomplish the following:

Inspection

(a) Within 450 flight hours from the effective date of this AD, perform a one-time ultrasonic inspection of the specified floor crossbeams for nominal thickness, as defined in Airbus Service Bulletin A320–53A1162, including Appendix 01 and Appendix 02, as applicable, dated June 25, 2002. Do the inspection per the Accomplishment Instructions of the Service Bulletin.

(1) If both floor crossbeams are found to be at the nominal thickness, no further action is required by this AD.

(2) If any floor crossbeam is found to not be at the nominal thickness, within 50 flight hours after the inspection required by paragraph (a) of this AD, reinforce the crossbeam in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53A1163, dated June 25, 2002, as applicable.

Difference Between Proposed Rule and Referenced Service Bulletins

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

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–418(B), dated August 7, 2002.

Issued in Renton, Washington, on March 10, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5968 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 1998N–1111]

Gastroenterology-Urology Devices; Classification for External Penile Rigidity Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify external penile rigidity devices intended to create or maintain sufficient penile rigidity for sexual intercourse into class II (special controls). Also, FDA is giving notice of its intent to exempt this type of device from the premarket notification (510(k)) requirements of the Federal Food, Drug, and Cosmetic Act. After considering public comments on the proposed classification, FDA will publish a final regulation classifying these devices. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of this device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of a draft guidance document that would serve as the special control for the devices if this proposal becomes final.

DATES: Submit written or electronic comments by June 15, 2004. *See* section IX of this document for the proposed effective date of a final rule based on this document.

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

FOR FURTHER INFORMATION CONTACT: Janine Morris, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, (301) 594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115), and the Medical Devices User Fee and Modernization Act (MDUFMA) (Public Law 107–250) established a comprehensive system for regulating 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 amendments), generally referred to as preamendments devices, are classified after FDA has taken the following steps: (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 before 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 remain in class III and require premarket approval until FDA performs the following tasks: (1) Reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a legally marketed device that does not require premarket approval. 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 21 CFR part 807 of the regulations.

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.

FDAMA added a new section 510(m) to the act (21 U.S.C. 360(m)). New 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 the agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of external penile rigidity devices.

B. Regulatory History

External penile rigidity devices are preamendments devices. These devices were not classified with the gastroenterology and urology devices that were classified in 1983. FDA has reviewed marketing submissions for these devices through the 510(k) process. Based on the premarket notifications (510(k)) reviews, the agency believes that the labeling of these devices adequately informs users and practitioners about the safe and effective use of the devices.

Consistent with the act and the regulations, FDA consulted with the Gastroenterology-Urology Advisory Panel (the Panel), an FDA advisory committee, regarding the classification of these devices. During a public meeting on August 7, 1997, the Panel discussed the history, composition, and usage of external penile rigidity devices. The Panel recommended classifying

external penile rigidity devices into class II with labeling recommendations as special controls (Ref. 1).

In the **Federal Register** of January 4, 1999 (64 FR 62), FDA issued a proposed rule to classify external penile rigidity devices into class II. The January 4, 1999, proposal provided the regulatory history of external penile rigidity devices as well as the recommendation of the Panel that these devices be classified into class II (special controls). Specifically, the Panel recommended that FDA classify the devices into class II because it concluded that special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and that there was sufficient information to establish special controls to provide that assurance. FDA agreed with the Panel's recommended classification.

The January 4, 1999, proposed rule provided an opportunity for interested persons to submit comments. The 90-day comment period ended on April 15, 1999. FDA received no comments.

FDA has decided to repropose the classification of this device to modify the description of external penile rigidity devices to clarify its intended use. In addition, FDA, on its own initiative, is proposing to exempt these devices from premarket notification requirements. The agency believes that premarket notification is not necessary to assure the safety and effectiveness of the device for the following reasons: (1) FDA received no adverse event reports regarding the use of external penile rigidity devices from 1997 to the present and (2) FDA conducted a scientific literature review from 1996 to June 2003, which continued to show that the devices are safe and effective when used properly. FDA also believes that a special controls guidance document with labeling recommendations addressing proper usage, along with the general controls, would provide reasonable assurance of the safety and effectiveness of the devices.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in a guidance document the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff." You may obtain that guidance through the Internet on FDA's Center for Devices and Radiological Health (CDRH) home page at *http://www.fda.gov/cdrh* or by fax through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Recommendation of the Panel

A. Device Identification

The Panel made the following device identification recommendation: Penile rigidity devices are generic external devices that include constriction rings, vacuum pumps, and penile splints for the management of erectile dysfunction. These devices fit on, over, or around the penis to support, promote, or maintain sufficient penile rigidity for sexual intercourse.

B. Recommended Classification of the Panel

The Panel unanimously recommended that FDA classify external penile rigidity devices into class II (special controls). The Panel believed that special controls regarding labeling recommendations would provide reasonable assurance of the safety and effectiveness of the device type. The Panel advised that the labeling provide the following information: (1) The identified risks to health of this device type; (2) relevant contraindications, warnings, and precautions; (3) possible methods of resolution of the problems/risks associated with the use of the devices; and (4) device-specific information. Device-specific information (64 FR 62) contains warnings and precautions, including, but not limited to, the following:

1. Information Relevant to Vacuum Pumps

The user should apply the minimum amount of vacuum pressure necessary to achieve an erection. Misuse of a vacuum pump may aggravate already existing medical conditions such as Peyronie's disease, priaprism, and urethral strictures.

2. Information Relevant to Constriction Rings

The user should restrict use of the device to 30 minutes and should not fall asleep wearing the constriction ring. Prolonged use of the constriction ring without removal may cause permanent injury to the penis.

Frequent use of constrictions rings may result in bruising at the base of the penis. The user should not use constrictions rings if there is decreased ability to sense pain in the penis, because pain may occur as a warning sign that the device may be causing injury.

3. Information Relevant to Penile Splints

The user should consult a physician if any injuries occur to either the user or the user's partner.

C. Summary of Reasons for Recommendation

The Panel recommended that external penile rigidity devices be classified into class II. The Panel believed that special controls regarding labeling recommendations, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and that there is sufficient information to establish special controls to provide such assurance.

D. Summary of Data Upon Which the Recommendation is Based

The Panel based its recommendation on the Panel members' knowledge and clinical experience, as well as published literature on external penile rigidity devices (Refs. 2 through 4).

E. Risks to Health

The Panel identified pain and/or discomfort, bruising, hemorrhage and/or hematoma formation, penile injury and penile gangrene (if blood flow is restricted too long) as risks and possible side effects associated with the use of these external penile rigidity devices. After considering the Panel's deliberations, as well as the published literature and medical device reports, FDA evaluated the risks to health associated with the use of external penile rigidity devices. FDA categorized the following as risks to health: (1) Tissue injury or trauma; (2) aggravation of existing medical conditions, such as Peyronie's disease, priaprism, and urethral strictures; and (3) infection/adverse tissue reactions.

1. Tissue Injury or Trauma

Tissue injury and trauma are risks to health associated with the use of external penile rigidity devices. Prolonged use of constriction bands over 30 minutes without removal may cause permanent injury to the penis because of restricted blood flow. Frequent use of constriction rings also may result in bruising at the base of the penis. Misuse of a vacuum pump may bruise or rupture the blood vessels either immediately below the surface of the skin or within the deep structures of the penis or scrotum, resulting in hemorrhage and/or hematoma formation. Misuse of a penile splint may cause vaginal trauma to the user's partner.

2. Aggravation of Certain Existing Medical Conditions

Misuse of a vacuum pump or constriction ring may aggravate already existing medical conditions, such as Peyronie's disease, priaprism, and urethral strictures. Peyronie's disease involves the formation of hardened tissue in the penis that causes pain, curvature, and distortion, usually during erection. Priaprism is the persistent, usually painful erection of the penis as a consequence of disease. A urethral stricture is an area of hardened tissue which narrows the urethra and may cause pain and difficulty in urination. Increased pressure from a vacuum pump or constriction ring may exacerbate the symptoms of these medical conditions.

3. Infection/Adverse Tissue Reactions

The materials used in external penile rigidity devices may present a risk to health when in contact with skin by causing adverse tissue reactions with respect to cytotoxicity, sensitization, or irritation. Infection is also a potential risk as a result of injury or inadequate cleaning of the devices.

F. Special Control

FDA believes that FDA's guidance document entitled "Class II Special Controls Guidance Document: External Penile Rigidity Devices; Guidance for Industry and FDA Staff" can provide reasonable assurance of the safety and effectiveness of external penile rigidity devices. FDA agrees with the Panel that specific labeling recommendations and adequate instructions for users are appropriate special controls. FDA believes that guidance on device design, in combination with labeling instructions, will also help assure a reasonable assurance of safety and effectiveness.

The guidance document addresses Panel and agency concerns about tissue injury and trauma, aggravation of existing medical conditions such as Peyronie's disease, priaprism, and urethral strictures, and infection/adverse tissue reactions.

1. Tissue Injury and Trauma

a. *Labeling.* The section addressing general labeling provisions for external penile rigidity devices will help minimize tissue injury and trauma due to user misuse by providing comprehensive instructions for use in language written and formatted for the lay person. The instructions should provide the following information: (1) How to size, place, operate, and remove the device, (2) potential risks and hazards associated with using the device, and (3) warning statements and consequences that emphasize their importance.

b. *Design features.* The section on design features has specific safety-related recommendations for constriction rings, vacuum pumps, and penile splints to reduce user and partner injury. The guidance document addresses manual safety release mechanisms and shape and surface designs that do not promote extended continuous use.

2. Aggravation of Certain Existing Medical Conditions

The use of vacuum pumps or constriction rings may aggravate certain existing medical conditions such as Peyronie's disease, priaprism, or urethral strictures. The guidance document recommends additional labeling precautions specific to vacuum pumps and constriction rings to minimize the risk to users with the previously mentioned medical conditions.

3. Infection/Adverse Tissue Reactions

a. *Labeling.* The labeling recommendations for reducing tissue injury or trauma also will help reduce the risk of infection as a result of tissue injury. The section on general labeling of external penile rigidity devices provides for manufacturers to include instructions for cleaning the devices to minimize the risk of infection from contaminated sources.

b. *Design features.* The section on design features contains recommendations for conformance to international standards for materials used in constriction rings, vacuum pumps, and penile splints to avoid adverse tissue reactions regarding cytotoxicity, sensitization, and irritation. Design features include recommendations for device shape and surface design as well as safety to minimize the risk of injury and the potential risk of infection to injured tissue.

IV. Proposed Classification

FDA agrees with the Panel's recommendation to classify these devices into class II (special controls). FDA believes that classifying external penile rigidity devices into class II is appropriate because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of these devices, and there is sufficient information to establish special controls to provide this assurance.

Additionally, the agency believes that premarket notification is not necessary to assure the safety and effectiveness of the device for the following reasons: (1) FDA received no adverse event reports regarding the use of external penile rigidity devices from 1997 to the present and (2) FDA conducted a scientific literature review from 1996 to June 2003, which continued to show that the devices are safe and effective when used properly. Serious complications are rare. FDA also believes that a special controls guidance document with labeling recommendations addressing proper usage, along with the general controls, would provide reasonable assurance of the safety and effectiveness of the devices. In this proposal, the agency is giving notice of its intent to exempt the devices from premarket notification requirements.

FDA believes that the device description recommended by the Panel in 1997 should reflect more accurately the intended use of the devices. FDA proposes that the device identification read as follows: External penile rigidity devices are devices intended to create or maintain sufficient penile rigidity for sexual intercourse. External penile rigidity devices include vacuum pumps, constriction rings, and penile splints, which are mechanical, powered, or pneumatic devices.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification 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.

VI. 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 consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review 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. This proposed rule will relieve a burden and simplify the marketing of these devices by exempting the devices from premarket notification requirements. The guidance document is based on existing review practices and will not impose new burdens on manufacturers of these devices. The agency, therefore, certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Submission of Comments

You may submit written or electronic comments regarding this proposal to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. You should identify comments with the docket number found in brackets in the heading of this document. Any comments FDA receives will be available in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Paperwork Reduction Act of 1995

FDA concludes that this proposed rule contains no collection of information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

IX. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 am. and 4 pm., Monday through Friday.

1. Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee transcript, August 7, 1997.

2. Lewis, J. H. et al., "A Way to Help Your Patients Who Use Vacuum Devices," *Contemporary Urology*, vol. 3, No. 12: 15–24, 1991.

3. Montague, D. K. et al., "Clinical Guidelines Panel on Erectile Dysfunction; Summary Report on the Treatment of Erectile Dysfunction," *Journal of Urology*, 156, 2007–2011, 1996.

4. "NIH Consensus Statement-Impotence," National Institutes of Health, vol. 10, No. 4, 1992.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes that 21 CFR part 876 be amended to read as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

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

2. Section 876.1 is amended by adding paragraph (e) to read as follows:

§ 876.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

3. Section 876.5020 is added to subpart F to read as follows:

§ 876.5020 External penile rigidity devices.

(a) *Identification.* External penile rigidity devices are devices intended to create or maintain sufficient penile rigidity for sexual intercourse. External penile rigidity devices include vacuum pumps, constriction rings, and penile splints which are mechanical, powered, or pneumatic devices.

(b) *Classification.* Class II (special controls). The devices are exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9. The special control for these devices is the FDA guidance document entitled "Class II Special Controls Guidance Document: External Penile Rigidity Devices; Draft Guidance for Industry and FDA." See § 876.1(e) for the availability of this guidance document.

Dated: March 4, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. 04–5983 Filed 3–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–037]

RIN 1625–AA09

Drawbridge Operation Regulations; Hobe Sound Bridge (SR 708), Atlantic Intracoastal Waterway, mile 996.0, Hobe Sound, Martin County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Hobe Sound Bridge (SR 708) across the Atlantic Intracoastal Waterway, mile 996.0 in Hobe Sound, Florida. This proposed rule would require the drawbridge to open on a 20-minute schedule from 7 a.m. to 6 p.m., daily. This proposed action would improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: Comments and related material must reach the Coast Guard on or before May 17, 2004.

ADDRESSES: You may mail comments and related material to Commander, (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL, 33131, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–04–037], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose

a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Bridge Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The existing regulations of the Hobe Sound Bridge (SR 708), mile 996.0, at Hobe Sound, published in 33 CFR 117.5 require the draw to open on signal.

On June 18, 2002, the Town of Jupiter Island requested that the Coast Guard review the existing regulations governing the operation of the Hobe Sound Bridge, because the Town contended that those regulations were not meeting the needs of vehicle and vessel traffic.

On August 28, 2002, the Coast Guard issued a test deviation published in the **Federal Register** (67 FR 55115). This test deviation was effective from November 1, 2002, until January 27, 2003. The test deviation allowed a change to the current bridge regulations by allowing the bridge to open on the hour, 20 minutes after the hour, and 40 minutes after the hour from 7 a.m. to 6 p.m. daily. We received 67 comments in reference to this deviation. Sixty comments were for the 20 minute schedule; three comments requested that the schedule be changed to an hour and half-hour; two comments were against the proposed schedule; and one of those requested that, if it were to be made permanent, it be limited to the winter season. One comment requested a permanent exemption from the regulations for all commercial vessels and one comment suggested enforcement of current regulations.

The Coast Guard proposes to make the 20-minute schedule published in the test deviation permanent, based on prior bridge logs, which indicated that the bridge opened two to three times an hour, and comments received from the public during the test deviation period. This proposed schedule may benefit both vessel and vehicle traffic by allowing for the opportunity to plan trips in conjunction with the 20-minute scheduled bridge openings. The hour and half schedule suggested by three comments appears to place additional unnecessary restrictions on navigation. The need for a seasonal summer and winter schedule does not appear to have any additional benefits for either vehicle or vessel traffic in this area as the prior traffic counts did not significantly differ between the summer and winter seasons. However, we may request additional traffic counts based on comments related to this NPRM. One comment requested an exemption for commercial vessels. However, with the exception of tugs and tugs with tows and Public Vessels of the United States, the Coast Guard does not normally exempt classes of vessels from regulations governing bridge operations.

Discussion of Proposed Rule

This proposed rule would require the Hobe Sound Bridge (SR 708), mile 996.0, at Hobe Sound to open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed rule would modify the existing bridge schedule to allow for efficient vehicle traffic flow and provide scheduled openings for vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of Hobe Sound Bridge, persons intending to drive over the bridge and nearby business owners. The proposed rule offers frequent, scheduled openings for vessel traffic, 3 times per hour from 7 a.m. to 6 p.m., and will meet the reasonable needs of navigation throughout the affected times. Vehicle traffic and small business owners in the area will benefit from the increased traffic flow that regularly scheduled openings will offer this area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Add § 117.261(q) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(q) *Hobe Sound Bridge (SR 708), mile 996.0, at Hobe Sound.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: February 13, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–6049 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[FRL–7637–7]

Supplemental Notice and Extension of the Comment Period for the Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing and extension of public comment period.

SUMMARY: The EPA is announcing that a public hearing will be held for the Supplemental Notice of Proposed Rule (Supplemental Proposal) for the January 30, 2004, Proposed National Emission Standards for Hazardous Air Pollutants (69 FR 4652); and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units (Proposed Utility Mercury Reductions Rule).

The Supplemental Proposal includes a model cap and trade program and monitoring and reporting requirements for the January 30, 2004, proposal. The Supplemental Proposal was signed by the EPA Administrator on February 25, 2004, and is posted on the EPA Web site (provided under **ADDRESSES**).

The public hearing will be held in Denver, Colorado. The hearing is scheduled for March 31, 2004. Persons wishing to present oral testimony for the Supplemental Proposal may do so at this hearing. Details of the hearing are reiterated below.

DATES: *Public Hearing.* The public hearing will be held on March 31, 2004.

Comments. The public comment period for the Proposed Utility Mercury Reductions Rule, which was published on January 30, 2004, is extended to April 30, 2004, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Public Hearing.* The hearing will be held at the following location: Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado, 80202, (303) 295–1234.

Comments. Written comments on the Supplemental Proposal may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the proposal for the addresses and detailed instructions.

Docket. Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through EPA's electronic Docket system at *http://www.epa.gov/edocket.*

Worldwide Web. The EPA Web site for this rulemaking, which includes the Supplemental Proposal and information about the public hearing, is at *http://www.epa.gov/mercury.*

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing or have questions concerning the public hearing, please contact Ms. Kelly Hayes at the address given below under **SUPPLEMENTARY INFORMATION** or at (919) 541–5578. Questions concerning the Supplemental Proposal should be addressed to William Maxwell, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Combustion Group (C439–01), Research Triangle Park, NC 27711, telephone number (919) 541–5430, e-mail at *maxwell.bill@epa.gov.* For information on section 111 Hg Model Trading Rule contact Mary Jo Krolewski, U.S. EPA, 1200 Pennsylvania Ave. (MC 6204J), Washington, DC 20460, telephone number (202) 343–9847, fax number (202) 343–2358, electronic mail (e-mail) address, *krolewski.maryjo@epa.gov.* For information on the part 75 Hg monitoring requirements contact Ruben Deza, U.S. EPA, 1200 Pennsylvania Ave. (MC 6204J), Washington, DC 20460, telephone number (202) 343–3956, fax number (202) 343–2358, electronic mail (e-mail) address, *deza.ruben@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearing

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the Supplemental Proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked by the last day of the comment period, as specified in the Supplemental Proposal.

The public hearing will be held in Denver, Colorado. The hearing is scheduled for March 31, 2004. Persons wishing to present oral testimony on the Supplemental Proposal may do so. The meeting facilities and their phone numbers are provided above under **ADDRESSES.**

If you would like to present oral testimony at the hearing, please notify Ms. Kelly Hayes at (919) 541–5578 no later than March 26, 2004. She will provide you with a specific time and date to speak.

The public hearing will begin each day at 8 a.m. and continue into the evening until 9 p.m., or later if necessary, depending on the number of speakers. The EPA is scheduling lunch breaks from 12:30 until 2 p.m. and dinner breaks from 6 to 7:30 p.m.

Oral testimony will be limited to a total of 10 minutes per commenter to address the Supplemental Proposal. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify Ms. Kelly Hayes if they will need specific equipment. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD ROM or in paper copy.

The hearing schedules, including lists of speakers, will be posted on EPA's Web pages for the rulemakings at *http://www.epa.gov/mercury* prior to the hearing. Verbatim transcripts of the hearing and written statements will be included in the rulemaking docket.

Comment Period

Due to the many requests we have received from both the public and members of Congress to extend the public comment period for the January 30, 2004, Proposed Utility Mercury Reduction Rule to reduce air emissions of mercury and nickel, EPA is extending the public comment period by 30 days. Therefore, the public comment period will end on April 30, 2004, rather than March 30, 2004.

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

The EPA has established the official public docket for the Supplemental Proposal and the Utility Mercury Reductions Rule under Docket ID No. OAR–2002–0056. The EPA has also developed Web sites for these rulemakings at the addresses given above. Please refer to the Supplemental Proposal for details on accessing information related to that action.

Dated: March 9, 2004.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 04–6093 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7637–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Hooker-102nd Street Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (the "EPA" or the "Agency"), Region 2, announces its intent to delete the Hooker-102nd Street Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action.

The NPL is Appendix B of the; National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which the EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA and New York State, through its Department of Environmental Conservation (NYSDEC) have determined that all appropriate response actions under CERCLA have been implemented and that no further response actions, other than operation, maintenance, and monitoring, are required. Moreover, the EPA and the NYSDEC have determined that the Site no longer poses a significant threat to public health or the environment. The Site is located in the City of Niagara Falls, Niagara County, New York.

DATES: The EPA will accept comments concerning its intent to delete on or before April 16, 2004.

ADDRESSES: Comments should be mailed to: Paul J. Olivo, Hooker-102nd Street Site Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on the Site is available for viewing, by appointment only, at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308.

Hours: Monday through Friday: 9 a.m. through 5 p.m.

Information on the Site is also available for viewing at the Site Administrative Record Repository located at: U.S. EPA Public Information Office, 345 Third Street, Suite 530, Niagara Falls, New York 14303, Tel. (716) 285–8842. Hours: Monday through Friday: 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Olivo at the address above, by telephone at (212) 637–4280, by electronic mail at *Olivo.Paul@epa.gov*, or by FAX at (212) 637–4284.

SUPPLEMENTARY INFORMATION CONCERNING THE HOOKER (102ND STREET) SITE:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA), Region 2, announces its intent to delete the Hooker-102nd Street Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this deletion. The EPA maintains the NPL as a list of sites that appear to present a significant risk to public health, or the environment. As described in § 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

The EPA will accept comments concerning the deletion of this Site from the NPL for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL Section III discusses procedures that the EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, the EPA, in consultation with the NYSDEC, will consider whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or,

(iii) A remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to the deletion of this Site:

1. The EPA, Region 2, issued a Record of Decision (ROD) for the Site on September 26, 1990, which selected the remedy for the Site. The ROD was amended on June 9, 1995.

2. Responsible parties implemented the remedy selected in the amended ROD as described in a Final Closeout Report dated September 8, 2003.

3. The EPA, Region 2, recommends deletion and has prepared the relevant documents.

4. The State of New York, through the NYSDEC, concurred with the proposed deletion of the Site in a letter dated September 29, 2003.

5. A notice has been published in a local newspaper, and in addition, a notice has been distributed to appropriate Federal, State or local officials, and other interested parties announcing a thirty-day public comment period which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

6. The EPA has made available the relevant documents to this decision at the addresses listed above.

7. Upon completion of the thirty-day public comment period, the EPA will evaluate all comments received before issuing a final decision on deletion. The EPA, Region 2, will prepare a Responsiveness Summary, if appropriate, which will address significant comments received during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories.

8. If, after consideration of the comments received, the EPA decides to proceed with the deletion, the EPA will place a Notice of Deletion in the **Federal Register**. Deletion does not occur until the final Notice of Deletion is published in the **Federal Register**. Generally, the NPL will reflect deletions in the next final update following the final Notice publication.

Deletion of a site from the NPL does not, by itself, alter, or revoke any individual's rights or obligation. Deletion of a site from the NPL does not alter the EPA's right to take appropriate enforcement actions. The NPL is primarily for informational purposes and to assist EPA management.

IV. Basis for Intended Site Deletion

The following summary provides a brief description and history of the Site and the Agency's rationale for recommending deletion of the Site from the NPL.

The Site consists of two land parcels totaling 22.1 acres. The Occidental Chemical Corporation (OCC), formerly the Hooker Chemical and Plastics Corporation, owns 15.6 acres, and the remaining 6.5 acres are owned by the Olin Chemical Corporation (Olin). The Site is located on Buffalo Avenue in Niagara Falls, Niagara County, New York. It borders on the Niagara River, and lies less than one-quarter of a mile south of the Love Canal Superfund Site. It is separated from the Love Canal Site by the LaSalle Expressway, Buffalo Avenue and Frontier Avenue.

Since the mid-1940s, the Site was used as an industrial waste landfill. In the early 1970s, landfilling operations at the Site were stopped. OCC and Olin remain as the current owners of the Site. During the period of active waste disposal at the Site, OCC and Olin deposited at least 159,000 tons of wastes, in both liquid and solid forms, into the landfill. These deposits included approximately 4,600 tons of benzene, chlorobenzene, chlorophenols, and hexachlorocyclohexanes, all of which are hazardous substances.

In 1979, the U.S. Department of Justice, on behalf of the EPA, filed a lawsuit against OCC and Olin, two potentially responsible parties (PRPs) for the Site's contamination, in order to put an end to the continuing discharges and to clean up Site contamination. The PRPs, with EPA and NYSDEC guidance, agreed to conduct a study into the nature and extent of Site contamination and to recommend alternatives for the cleanup of the Site.

The investigation included the landfill residues, contaminated fill in an area outside the landfill, shallow ground water, bedrock ground water, liquid waste, soil, river sediments, and storm drains. The investigation was completed in 1990.

In September 1990, the EPA selected a remedy which included the installation of a synthetic-lined cap; consolidation of contaminated soils beneath the cap; surrounding the waste mass with a slurry wall; dredging and incineration of highly contaminated sediments; dredging, dewatering, and consolidation, beneath the cap, of the remaining contaminated sediments; recovery and treatment of ground water; incineration of any recovered NAPL (non-aqueous phase liquids); monitoring; and restricting access to the

Site by the installation of additional security fencing.

In September 1991, the EPA issued the PRPs an Administrative Order to conduct the remedial design and the remedial action. The two PRPs agreed to comply with the Order. Design of the EPA-selected remedy was begun in October 1991. The Intermediate Engineering Report (IER) was approved by the EPA on August 31, 1993. However, certain concerns raised by the federal and state natural resource trustees caused the EPA to reexamine the remedial design as proposed in the IER. As a result of the reexamination, the September 1990 ROD was amended in June 1995. The amendment eliminated the incineration contingency whereby all highly contaminated sediments in an embayment area in the Niagara River adjacent to the landfill would have had to be excavated and incinerated were they to remain outside the final positioning of the slurry wall. The slurry wall was in fact redesigned so as to be positioned to run as close to the shoreline as was practical and still contain any migration of the NAPL plumes. Remedial action activity began in April 1996. The construction of the slurry wall was completed in 1996 along with excavation of contaminated sediments from the embayment and consolidation of these sediments into the landfill. The installation of the permanent cap over the landfill was completed during the 1997 construction season.

The remedy for the Site was completed in March 1999 when the forcemain system for pumping leachate from the landfill to the Love Canal Treatment Facility became operational. A Preliminary Closeout Report (PCOR) was approved by the EPA on September 2, 1999. The PCOR documented the fact that all construction activities identified as necessary remedial actions for the Site pursuant to the ROD, as amended, had been completed. The forcemain system continues to pump sufficient leachate from the landfill so as to maintain an inward gradient across the slurry wall. The leachate pumping system reached the steady-state phase in November 2000.

An Operation and Maintenance (O&M) Manual was developed and implemented. Annual reports are provided to the EPA and the NYSDEC and both the EPA and the NYSDEC believe that the reports for 2001 and 2002 confirm that the remedy for the Site has been successfully implemented.

A Consent Decree between EPA and the State of New York and OCC and Olin was approved and entered by a federal court on October 1, 1999. Under the terms of the Consent Decree, the PRPs agreed to implement the long-term O&M for the Site and reimbursed to the EPA $6,800,000 of its past costs plus interest. Additionally, OCC and Olin implemented institutional controls in the form of deed notifications that the Site property was subject to the terms of the Consent Decree, and use restrictions that run with the land that prohibit future uses of the property such as groundwater extraction or excavation that could adversely affect the remedy for the Site. These institutional controls are recorded in the property records of Niagara County.

The Site no longer poses a significant threat to human health or the environment. However, hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to Section 121(c) of CERCLA, the EPA and/or the State will review Site remedies no less often than every five years. The first Five-Year Review for this Site was signed by the EPA on August 15, 2001; and concluded that the response actions implemented at the Site are in accordance with the remedy selected by the EPA and that the remedy continues to be protective of human health and the environment. The next Five-Year Review will be completed before August 2006.

Public participation activities for this Site have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. The ROD was subject to a public review process. All other documents and information which the EPA relied on, or considered in recommending this deletion are available for the public to review at the information repositories.

One of the three criteria for site deletion is when "responsible parties or other persons have implemented all appropriate response actions required" (40 CFR 300.425(e)(1)(i)). The EPA, with the concurrence of the State of New York, through the NYSDEC, believes that this criterion for deletion has been met. Consequently, the EPA is proposing deletion of this Site from the NPL.

Dated: March 4, 2004.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 04–5873 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7619–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Niagara County Refuse Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces its intent to delete the Niagara County Refuse Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action.

The Niagara County Refuse Superfund Site is located in the Town of Wheatfield, Niagara County, New York. The NPL is appendix B of 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 New York State, through the Department of Environmental Conservation (NYSDEC) have determined that all appropriate response actions have been implemented and no further response actions, other than operation, maintenance, and monitoring, are required. In addition, EPA and the NYSDEC have determined that the Site is protective of public health, welfare, and the environment.

DATES: EPA will accept comments concerning its intent to delete on or before April 16, 2004.

ADDRESSES: Comments should be submitted to: Michael J. Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on the Site is available for viewing, by appointment only, at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: Monday through Friday: 9 a.m. through 5 p.m.

Information on the Site is also available for viewing at the Site Administrative Record Repository located at: North Tonawanda Public Library, 505 Meadow Road, North Tonawanda, New York 14120, Tel. (716)

693–4132, Hours: Monday through Thursday: 9:30 a.m. through 9 p.m., Friday and Saturday 9:30 a.m. through 5 p.m.

Site information is also available for viewing at the following location: U.S. EPA Public Information Office, 345 Third Street, Suite 530, Niagara Falls, New York 14303, Tel. (716) 285–8842, Hours: Monday through Friday: 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Negrelli at the address provided above, by telephone at (212) 637–4278, by electronic mail at *Negrelli.Mike@epa.gov,* or by FAX at (212) 637–4284.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA, Region 2, announces its intent to delete the Niagara County Refuse Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). As described in § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

EPA will accept comments concerning the deletion of the Site from the NPL for thirty (30) days after publication of this document in the **Federal Register.**

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

II. NPL Deletion Criteria

Section 300.425 (e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, shall consider whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or,

(iii) A remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to the deletion of this Site:

1. EPA, Region 2, issued a Record of Decision (ROD) for the Site on September 24, 1993, which selected the remedy for the Site.

2. Responsible parties implemented the remedy selected in the ROD as described in a Final Close Out Report dated August 14, 2003.

3. EPA, Region 2, recommends deletion and has prepared the relevant documents.

4. The State of New York, through the NYSDEC, concurred with the proposed deletion of the Site in a letter dated September 29, 2003.

5. A notice has been published in a local newspaper, and in addition, a notice has been distributed to appropriate Federal, State and local officials, and other interested parties announcing a 30-day public comment period which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

6. The EPA has made available the relevant documents to this decision at the addresses listed above.

7. Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing a final decision on deletion. The EPA, Region 2, will prepare a Responsiveness Summary, if appropriate, which will address significant comments received during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories.

If, after consideration of the comments it receives, EPA decides to proceed with the deletion, EPA will place a Notice of Deletion in the **Federal Register.** Deletion does not occur until the final Notice of Deletion is published in the **Federal Register**. Generally, the NPL will reflect deletions in the next final update following the final notice publication.

IV. Basis for Intended Site Deletion

The following summary provides a brief description and history of the Niagara County Refuse Superfund Site and provides the Agency's rationale for recommending deletion of the Site from the NPL.

The Niagara County Refuse site is a former municipal landfill, comprised of approximately 65 acres, located along the eastern border of the Town of Wheatfield, New York and the western border of the City of North Tonawanda. The southern edge of the Site lies approximately 500 feet north of the Niagara River.

During the landfill's operational period (1968–1976), the Niagara County Refuse Disposal District (NCRDD) accepted municipal refuse and industrial wastes, which are commingled throughout the landfill. More than 100 waste generators or transporters are thought to have used the Site. Disposed materials included heat-treatment salts, plating-tank sludge, tetrachloroethylene, PVC skins and emulsion, thiazole polymer blends, polyvinyl alcohol, phenolic resins, and brine sludge containing mercury.

Beginning in 1980, the Site became the focus of several investigations by EPA, NYSDEC, and the United States Geological Survey (USGS) resulting in the Site being placed on the National Priorities List (NPL) in September 1983.

In March 1989, a group of fourteen potentially responsible parties (PRPs) entered into an administrative consent order with EPA to perform a Remedial Investigation/Feasibility Study (RI/FS). In February 1995, a group of twelve PRPs entered into a judicial consent decree with the United States on behalf of EPA to conduct the remedial design, remedial construction, operation, maintenance, and monitoring for the Site. EPA signed a Record of Decision (ROD) for the Site on September 24, 1993, selecting the remedy for the Site as follows:

—Construction of a New York State Part 360 Standard Landfill Cap;
—Construction of a clay perimeter barrier wall;
—Construction of a gas venting system beneath the cap;
—Construction of a leachate collection system;
—Removal of the field tile drains located to the west of the landfill;
—Performance of an ecological assessment of the adjacent wetlands;
—Implementation of deed and access restrictions;
—Implementation of a long-term operation & maintenance program for the cap, and gas venting and leachate collection systems; and
—Implementation of long-term air and water quality monitoring.

On-site construction at the Site commenced in November 1998, continuing unabated through the next two construction seasons and in

September 2000, EPA conducted a final inspection with NYSDEC and the PRPs. In December 2000, EPA issued its approval of the Remedial Action Report. The ecological assessment recognized that there were valuable wetlands and uplands located on the Site. A restoration plan was developed and implemented to account for the wetland losses incurred by the capping, and 0.17 acres of wetland were created as part of the work done at the Site. The success of the restoration effort is described in the Site Annual Monitoring Reports. Additionally, institutional controls, consisting of recording the Consent Decree and placing restrictive covenants on the real property at the Site, have been implemented by Niagara County and the Town of Wheatfield.

An Operation, Maintenance, and Monitoring (OM&M) Manual was developed and implemented. Financial assurance for OM&M activities has been provided by the PRPs in the form of demand notes as required by the Consent Decree. Annual reports are provided to EPA and NYSDEC and both EPA and NYSDEC believe that the reports for 2001 and 2002 confirm that the remedy for the Site has been successfully implemented.

The Site has been cleaned and environmentally valuable lands restored. The Site no longer poses an unacceptable risk to human health or the environment. However, hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to section 121(c) of CERCLA, EPA and/or the State will review site remedies no less often than every five years. The EPA, Region 2, conducted a Five-Year Review of the Site in November 2003. The Five-Year Review concluded that the contamination at the Niagara County Refuse site is under control and there is no exposure to human or environmental receptors from Site-related contaminants due to permanent measures in place at the Site.

Public participation activities for this Site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The ROD was subject to a public review process. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information respositories.

One of the three criteria for site deletion is when "responsible parties or other persons have implemented all appropriate response actions required" (40 CFR 300.425(e)(1)(i)). EPA, with the concurrence of the State of New York, through the NYSDEC, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water Supply.

Dated: December 24, 2003.

Kathleen Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 04–5874 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7637–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Love Canal Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II, announces its intent to delete the Love Canal Superfund site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York (State), through the New York State Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions under CERCLA have been implemented and that no further response action pursuant to CERCLA are appropriate.

DATES: Comments concerning this Action must be received by April 16, 2004.

ADDRESSES: Written comments should be submitted to: Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the EPA Region II public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, NY 10007–1866, (212) 637–4308.

Hours: 9 a.m. to 5 p.m., Monday through Friday.

Information on the Site is also available for viewing at the following information repository: U.S. Environmental Protection Agency, 530 Third Street, Niagara Falls, New York 10460, (716) 285–8842.

FOR FURTHER INFORMATION CONTACT: Damian Duda, at the address provided above, by telephone at (212) 637–4269, by electronic mail at *duda.damian@epa.gov* or by FAX at (212) 637–3966.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region II announces its intent to delete the Love Canal Superfund site, located in the City of Niagara Falls, Niagara County, New York from the NPL and requests public comment on this action. The NPL is Appendix B of the NCP, which EPA promulgated, pursuant to Section 105 of CERCLA. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL can have remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions, if conditions at the site warrant such action.

The Site is located in the southeast corner of the City of Niagara Falls, approximately ¼ mile north of the Niagara River in Niagara County, New York.

EPA will accept comments concerning the deletion of this Site from the NPL for thirty days after publication of this notice in the **Federal Register**.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State of New York, shall

consider whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response actions by responsible parties is appropriate; or,

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, implementing remedial measures is not appropriate. 40 CFR 300.425(e)(1).

III. Deletion Procedures

The following procedures are being used for the intended deletion of the Site:

(1) EPA Region II issued the following decision documents: a Decision memorandum in July 1982; three Records of Decision (RODs) in March 1985, September 1987 and September 1988; three Explanations of Significant Differences (ESDs) in June 1989, November 1996 and December 1998; and, a ROD Amendment in May 1991, all of which describe the selected remedies at the Site.

(2) EPA, NYSDEC and the Potentially Responsible Party (PRP) designed and constructed the various remedies at the Site. EPA and NYSDEC monitored the design and construction activities. EPA prepared a Final Closeout Report (available upon request), which describes the remedial activities that were implemented and which finds that all areas of concern described in the NPL listing and the various decision documents have been adequately addressed.

(3) EPA Region II recommends deletion and has made all relevant documents available in the Regional office and local information repository.

(4) The State of New York, through the NYSDEC, has concurred with the deletion decision in a letter dated September 30, 2003.

(5) Concurrent with the publication of this Notice of Intent to Delete, a notice has been published in two local newspapers and has been distributed to appropriate Federal, State and local officials and any other interested parties, announcing a thirty (30)-day public comment period on the deletion package.

The NCP provides that EPA shall not delete a site from the NPL until the public has been afforded an opportunity to comment on the proposed deletion. EPA Region II will accept and evaluate public comments before making a final decision to delete. If a decision is made to delete this Site, the decision will be made in a final Notice of Deletion in the **Federal Register**. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Intended Site Deletion

Between 1942 and 1952, the Hooker Chemicals & Plastics Corporation (now Occidental Chemical Corporation (OCC)) disposed of approximately 22,000 tons of drummed and liquid chemical wastes, including polycyclic aromatic hydrocarbons, halogenated organics, pesticides, chlorobenzenes and dioxin into the abandoned Love Canal Landfill (LCL).

Problems with odors and residues in the basements and backyards of properties abutting the LCL were first reported in the 1970's. Also, during the 1970's, unusually high precipitation in the region caused the water table within the LCL to rise, which allowed contaminants to spread laterally in surficial soils and along utility bedding, eventually seeping into the basements of nearby homes. Dioxin and other contaminants also migrated from the LCL to the sanitary and storm sewers which extended outside the LCL boundaries, some with outfalls into nearby creeks which are tributaries to the Niagara River. In 1978, the New York State Department of Health (NYSDOH) identified more than 80 chemicals in the LCL and adjacent soils.

In August 1978, President Carter issued the first of two Emergency Declarations at the Site which provided Federal funding for remedial work to contain the chemical wastes at the Site and for the relocation of the residents in the homes (239 properties) directly adjacent to the LCL; these homes were subsequently identified as Ring I and Ring II.

In May 1980, President Carter issued the second Declaration of Emergency at the Site. This emergency declaration established the Emergency Declaration Area (EDA), the approximately 350-acre neighborhood surrounding the Site, and authorized $20 million of Federal funds for the purchase of homes. The Federal Emergency Management Agency (FEMA) disbursed these funds and, together with NYSDEC, relocated approximately 950 families, of the more than 1,050 families affected, from a 10-square-block area surrounding the LCL.

In 1981, EPA proposed the addition of the Site to the NPL, making it available for funding under CERCLA. The Site was added to the NPL in 1983.

In May 1982, EPA's Office of Research and Development issued the *Environmental Monitoring at Love Canal Study* (May 1982) (EMS) which evaluated the nature and extent of contamination throughout the EDA, including air, soils, surface water, sediments and biota sampling.

In July 1982, the EPA Region 2 Regional Administrator issued a *Decision Memorandum: Cooperative Agreement with the State of New York for Love Canal.* This memorandum was a precursor to the Superfund ROD and documented the work that had been performed by NYSDEC, approved additional Federal funding, and identified a phased approach for conducting eight additional tasks which included the following:

- Undertake Site containment via an expanded leachate collection system and/or other containment option.
- Investigate/remediate contamination in the north end storm and sanitary sewer system.
- Investigate/remediate contamination in Black and Bergholtz creeks.
- Investigate/remediate contamination in the south end storm sewers.
- Investigate/remediate contamination in the western sanitary sewers and lift stations.
- Develop long-term monitoring to ensure the effectiveness of the cleanup activities.
- Investigate/remediate 102nd Street outfall.
- Prepare summary document with conclusions.

By June 1983, the Rings I and II homes, adjacent to the LCL, as well as the 99th Street School, had been demolished.

In August 1983, in order to address concerns raised by the Office of Technology Assessment and the public regarding the 1982 EMS, EPA established the multi-agency Love Canal Technical Review Committee (TRC) to act as a management group to provide interagency coordination and oversight for further remedial and habitability activities for the Site. The TRC was comprised of senior-level representatives from EPA, U.S. Department of Health and Human Services/Centers for Disease Control, NYSDOH and NYSDEC. The principal task of the TRC was to determine the habitability of the EDA surrounding the Site.

The efforts of the TRC led to the development of the Love Canal Emergency Declaration Area Habitability Study (LCHS). A draft Habitability Criteria document was

developed, pursuant to recommendations of an independent panel, and was released for peer review. The final habitability criteria were established after this extensive peer review process of the draft habitability criteria. The development of the five-volume LCHS was based upon the final habitability criteria.

In October 1983, EPA issued the *Environmental Information Document—Site Investigations and Remedial Action Alternatives—Love Canal* which evaluated contamination in the creeks and sewers surrounding the LCL and provided treatment alternatives for their remediation.

In 1984, NYSDEC installed a 40-acre cap over the LCL, consisting of a high-density polyethylene liner, which was then covered by 18 inches of clean soil and seeded for grass. In addition, NYSDEC performed high-pressure cleaning of the leachate collection system in February 1983 to improve its performance. The permanent leachate treatment plant began operation in December 1979. Modifications were made to the leachate treatment plant in December 1984.

In March 1985, EPA issued the *Love Canal Sewer and Creek Remedial Alternative Evaluation and Risk Assessment,* which evaluated risks posed by contamination in the creeks and sewers, further evaluated alternatives for remediating the creeks and presented a proposed remedial action plan.

In May 1985, EPA issued a ROD selecting a remedy to remediate the sewers and the creeks in the EDA. This ROD called for:

- Hydraulically cleaning the sewers;
- dredging and hydraulically cleaning the Black Creek culverts;
- removing Black and Bergholtz Creek sediments with dioxin concentrations exceeding one part per billion (ppb);
- construction of an on-site interim storage facility for the creek and sewer sediments; and,
- remediation of the 102nd Street outfall area (which was subsequently addressed under the remedial action for the 102nd Street Landfill Superfund site).

In August 1985, EPA issued the *Long-Term Monitoring Program Design for the Love Canal Remedial Project* which evaluated contamination in the area groundwater and effectiveness of the barrier drain and cap system. Hundreds of groundwater monitoring wells were installed between 1985 and 1987.

In 1986, the Superfund Amendments and Reauthorization Act (SARA) was enacted; Section 312 of SARA included specific provisions to address the significant program aspects of the Site. These included:

- Completion of a study of the habitability of the EDA, *i.e.,* the LCHS.
- Acquisition of those properties within the EDA which were not eligible for government acquisition under the FEMA acquisition program.
- Maintenance of property acquired under the FEMA and EPA's SARA acquisition programs.
- Provision of technical assistance to the Love Canal Area Revitalization Agency (LCARA) to facilitate their efforts to revitalize the EDA. LCARA was a New York State Agency that was designated as the lead agency in the rehabilitation effort of the Love Canal EDA.

During 1986 and 1987, the remediation of the contaminated sewers was performed; this included the clean-out of 68,000 linear feet of storm and sanitary sewers. An on-site facility was constructed to dewater sewer contaminants. This remedial action conformed with the 1985 ROD, requiring the removal of dioxin-contaminated sediments from the creeks and sewers. Additional sewer cleanup was performed pursuant to the 1987 ROD (discussed below); the 1987 ROD also documented earlier elements of the sewer cleanup.

From 1987 until 1989, Black and Bergholtz Creeks were dredged of approximately 14,000 cubic yards of sediments. Clean riprap was placed in the creek beds, and the banks were replanted with grass. This remedial action conformed with the 1985 ROD, requiring the removal of dioxin-contaminated sediments from the creeks and sewers.

In June 1987, EPA issued the *Alternatives for Destruction/Disposal of Love Canal Creek and Sewer Sediments* report which provided various alternatives for the ultimate disposal of the sediments, described below in more detail.

In 1987, EPA entered into the first of two cooperative agreements with LCARA to implement the mandates of Section 312 of SARA/CERCLA. This first agreement dealt with EDA property acquisition. Under EPA's and other acquisition programs, including FEMA's, LCARA purchased over 600 properties in the EDA.

In October 1987, EPA issued a second ROD selecting a remedy to address the destruction and disposal of the dioxin-contaminated sediments from the sewers and creeks. The ROD called for:

- construction of an on-site facility to dewater the sewer and creek sediments and to contain the dewatered sediments;
- construction of a separate on-site facility to treat the dewatered sediments through high temperature thermal destruction;
- on-site thermal treatment of the residuals stored at the Site from the leachate treatment facility and other associated Love Canal waste materials; and,
- on-site disposal of any nonhazardous residuals from the thermal treatment or incineration process.

From 1987 until 1988, the LCHS sampling and evaluation were performed to evaluate air and soil contamination in the EDA and other comparison neighborhoods, using specific habitability criteria, as discussed above. *Volume I—Final Report of the LCHS, Introduction and Decision-Making Documentation* was issued in May 1988. The subsequent four volumes of data documentation were issued later. Volumes II and III presented the results of the assessment for the Love Canal indicator chemicals for air and soil. Volume IV presented the assessment of the dioxin soil assessment. Volume V summarizes the subsequent peer review of Volumes II–IV and the response to that peer review.

In September 1988, using the results of the LCHS, the New York State Commissioner of Health issued a Decision on Habitability, which identified appropriate land uses for the seven designated areas of the EDA. Areas 1–3 were declared not suitable for residential use, *i.e.,* uninhabitable, but were suitable for commercial/industrial use. Areas 4–7 were deemed habitable, *i.e.,* suitable for residential use.

In March 1988, EPA issued the *93rd St. School Remedial Investigation and Feasibility Study* which evaluated the nature and extent of contamination at the 93rd St. School and provided alternatives for the remediation of the contamination.

In September 1988, EPA issued a third ROD which selected a remedy for contaminated soils at the 93rd Street School. The selected remedy included the following actions:

- excavation of approximately 7,500 cubic yards of contaminated soil adjacent to the school;
- on-site solidification and stabilization of the contaminated soils; and,
- return of the stabilized soils to the excavated area.

Prior to 1989, EPA, through its cooperative agreement with NYSDEC, provided funds for the maintenance of the abandoned properties in the EDA. Subsequently, in 1989, NYSDEC passed the responsibility for home maintenance

to LCARA. At this time, EPA then entered into a second cooperative agreement with LCARA to implement the maintenance and technical assistance (MATA) mandates of Section 312 of CERCLA. Under this MATA agreement, EPA provided LCARA with funding to maintain improved and unimproved properties in the EDA and also to demolish EDA homes that had deteriorated to the extent that they presented safety concerns or a net loss to the overall value of the property. Over 250 homes were demolished under the MATA program.

EPA's technical assistance has supported LCARA's efforts to revitalize the EDA (EPA did not provide Federal funds for the actual repair or reconstruction of buildings within the EDA). LCARA sold approximately 260 homes in the EDA areas designated for residential use and prepared a master plan for the areas designated for commercial/industrial use.

In 1989, EPA issued an ESD to the 1985 and 1987 RODs, which specified that creek sediments were to be dewatered at creek side, placed in polyethylene bags and then transported to and stored at OCC's Resource Conservation and Recovery Act-permitted storage buildings at its Niagara Falls Main Plant, rather than at the Site, pending high temperature thermal destruction at OCC's Niagara Falls Main Plant. In addition, other Love Canal wastes, including the sewer sediments and other remedial wastes originally targeted for thermal treatment at the Site, were also to be thermally treated at OCC's Niagara Falls Main Plant rather than at the Site. OCC, the United States and the State of New York entered into an agreement, *i.e.*, a partial consent decree, filed in U.S. District Court, to implement this modification to the 1985 and 1987 RODs.

In May 1991, EPA issued an amendment to the 1988 ROD for the 93rd Street School, which modified the selected remedy and called for excavation and off-site disposal of the contaminated soils, rather than disposal at the 93rd Street School site.

In September 1992, the contaminated soils at the 93rd Street School were excavated; these materials were used for alternate grading material for the 102nd Street Landfill Superfund site Remedial Action, *i.e.*, subgrade material for the capping remedy.

In November 1996, EPA issued a second ESD for the 1987 ROD. This ESD authorized thermal treatment and/or land disposal of the stored Love Canal waste materials at an off-site commercial incinerator and landfill rather than at OCC's Niagara Falls Main Plant.

In February 1998, OCC began shipping the bagged Love Canal wastes from its storage facilities for disposal (thermal destruction or landfilling).

In December 1998, EPA issued a third ESD which provided notice that EPA granted a treatability variance to OCC to eliminate the requirement that the stored Love Canal waste materials containing dioxin at concentrations between 1 and 10 ppb be incinerated. As a result of this variance, these materials could be disposed at a commercial hazardous waste landfill without treatment.

In August 1999, this remedial action was completed and the remaining bags of wastes were shipped off-site for disposal. A total of 10,262 bags were land disposed in a Subtitle C facility and 5,234 bags were incinerated, with the resulting residues being landfilled at Subtitle C facilities.

LCARA completed its charge to revitalize the EDA and, in 2003, was subsequently dissolved by an act of the State legislature. At the present time, all residential and commercial properties in Areas 4–7 have been rehabilitated, sold by LCARA and restored to active use. LCARA rehabilitated and sold approximately 260 homes in the areas identified for residential use and prepared a master plan for the areas designated for commercial/industrial use. Certain parcels in EDA Areas 2–3 remain vacant, and these vacant properties are properly zoned and have deed restrictions which comply with the original Decision on Habitability, limiting use to commercial/industrial purposes only, unless remediated. These parcels were subsequently sold to real estate developers.

EPA, NYSDEC and the PRP used engineering consultants and contractors to perform the remedial design and/or construction for the Site. EPA and NYSDEC also performed oversight for activities conducted by the PRPs and their contractors, as well as EPA and NYSDEC contractors.

In 1982, EPA established a Public Information Office in downtown Niagara Falls to handle the Site, as well as other EPA Superfund sites in the Niagara Falls and Buffalo, New York area. All decisions made about the Site were conducted in a public forum, especially during the development of the LCHS, which included the monthly TRC meetings, as well as expert panel meetings, which were all open to the public. Residents of the EDA were informed of each meeting and were encouraged to attend. All associated minutes, reports and other documents generated during the more than 70 TRC meetings, as well as each expert panel meeting, *et al.*, were made available to the public for review at the EPA offices in Niagara Falls. The final TRC meeting was held in 1991.

Institutional controls are in place in both the containment area of the Site and the EDA. New York State (NYS) has a permanent easement on the Site property, providing for the exclusive use and occupancy of the Site property. By Consent Decree, NYS granted OCC exclusive use and occupancy of the Site property for the purpose of providing continued O&M for the Site remedy. OCC retains exclusive use and occupancy, as long as the Consent Decree is in effect. The institutional controls on the vacant parcels in the non-habitable sections of the EDA (Areas 1–3) are maintained by zoning and deed restrictions. The deeds for these properties require that NYSDEC be notified both when these properties are sold and when these properties are being considered for any other use than commercial and/or light industrial. The deeds also state that all identified use limitations and restrictions of the property shall run with the land and bind the current owner and any successors in perpetuity or until such time as NYSDEC shall determine that such institutional controls are no longer necessary for the protection of public health and the environment. The deed also identifies that some soil remediation is required prior to any potential residential use.

Under the direction of NYSDEC, OCC, through its contractor Miller Springs Remediation Management, performs O&M of the Site remedy and maintains day-to-day operations at the Site, as identified in two separate consent decrees with NYS and the United States, respectively. The continued effectiveness of the remedy is monitored, pursuant to both consent decrees, as well as through the performance of EPA's five-year reviews.

A five-year review of Site remedies was completed on September 30, 2003. The five-year review ensures that the implemented remedies protect human health and the environment and that they function as intended by the decision documents.

EPA, in consultation with the State of New York, through the NYSDEC, has determined that all appropriate response actions, under CERCLA, have been implemented at the Site and no further response actions, other than monitoring, operation, maintenance and compliance with institutional controls, are necessary.

Hazardous substances remain at the Site above levels that would be allowed for unlimited use without restrictions. It is the policy of EPA to conduct five-year reviews of pre-SARA remedies which leave hazardous substances on-site. EPA completed a five-year review of this Site on September 30, 2003. The next five-year review should be completed by EPA and/or NYSDEC before September 30, 2008.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 4, 2004.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 04–5875 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–104 and ET Docket No. 04–37; FCC 04–29]

Broadband Power Line Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to adopt new requirements and measurement guidelines for a new type of carrier current system that provides access to broadband services using electric utility companies' power lines. Because power lines reach virtually every home and community in the country, we believe that these new systems, known as Access broadband over power line or Access BPL, could play an important role in providing additional competition in the offering of broadband services to the American home and consumers, and in bringing Internet and high-speed broadband access to rural and underserved areas.

DATES: Comments must be filed on or before May 3, 2004, and reply comments must be filed on or before June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577, e-mail: *Anh.Wride@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 03–104 and ET Docket No. 04–37, FCC 04–29, adopted February 12, 2004, and released February 23, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 3, 2004, and reply comments on or before June 1, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking ("NPRM") proposes to amend part 15 of the Commission's rules to adopt new requirements and measurement guidelines for a new type of carrier current system that provides access to broadband services using electric utility companies' power lines. Because power lines reach virtually every home and community in the country, we believe that these new systems, known as Access broadband over power line or Access BPL, could play an important role in providing additional competition in the offering of broadband services to the American home and consumers, and in bringing Internet and high-speed broadband access to rural and underserved areas. At the same time, we are cognizant that the possibility of widespread operation of Access BPL raises interference concerns and that we must protect licensed radio services from any harmful interference that might occur. In this regard, we are proposing to require that BPL systems and devices incorporate capabilities to mitigate harmful interference should it occur. We are also proposing to adopt administrative requirements to aid in the identification and resolution of harmful interference from Access BPL systems. Finally, we are proposing to clarify certain measurement guidelines for all types of carrier current systems that use electric wiring and electrical outlets within homes and buildings to transfer information between computers and other electronic devices. With these proposals, we take an important step towards promoting the deployment of new broadband networks that are expected to enhance the economic, educational and social well-being of all Americans. Specifically, we believe that

the proposed changes will remove regulatory uncertainties and facilitate the introduction and use of this promising new technology.

Description of BPL

2. Traditionally, various low-power, unlicensed devices or systems have used the alternating current (AC) power lines to carry information by coupling radio frequency (RF) energy to the AC electrical wiring. These unlicensed devices include AM radio systems on school campuses and devices intended for the home, such as intercom systems and remote controls for electrical appliances and lamps. Until recently, carrier current devices have operated generally on frequencies below 2 MHz with relatively limited communications capabilities. Because of the inherent impedance and attenuation variations of power lines and noise from devices such as dimmer switches, motorized electrical appliances, and computers switching on and off, reliable high-speed communications over power lines have been difficult to achieve. However, the availability of faster digital processing capabilities and the development of sophisticated modulation schemes have produced new designs that can overcome these technical obstacles. These new designs have led to the development of new BPL systems that use spread spectrum or multiple carrier techniques and that incorporate adaptive algorithms to counter the noise in the line.

3. The new low-power, unlicensed BPL systems couple RF energy onto the existing electric power lines to provide high-speed communications capabilities. BPL systems may operate either inside a building ("In-House BPL") or over utility poles and medium voltage electric power lines ("Access BPL"). In-House BPL systems use the electrical outlets available within a building to transfer information between computers and between other home electronic devices, eliminating the need to install new wires between devices. Using this technology, consumers can readily implement home networks. Access BPL systems can be used to provide high speed Internet and other broadband services to homes and businesses. In addition, electric utility companies can use Access BPL systems to monitor, and thereby more effectively manage their electric power distribution operations. Given that Access BPL capability can be made available in conjunction with the delivery of electric power, it may provide an effective means for "last-mile" delivery of broadband services and may offer a competitive alternative to digital subscriber line (DSL), cable modem services and other high-speed Internet technologies.

4. Most Access BPL systems today operate on frequencies up to 50 MHz with very low power signals spread over a broad range of frequencies. These frequencies are also used by licensed radio services that must be protected from harmful interference as BPL systems operate on an unlicensed basis under part 15 of the Commission's rules. In the radio spectrum below 50 MHz, incumbent authorized operations include fixed, land mobile, aeronautical mobile, maritime mobile, radiolocation, broadcast radio, amateur radio terrestrial and satellite, and radio-astronomy. Users of this spectrum also include, for example, public safety and Federal government agencies.

Existing Part 15 Rules for BPL

5. Carrier current devices, including BPL equipment, are subject to the Commission's existing part 15 rules for low-power, unlicensed equipment that operates on a non-interference basis. At the present time, the part 15 rules provide specific radiated and conducted emission limits for carrier current systems operating below 30 MHz. The radiated emission limits apply from 9 kHz and vary with frequency. There is no limit on conducted emissions for carrier current systems that contain their fundamental emission within the standard AM broadcast band of 535 to 1705 kHz and are intended to be received using standard AM broadcast receivers. All other carrier current systems operating below 30 MHz are subject to a conducted emission limit only within the AM broadcast band. Carrier current devices that do not operate at frequencies below 30 MHz are subject to the general conducted limits below 30 MHz.

Notice of Inquiry

6. In April 2003, the Commission issued a *Notice of Inquiry* (Inquiry), 68 FR 28182, May 23, 2003, on BPL technologies and systems. The *Inquiry* was issued to solicit comments to assist the Commission in reviewing its part 15 rules to facilitate the deployment of Access BPL while ensuring that licensed services continue to be protected. In the *Inquiry*, the Commission encouraged continued deployment of Access BPL systems that comply with the existing rules.

7. In the *Inquiry*, the Commission asked for comments on the characteristics of BPL technology, the status of deployment of BPL and any standards work related to BPL. The Commission also asked for comments on the probable interference environment and propagation patterns of BPL and the mitigation techniques used by BPL to avoid interference. The Commission further asked whether it would be possible to develop a standardized measurement method for testing BPL, and if so, how to develop it. It requested input on whether there are any international standards that should be investigated for possible adoption in order to facilitate the development of BPL products for a global marketplace. In addition, the Commission sought comments on issues related to the authorization of BPL and the types of components of Access BPL that would be subject to equipment authorization. Finally, the Commission sought input on whether power line carrier systems currently deployed by the utility companies to control and monitor the electrical system would be replaced in the future with the new high speed BPL equipment and on any associated issues with the coexistence of the older control systems with the new BPL systems. (See paragraphs 9 through 29 of the NPRM for full discussion).

8. As indicated in the *Notice of Inquiry* and supported by the responsive comments, we believe that Access BPL offers the promise of a new method for delivery of broadband services to residential, institutional, and commercial users. Because power lines reach virtually every home, school, and business in the United States, Access BPL technology could play an important role in providing high-speed Internet and broadband services to rural and remote areas of the country. Thus, significant areas of the country still lack broadband access and many others lack competition for such services, and we believe that Access BPL could serve as a means to reach those areas. Since Access BPL uses the same power lines that carry electricity virtually everywhere, much of the infrastructure needed to operate this technology is already in place, so that major savings in deployment costs and capital may be realized in its deployment. Access BPL could also serve to provide new competition to existing broadband services, such as cable and DSL. In addition, Access BPL may allow electric utilities to improve the safety and efficiency of the electric power distribution system and also further our national homeland security by protecting this vital element of the U.S. critical infrastructure. Moreover, Access BPL is being developed worldwide, and encouraging the deployment of the technology in the United States will support globalization of products and

services, promote continued U.S. leadership in broadband technology, and bring important benefits to the American public.

9. We recognize the significant concerns of existing radio users regarding the potential for harmful interference from Access BPL operations. After careful consideration, however, we believe that these interference concerns can be adequately addressed. We believe that Access BPL systems can operate successfully under the non-interference requirements of the part 15 rules. Under these rules, operators of Access BPL systems will be responsible for eliminating any harmful interference that may occur. Furthermore, we believe that the current part 15 emission limits for carrier current systems in conjunction with certain additional requirements specific to Access BPL operations will be adequate to ensure that existing radio operations are protected against harmful interference from such operations. We therefore are proposing changes to our part 15 rules that we believe will facilitate the deployment of Access BPL technology while protecting licensed users of the spectrum. Specifically, we are proposing to: (1) Define Access BPL for purposes of our rules; (2) maintain the existing part 15 emission limits for Access BPL; (3) require that Access BPL devices employ adaptive interference mitigation techniques; (4) require that Access BPL providers maintain a database of installation locations and technical information; and (5) adopt specific measurement guidelines for both Access BPL and other carrier current systems to ensure that measurements are made in a consistent manner and provide for repeatable results in determining compliance with our rules.

Definition of Access BPL

10. We propose to define Access BPL as a carrier current system operating on any electric power transmission lines owned, operated or controlled by an electrical power provider, as follows:

Access Broadband over power line (Access BPL): A carrier current system that transmits radio frequency energy by conduction over electric power lines owned, operated, or controlled by an electric service provider. The electric power lines may be aerial (overhead) or underground.

We believe that this definition is consistent with the concept of Access BPL and the current and planned deployment of this technology. We request comment on this definition of Access BPL. Interested parties are invited to submit suggestions for alternative definitions. Such submissions should include a complete description of what would be included in the definition of Access BPL and why. We also request comment on whether there are entities that plan to own/operate Access BPL over the electric power lines but would not be electrical power providers or a subsidiary of the incumbent electric power provider.

Access BPL Emission Limits

11. Existing spectrum users are concerned that emissions from Access BPL systems and devices could adversely affect their operations. BPL proponents, on the other hand, suggest that any impact from Access BPL would be minimal and some argue that emission levels higher than the current part 15 limits would be acceptable and allow more cost-effective system implementations. At this time, the Commission believe that we should proceed cautiously. We recognize that unlicensed operations in the HF band presents a number of unique challenges given the propagation characteristics of this range of frequencies and the diversity of licensed users. Accordingly, in order to better ensure protection of existing radio services, we are proposing to continue to apply the existing part 15 emission limits for carrier current systems to Access BPL systems. While we agree that there is some potential for Access BPL to cause harmful interference to radio services, we also tentatively conclude that the likelihood of such harmful interference is low under the current limits and that where such interference does occur, there are remedies that the Access BPL operator can employ to eliminate such interference. On balance, we believe that the benefits of Access BPL for bringing broadband services to the public are sufficiently important and significant as to outweigh the potential for increased harmful interference that may arise. Furthermore, we are proposing to subject Access BPL operations to the existing part 15 radiated emission limits for carrier current systems. In addition, we are proposing that Access BPL devices include technical capabilities and administrative procedures to ensure that the potential for harmful interference is minimized and that any instances of harmful interference are quickly resolved.

12. To ensure that any effect of the power line is taken into consideration when testing for compliance with our part 15 rules, we are proposing to modify the measurement procedures for Access BPL systems, as set forth in Appendix C of the NPRM, to specify that emission measurements be made at several specific distances from the Access BPL equipment source, and that measurements be taken parallel to the power line to find the maximum emissions from the BPL system. We seek comment on our proposed measurement guidelines.

13. With regard to potential interference to the non-amateur radio services, such as public safety, maritime and other operations, we believe that the risk of harmful interference from Access BPL operations is low. In general, we believe that a properly designed and operated BPL system will pose little interference hazard to non-amateur services such as aeronautical, maritime and public safety. However, we recognize in our analysis that public safety systems merit particular attention because of the often critical nature of their communications. In analyzing the potential for harmful interference to public safety systems we took into account the fact that low-level part 15 signals from Access BPL devices attenuate rapidly as the distance from the device increases; and that most public safety systems are designed so that mobile and portable units receive a signal level significantly above the noise floor. From an interference analysis standpoint, this latter characteristic distinguishes public safety systems from amateur radio stations using high-sensitivity receivers to receive signals from transmitters often thousands of miles away. However, it is foreseeable that under certain rare circumstances a public safety unit could: (a) operate in close proximity to an Access BPL device; (b) be tuned to a frequency radiated by the Access BPL device; and (c) be receiving a weak signal from a distant, or obstructed, public safety base station. In general, potential harmful interference under these conditions would be limited to public safety units operating on systems using low-band VHF channels (25–50 MHz). Therefore, it appears that the interference protections we propose herein—and the strict "no interference" restriction inherent in the part 15 rules—will be adequate to foreclose such rare instances of harmful interference to public safety systems. While we tentatively conclude that the measures proposed herein are adequate, we request comment on whether any additional measures are needed to protect particular operations, such as public safety. For example, should we require Access BPL system to coordinate with public safety agencies that use the

HF band for state-wide public safety communications?

14. We are proposing to maintain the existing part 15 radiated emission limits for Access BPL systems and devices. In addition, we are proposing to exempt Access BPL systems from the existing conducted emission limits of § 15.107(c). Because Access BPL systems are installed on power lines that can carry 1,000 volts to 40,000 volts, conducted emission measurements are very difficult to measure, and present safety hazards in connecting test equipment to these lines. We do not believe that this exemption would have any impact on interference potential since Access BPL would still be required to comply with our radiated emissions rules. We seek comment on these proposals. We further seek comment on whether Access BPL would in some instances operate in the AM broadcast band (from 535 to 1705 kHz), and whether specific conducted requirements are needed in such situations.

Access BPL Operational Requirements

15. To further address the interference concerns raised in the *Inquiry*, we are proposing certain additional technical and administrative requirements for Access BPL. First, we are proposing to require that Access BPL systems and devices incorporate capabilities that would allow the operator to modify system performance to mitigate or avoid harmful interference to radio services. Such adaptive interference mitigation techniques would include, for example, the capability to reduce power levels on a dynamic or remote controlled basis, and the ability to include or exclude specific operating frequencies or bands. This capability would allow operators to avoid localized and site-specific harmful interference.

16. We believe that this requirement is reasonable and practicable for Access BPL operators and equipment manufacturers to implement. We observe that a number of Access BPL devices currently employ OFDM modulation techniques, which facilitate the ability to dynamically select the specific frequencies used to provide service and to avoid use of specific frequencies where operation might result in harmful interference. In this regard, we note that PowerWAN states that "notching" of specific frequency is technically feasible. Ambient indicates that its equipment will be able to notch out individual frequencies "on the fly," in response to short term changes in the RF environment. Main.Net states that it already has the capability to remotely control the operating frequencies and power of their installations.

17. Second, we propose to require that Access BPL devices incorporate a shut-down feature that would deactivate units found to cause harmful interference, and thereby allow speedy implementation of interference mitigation measures. It is our understanding that most Access BPL devices already possess this capability. We seek comment on these proposals and invite suggestions for alternative approaches. In particular, we request comment on whether we should have specific requirements regarding the above mitigation approaches. For example, should we require that each Access BPL device be capable of operating across a minimum range frequencies and have the capability to remotely exclude a specific percentage of frequencies within this range. We also seek comment on the cost and effectiveness of these or alternative approaches. To the extent possible, we encourage potential BPL providers and BPL equipment manufacturers to work with amateurs and other existing licensed services to develop such appropriate mitigation requirements. We seek comment on the appropriate period of time that we should allow for BPL systems to come into compliance with any new requirements that we may adopt pursuant to this rule making proceeding. We further seek comment on whether Access BPL systems currently deployed should be required to be brought into compliance with the new rules, and if so, what period of time should be afforded for them to come into compliance.

18. Finally, we propose to subject Access BPL systems to a notification requirement similar to the notification requirements in our rules for power line carrier (PLC) systems. Under this requirement, an Access BPL system operator would submit information on its system to an industry-operated entity. The objective of the proposed notification would be to establish a publicly accessible database for Access BPL information to ensure that the location of Access BPL systems and their operating characteristics are identified if harmful interference occurs and to facilitate interference mitigation and avoidance measures. We propose that this notification includes information on the location of the installation, the type of modulation used and the frequency bands of operation. We seek input on these proposals. We also request comment and suggestions on the appropriate industry-operated entity that we should select to receive the notifications and maintain the Access BPL data base. We also seek comment on other approaches for making this information available. For example, would it more reasonable to allow each Access BPL operator to maintain a database of its own rather than require a more centralized data base? Commenting parties are requested to submit information on the benefits of such approaches. We further seek input on any resulting burdens that the proposed notification requirement may place on entities operating Access BPL systems, and any impact of a notification system on the availability of customer data as well as how any concerns regarding the proprietary nature of that data can be addressed.

Equipment Authorization and Measurement Guidelines

19. *Equipment Authorization.* We propose to retain the Verification procedure for Access BPL. Consistent with the objective that our regulatory requirements keep pace with technology development, we recognize that we must balance administrative burdens and the need to ensure compliance with our rules. We agree with commenting parties such as Phonex Broadband Corporation (Phonex) and UPLC that the authorization procedure for BPL should be the same as for all unintentional radiators, including traditional types of carrier current systems. Low-speed carrier current systems, which for a number of years have been operating inside buildings, have rarely been a source of harmful interference to radio communications, and the use of the verification procedure has been adequate to ensure that such systems comply with the rules. We seek comment on this proposal.

20. *Access BPL Measurement Guidelines.* Because Access BPL is a new implementation of carrier current techniques, there are no existing measurement guidelines for this type of equipment. We tentatively propose that Access BPL systems, including all BPL electronic devices, *e.g.*, couplers, injectors, extractors, repeaters, boosters, concentrators installed on the electric utility overhead or underground medium voltage lines etc., be measured *in-situ* to demonstrate compliance with our part 15 rules, at a minimum of three overhead and three underground representative locations, using the measurement guidelines in Appendix C of the NPRM. Consistent with existing FCC measurement procedures, measurements below 30 MHz must be performed with a magnetic loop antenna, while those above 30 MHz are performed using an electric field sensing antenna. For Access BPL in

underground installations, the proposed guidelines employ the common principle of measuring radiated fields along a number of radials at a specified distance from the periphery of the pad-mounted above-ground transformer where the Access BPL equipment is located, to find the maximum emissions. For Access BPL installed on overhead lines, in order to take into account the effect of the long power line associated with the Access BPL equipment, our proposed guidelines specify measurements at fixed horizontal distances from the power line where the Access BPL source is installed. Thus, rather than finding the maximum emissions across a number of radials,—as currently performed for other part 15 emitters—the receive antenna is moved down-line, parallel to the power line, starting from the Access BPL equipment location, to find the maximum emissions. Down-line distances used in this sequence of measurements are specified in terms of wavelength of the Access BPL mid-band frequency. We seek comment on these guidelines.

21. In addition, we specifically solicit comments on the height of receive antennas used for radiated emissions measurements for Access BPL systems operating on overhead power lines and on the possible use of correction factors to account for antenna height. The proposed guidelines in Appendix C of the NPRM recommend a fixed *loop* antenna height at 1 meter and scanning the height of electric field sensing antennas from 1 to 4 meters. While these recommendations correspond to standard practice for other types of devices (especially when measured on a test site), these heights may not capture the maximum emissions from an overhead power line. In Appendix C of the NPRM, we address this issue by specifying that distance extrapolation for emission measurements on overhead lines be based on slant-range distance from the Access BPL location on the pole to the measuring antenna, rather than on horizontal distance.

22. However, this technique does not account for field strength reductions caused by ground effects. We seek comment on the following:

(a) Is it necessary to require that emission measurements be conducted at antenna heights greater than those proposed in Appendix C of the NPRM?

(b) Is it practical and safe to make *in-situ* emission measurements at antenna heights up to the height of an overhead medium voltage power line (typically 11 meters) when operating 10 meters from the power line? As an alternative to requiring higher antenna heights, should we specify that measurements that are performed at heights significantly lower than the power line be subjected to a correction factor to estimate the maximum field strength that would have been observed at a higher measurement height? How should such a correction factor be determined?

23. *Measurement Guidelines for Other Carrier Current Systems.* In the *Inquiry,* the Commission observed that the International Electrotechnical Commission (IEC), International Special Committee on Radio Interference (CISPR) Subcommittee I on *Interference Relating To Multimedia Equipment,* Working Group 3 on *Emission from Information Technology Equipment* is developing conducted emission limits for new BPL technologies. We note however that this international work on a standardized measurement method for In-House BPL is still under way, including work on the definition of a line impedance stabilization network (LISN), associated injection methods, and conducted emission limits for systems using the power line port as a communication port. We tentatively propose in the interim, pending the completion of such work, to retain the three-installation radiated emissions method for In-House BPL and traditional CCS, using the measurement guidelines in Appendix C of the NPRM, which clarify principles used regarding *in-situ test* buildings, device installation location within a building, measurement distances from the building, measurement of emissions from overhead power feed lines to the building, and device operation. We seek comment on the measurement guidelines of Appendix C of the NPRM, for In-House BPL and CCS.

24. In conclusion, we believe that Access BPL has the potential to offer a number of significant benefits, such as (1) increasing the availability of broadband services to homes and businesses; (2) improving the competitiveness of the broadband services market; (3) improving the quality and reliability of electric power delivery; and, (4) advancing homeland security. We believe that our proposals contained herein to adopt new part 15 technical and administrative rules for Access BPL will help promote and foster the development of this new technology with its concomitant benefits while at the same time ensuring that existing licensed operations are protected from harmful interference. We further believe that our proposed measurement guidelines for Access BPL and CCS will ensure that emission measurements for determining the compliance of these systems with FCC requirements are made in a consistent manner, and with repeatable results. We request comments on these conclusions and on all aspects of the proposals herein.

Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act of 1980 as amended,[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 53 of the NPRM. The Commission will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IFRA (or summaries thereof) will be published in the **Federal Register**.[3]

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

26. A number of parties are currently operating Access BPL under our part 15 rules. Access BPL systems are new types of carrier current system that operate on an unlicensed basis under part 15. Access BPL systems use existing electrical power lines as a transmission medium to provide high-speed communications capabilities by coupling RF energy onto the power line. Because power lines reach virtually every community in the country, we believe that Access BPL could play an important role in providing additional competition in the offering of broadband infrastructure to the American home and consumers. In addition, BPL could bring Internet and high-speed broadband access to rural and underserved areas, which often are difficult to serve due to the high costs associated with upgrading existing infrastructure and interconnecting communication nodes with new technologies. We propose to amend part 15 of our rules to adopt new requirements and measurement guidelines for Access broadband over

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[2] *See* 5 U.S.C. 603(a).

[3] *See* 5 U.S.C. 603(a).

power line (BPL). Specifically, we propose new part 15 requirements for Access BPL to promote its growth while continuing to protect licensed spectrum users. We further propose to adopt new measurement guidelines for Access BPL, both in aerial (overhead) and underground configurations. For In-House BPL and traditional CCS, we propose to clarify the measurement guidelines to ensure that measurements are made in a consistent manner and provide for repeatable results in determining compliance with our rules. These actions will remove regulatory uncertainties, promote the deployment of BPL to bring the necessary competition in the provisioning of broadband applications to the American public as well as new high speed broadband access to underserved areas of the country, while ensuring that licensed users continue to be protected from harmful interference.

B. Legal Basis

27. This action is taken pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

28. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[5] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets may additional criteria established by the Small Business Administration (SBA).[6]

29. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Nationwide, as of 1992, there were approximately 275,801 small organizations.[8] The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[9] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[10] This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small governmental jurisdictions is approximately 75,955 or fewer.

30. The proposed rules pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment.[11] Under this standard, firms are considered small if they have 750 or fewer employees.[12] Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments[13] in this category.[14] Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%,[15] so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with and additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses. We do not believe this action would have a negative impact on small entities that manufacture unlicensed BPL devices. Indeed, we believe the actions should benefit small entities because it should make available increased business opportunities to small entities. We request comment on these assessments.

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

31. Part 15 carrier current devices are already required to be authorized under the verification procedure as a prerequisite to marketing and importation. The reporting and recordkeeping requirements associated with the equipment authorization procedures would not be changed by the proposals contained in this Notice.

32. We propose to adopt new requirements for Access BPL to ensure protection of licensed spectrum users from harmful interference. These requirements include the proposed technical requirement for adaptive interference mitigation capabilities and the proposed notification of Access BPL systems in a database similar to the one required for existing Power Line Carrier systems. Although these proposals do somewhat increase the reporting and record keeping requirements for Access BPL systems, the benefit of ensuring protection to critical systems operated by law enforcement groups, government users and emergency operations outweighs this small cost that will permit the growth of Access BPL in the shared spectrum.

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

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[16]

[4] *See* U.S.C. 603(b)(3).

[5] *Id.* 601(3).

[6] *Id.* 632.

[7] 5 U.S.C. 601(4).

[8] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[9] 5 U.S.C. 601(5).

[10] 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).

[11] NAICS code 334220.

[12] Id.

[13] The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical locations for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

[14] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

[15] Id. Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

[16] 5 U.S.C. 603(c).

34. In this NPRM, we have maintained the existing part 15 emission limits, which are applicable to all part 15 devices, including BPL. We have also maintained the verification method for equipment authorization of BPL, which is the least burdensome equipment authorization procedure, wherein the manufacturer conducts his own testing and retains the compliant test data in his file. We have proposed to adopt new measurement guidelines for BPL and existing carrier current systems, to assist manufacturers and testing entities to follow clearer and more precise measurement procedures in the testing of BPL and CCS.

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

35. None.

Ordering Clauses

36. Pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336, the Notice of Proposed Rule Making is hereby adopted.

37. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in Part 15

Communications equipment, Radio, Reporting and recordkeeping.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1.The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.'

2. Section 15.3 is amended by adding paragraph (ff) to read as follows:

§ 15.3 Definitions.

* * * * *

(ff) *Access Broadband over power line (Access BPL):* A carrier current system that transmits radio frequency energy by conduction over electric power lines owned, operated, or controlled by an electric service provider. The electric power lines may be aerial (overhead) or underground.

3.Section 15.107 is amended by adding paragraph (e) to read as follows:

§ 15.107 Conducted limits.

* * * * *

(e) The limits shown in paragraphs (a) and (b) of this section shall not apply to Access BPL systems.

4. Section 15.109 is amended by revising paragraph (e), redesignating paragraphs (f), (g) and (h) as paragraphs (h), (i) and (j), and by adding new paragraphs (f) and (g) to read as follows:

§ 15.109 Radiated emission limits.

* * * * *

(e) Carrier current systems, including BPL systems. used as unintentional radiators or other unintentional radiators that are designed to conduct their radio frequency emissions via connecting wires or cables and that operate in the frequency range of 9 kHz to 30 MHz, including devices that deliver the radio frequency energy to transducers, such as ultrasonic devices not covered under part 18 of this chapter, shall comply with the radiated emission limits for intentional radiators provided in § 15.209 for the frequency range of 9 kHz to 30 MHz. As an alternative, carrier current systems used as unintentional radiators and operating in the frequency range of 525 kHz to 1705 kHz may comply with the radiated emission limits provided in § 15.221(a). At frequencies above 30 MHz, the limits in paragraphs (a), (b) or (i) of this section, as appropriate, continue to apply. For all BPL systems; the requirements of this paragraph (e) and paragraph (a) of this section shall also apply to the emissions from all low-voltage lines from the distribution transformer to all in-building wiring.

(f) Access BPL systems shall incorporate adaptive interference mitigation techniques such as dynamic or remote reduction in power and adjustment in operating frequencies, in order for Access BPL installations to avoid site-specific, localized use of the same spectrum by licensed services. Access BPL systems shall incorporate a shut-down feature to deactivate units found to cause harmful interference.

(g) Entities operating Access Broadband over Power Line systems shall supply to a Federal Communications Commission/National Telecommunications and Information Administration recognized industry-operated entity, information on all existing, changes to existing and proposed Access BPL systems for inclusion in a data base. Such information shall include the installation locations, frequency bands of operation, and type of modulation used. No notification to the FCC is required.

* * * * *

[FR Doc. 04–5271 Filed 3–16–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–366; MB Docket No. 04–34, RM–10848]

Radio Broadcasting Services; Joliet and Lemont, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition for rule making filed by HBC License Corporation proposing the reallotment of Channel 228A from Joliet to Lemont, Illinois, and the modification of Station WVIX(FM)'s construction permit accordingly Channel 228A can be reallotted to Lemont in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.4 miles) south at Station WVIX(FM)'s authorized construction permit site. The coordinates for Channel 228A at Lemont are 41–36–39 North Latitude and 88–00–33 West Longitude. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 228A at Lemont, Illinois, or require petitioner to provide an equivalent class channel for the use of other interested parties.

DATES: Comments must be filed on or before April 26, 2004, reply comments on or before May 11, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence N. Cohn, Esq., Cohn and Marks, LLP, 1920 N Street, NW., Suite 300, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–34, adopted March 3, 2004, and

released March 5, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals, II, 445 12th Street, SW, Room CY–B402, Washington, DC 20054, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 228A at Joliet and adding Lemont, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–6043 Filed 3–16–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI20

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Topeka Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions to proposed critical habitat, reopening of comment period, notice of availability of draft economic analysis and draft environmental assessment, and announcement of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of a 30-day public comment period for the proposed rule to designate critical habitat for the Topeka shiner (*Notropis topeka*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed rule to designate critical habitat in the States of Iowa, Kansas, Minnesota, Nebraska, and South Dakota was published on August 21, 2002 (67 FR 54261). We herein propose critical habitat segments for Missouri and one additional segment for South Dakota, and discuss potential exclusions from critical habitat designation under the authority of section 4(b)(2). We also exclude habitat on the Fort Riley Military Installation in Kansas under authority of section 4(a)(3) of the Act. In addition, we announce the availability of the draft economic analysis and draft environmental assessment for the proposed designation, and announce a public meeting.

DATES: The public meeting will be held from 7 to 9 p.m. central standard time on April 13, 2004, in Boonville, Missouri.

The comment period is hereby reopened until April 16, 2004. We will consider comments from all interested parties on the proposed rule of August 21, 2002 (67 FR 54261), the additional information provided herein, the draft economic analysis, and the draft environmental assessment. We must receive all comments by the closing date. Any comments that we receive after the closing date will not be considered in the final decision on this proposal.

ADDRESSES: The public meeting will be held at the Boonville High School, 1690 Ashley Rd., Boonville, Missouri.

Written comments and materials concerning the proposed rule and amendments, proposed exclusions, draft economic analysis, and draft environmental assessment may be submitted to us at the hearing, or directly by any one of several methods:

(1) You may submit written comments and information to the Kansas Ecological Services Field Office, U.S. Fish and Wildlife Service, 315 Houston Street, Suite E, Manhattan, Kansas 66502.

(2) You may hand-deliver comments and information to the Kansas Ecological Services Field Office, at the above address, or send comments via facsimile to (785) 539–8567.

(3) You may send comments via electronic mail (e-mail) to *fw6_tshiner@fws.gov*. For directions on how to submit comments electronically, see the "Public Comments Solicited" section.

The complete file for this notice and the proposed rule are available for public inspection, by appointment, during normal business hours at the above address. Copies of the proposed rule, draft economic analysis, and draft environmental assessment are available by writing to the above address or by connecting to the Service Internet Web site at *http://mountain-prairie.fws.gov/topekashiner/ch*.

FOR FURTHER INFORMATION CONTACT: Vernon Tabor, Kansas Ecological Services Field Office, at the above address (telephone: (785) 539–3474, extension 110; facsimile: (785) 539–8567; e-mail: *fw6_tshiner@fws.gov*).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend for any final action resulting from this reopened proposal to be as accurate and effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, landowners, or any other interested party regarding the revisions to the proposed rule, the draft economic analysis, and the draft environmental assessment. In addition, we are requesting any further comments regarding our August 21, 2002, proposed rule (67 FR 54261), pertaining to the designation of critical habitat in the remainder of the Topeka shiner's range, which includes portions of Iowa, Kansas (not including Fort Riley), Minnesota, Nebraska, and South Dakota. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the

benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the amount and distribution of Topeka shiner and its habitat, and which habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs are overlooked;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the economic analysis appropriately identifies land and water use regulatory controls that will likely result from the designation;

(9) Whether the economic analysis appropriately identifies all costs that could result from the designation;

(10) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(11) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(12) The economic analysis should identify all costs related to the designation of critical habitat for the Topeka shiner which was intended to take place at the time the species was listed. As a result, the assumption is the economic analysis should be consistent with the Service's listing regulations. Does this analysis achieve that consistency?

(13) Whether our characterization of existing regulatory protections in the listing document is consistent with the costs of the regulation imposed as a result of this critical habitat determination.

All previous comments and information submitted during the initial comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018–AI20" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly at our Kansas Ecological Services Field Office (see **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT**).

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including the individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 306 species or 25 percent of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters

a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

The Topeka shiner is a small, stout minnow. It has a dorsal (back) side that is olive-green, a distinct dark stripe preceding the dorsal fin, and a dusky stripe running along the entire longitudinal length of the lateral line. The Topeka shiner is found in small-to mid-size prairie streams of the central prairie regions of the United States with relatively high water quality and cool to moderate temperatures. Many of these streams exhibit perennial flow, although some become intermittent during summer or periods of prolonged drought. The Topeka shiner's historic range includes portions of Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. The species continues to exist in these States, but in most areas, its range is greatly reduced.

We published a final rule in the **Federal Register** on December 15, 1998, designating the Topeka shiner as an endangered species; we also determined that designation of critical habitat for the species was not prudent (63 FR 69008). In an April 4, 2001, court settlement of the case, *Biodiversity Legal Foundation et al.* v. *Ralph Morgenweck et al.* (C00–D–1180), we agreed to reconsider our prudency determination and, if prudent, to propose critical habitat for the shiner by August 13, 2002, and to finalize our designation of critical habitat by August 13, 2003. On August 21, 2002, we published a proposed rule in the **Federal Register** (67 FR 54261) for the designation of Topeka shiner critical habitat. The proposed designation included 3,766 kilometers (km) (2,340 miles (mi)) of stream in the States of Iowa, Kansas, Minnesota, Nebraska, and South Dakota as critical habitat. We also proposed not to include Topeka shiner habitat in the State of Missouri and on the Fort Riley Military Installation, Kansas, under the authority of section 3(5)(A) of the Act. Following publication of the proposed rule, we opened a 60-day public comment period. We also held one public meeting in each of the six affected States during September 2002. Due to budgetary constraints, we did not finalize the designation of critical habitat by August 13, 2003. We petitioned the court to extend this deadline until July 17, 2004, and, in an order dated February 10, 2004, the court granted us this extension.

In the August 2002 proposed rule for designation of critical habitat for the Topeka shiner, we indicated our intention not to include critical habitat in Missouri and on Ft. Riley, Kansas, in the critical habitat designation. This was based upon our interpretation of the definition of critical habitat found in section 3(5)(A) of the Act. Section 3(5)(A)(i) of the Act, as amended (16 U.S.C. 1531 *et seq.*), defines critical habitat as areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. In order to give meaning to the last clause of the definition, we have considered that if an area was already adequately managed, there would be no requirement for special management considerations or protection. A management plan is considered adequate when it meets the following three criteria: (1) The plan provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that it will be implemented (*i.e.*, those responsible for implementing the management plan are capable of accomplishing the objectives, have an implementation schedule, and/or adequate funding for the management plan); and (3) the plan provides assurances the management plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Subsequent to publication of the proposed rule, two issues arose. The first issue is a January 2003 court ruling on a separate case not pertaining to the Topeka shiner (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–409 TUC DCB, D. Ariz., Jan. 13, 2003). In that ruling, a Federal District Court in Arizona disagreed with our application of the definition of critical habitat as it pertains to section 3(5)(A) of the Act. The court stated that "whether habitat does or does not require special management is not determinative on whether the habitat is 'critical' to a threatened or endangered species." The court affirmed the Secretary's authority to exclude areas from critical habitat designation pursuant to section 4(b)(2) of the Act.

The second issue is that section 318 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, adopted November 24, 2003) amended the Endangered Species Act by adding new language to section 4(a)(3), which prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. The Sikes Act Improvement Act of 1997 requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. The Service consults with the military on the development and implementation of INRMPs for installations with listed species.

Because of the court's decision and the amendment to the Act, we decided to clarify the basis for proposed exclusions to critical habitat for the Topeka shiner. In the following paragraphs we address our consideration of Fort Riley, Kansas under section 4(a)(3), followed by our clarification of the basis for our proposed exclusion of the State of Missouri. In addition, we are proposing to designate one additional stream segment in South Dakota as critical habitat, based on information received since the proposed rule was published in 2002.

Fort Riley, Kansas

We previously proposed not to include stream segments on the Fort Riley Military Installation, Kansas, in critical habitat, on the basis of our interpretation of section 3(5)(A) of the Act. Because of the court's decision and the amendment to the Act, we know clarify the basis for not proposing stream segments on Fort Riley. Section 4(a)(3) of the Act now allows the Secretary of the Department of the Interior to exempt defense sites from critical habitat designations if an adequate INRMP is in place. The law says the Secretary "shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense * * * that are subject to an integrated natural resources management plan * * * if the secretary determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation."

We consider an INRMP adequate under section 4(a)(3) for military installations when it meets the same three criteria we consider under section 3(5)(A) of the Act: (1) The plan provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that it will be implemented (*i.e.*, those responsible for implementing the management plan are capable of accomplishing the objectives, have an implementation schedule, and/or adequate funding for the management plan); and (3) the plan provides assurances the management plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

The Topeka shiner has been a focal species for planning and conservation efforts on Fort Riley since the early 1990s, with numerous stream surveys occurring from this time to the present. Fort Riley initiated development of management guidelines for the species in 1994. The first Endangered Species Management Plan for Topeka Shiner on Fort Riley was formalized in 1997. This management plan was revised and incorporated into Fort Riley's INRMP 2001–2005, which was formalized July 30, 2001 (Keating, Ft. Riley Natural Resources Division, pers. comm. 2002). This management plan outlines and describes conservation goals; management prescriptions and actions; a monitoring plan; estimates of time, cost, and personnel needed; a checklist of tasks; and an annual report (Department of the Army 2001).

We evaluated the Fort Riley Endangered Species Management Plan for Topeka Shiner and the Fort's associated Topeka shiner conservation actions that have been completed, ongoing, or planned, against our three criteria used to determine whether the requirements of section 4(a)(3) are being satisfied. This management plan provides conservation benefits to the species; the plan provides assurances that conservation efforts will be implemented; and the plan and efforts of the Army will be effective since they include biological goals, restoration objectives, and monitoring consistent with the draft Recovery Plan.

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species, which, if designated as critical habitat, would require consultation with the Service to ensure that activities would not adversely modify critical habitat. As previously discussed, Fort Riley has a completed final INRMP that provides for sufficient conservation management and protection for the Topeka shiner. Moreover, this INRMP has already undergone section 7 consultation with the Service prior to its final approval. Further, activities authorized, funded, or carried out by the military or Federal agencies in these areas that may affect the Topeka shiner will still require consultation under section 7 of the Act, based on the requirement that Federal agencies ensure that such activities not jeopardize the continued existence of listed species. This requirement applies even without critical habitat designation on these lands.

Based on the foregoing discussion, we believe that the requirements of section 4(a)(3) of the Act are satisfied in relation to Topeka shiner habitat on Fort Riley. We, therefore, do not include these stream segments in the proposed critical habitat for Topeka shiner.

Missouri

We previously proposed not to include stream segments in the State of Missouri in proposed critical habitat, based on our interpretation of section 3(5)(A) of the Act. We determined that adequate special management or protection would be provided by a legally operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species. We further determined that a plan is adequate when it meets the three criteria listed in a previous paragraph of this preamble.

In the proposed rule for designation of critical habitat for the Topeka shiner, we evaluated Missouri's State Action Plan for the Topeka Shiner (Action Plan) and associated Topeka shiner conservation actions that have been completed, ongoing, or planned in Missouri against the three criteria to determine whether lands require "special management considerations or protections." The Action Plan clearly provides conservation benefits to the species; the Action Plan provides assurances that conservation efforts will be implemented because MDC has authority to implement the plan, has put in place the funding and staffing necessary to implement the Plan, and has completed or begun work on many significant elements of the Plan; and the Action Plan and efforts of MDC will be effective because they include biological goals, restoration objectives, and monitoring consistent with a Service preliminary draft Recovery Plan. We continue to believe that the Missouri Action Plan provides for special management of the Topeka shiner under the definition of critical habitat in section 3(5)(A) of the Act. However, as a consequence of the court's decision in *Center for Biological Diversity* v. *Norton*, we now propose the previously-excluded segments in Missouri, and also clarify the basis for proposing to exclude these areas from the critical habitat designation for Topeka shiner.

The 12 stream segments, representing 148 km (92 mi) of stream, described below, constitute our best assessment of areas in Missouri needed for the conservation of the Topeka shiner, based on the best scientific and commercial information available. These areas are: (1) Currently considered occupied by the Topeka shiner or provide critical links or corridors between occupied habitats and/or potentially occupied habitats; (2) provide all or some of the primary constituent elements essential to the conservation of the species as described in our proposed rule; and (3) may require special management considerations or protection. A more detailed description of the stream segments follows (see "Proposed Regulation Promulgation" section of this document for legal descriptions and maps of these stream segments).

1. Sugar Creek Complex (three stream segments), Daviess and Harrison Counties, Missouri. The stream segments proposed in this complex provide the primary constituent elements necessary for designation as critical habitat, including natural stream

morphology and in-stream habitat. Stream habitat within this complex can be characterized as moderate in quality, with the watershed draining a mosaic of cropland and pastureland. This complex includes portions of the mainstem of Sugar Creek, Tombstone Creek, and an unnamed tributary to Sugar Creek. A downstream portion of Sugar Creek has been severely altered by channelization, and does not provide the primary constituent elements.

2. Moniteau Creek Complex (four stream segments), Cooper and Moniteau Counties, Missouri. Stream habitat within this complex can be characterized as moderate to good in quality, with the watershed draining a mosaic of cropland, woodlands, and pastureland. Riparian areas are mostly wooded and appear stable. This complex includes portions of Moniteau Creek, an unnamed tributary to Moniteau Creek, Smiley Creek, and Pisgah Creek.

3. Bonne Femme Creek Complex (five stream segments), Boone County, Missouri. The Bonne Femme Creek complex is comprised of four tributary streams, including Turkey Creek, Bass Creek, and two unnamed tributary streams to Bass Creek, as well as a portion of mainstem Bonne Femme Creek. Extensive watershed modification is occurring throughout this basin as the growth of Columbia, Missouri, rapidly spreads through this watershed from the north. There have been no documented collections of Topeka shiners from the streams of the Bonne Femme Creek watershed since 1997. However, it has yet to be determined if the species has been completely eliminated from the watershed or is still present in very reduced numbers. The stream segments in this complex provide the primary constituent elements, including natural stream morphology and in-stream habitat.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of such exclusion outweigh the benefits of including the areas within critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species. For the areas of Missouri that were not included in the proposed designation pursuant to the definition of critical habitat, we believe that the benefits of excluding those areas from the final designation outweigh the benefits of including them. If we determine that the benefits of exclusion are greater than those of designation, critical habitat will be excluded from the final designation pursuant to section 4(b)(2).

For our evaluation of potential critical habitat sites in Missouri, we have conducted an analysis of the economic impacts and other relevant impacts of designating critical habitat. Economic factors include: (1) Costs to us and Federal action agencies from increased workload to conduct consultations under section 7 of the Act and technical assistance associated with critical habitat; (2) costs of modifying projects, activities, or land uses resulting from consultations involving critical habitat; (3) costs of delays from increased consultations involving critical habitat; (4) costs of reduced property values or income resulting from increased regulation of critical habitat designation; (5) potential offsetting economic benefits associated with critical habitat, including educational benefits.

Other relevant impacts include: (1) The willingness of landowners and land managers to work with natural resource agencies and participate in voluntary conservation activities that directly benefit the Topeka shiner and other threatened or endangered species, including such cooperative partnerships as Safe Harbor Agreements; (2) the implementation of various cooperative conservation measures agreed to through various State and local partnerships, such as those outlined in Missouri's State Action Plan or through similar collaborative efforts; (3) management or regulatory flexibility, such as the establishment of nonessential experimental populations under section 10(j) of the Act, to recover Topeka shiners through reintroductions; and (4) opportunities and interest of landowners to participate in various incentive and assistance programs offered by the Service and other Federal, State, and local agencies that restore habitats and improve water quality in watersheds containing Topeka shiners.

Benefits of designating critical habitat include: (1) Focusing conservation activities for listed species by identifying areas essential to conserve the species; (2) increasing awareness by the public and land management agencies of the importance of these areas for conservation of the species; and (3) assisting Federal, State, and local agencies in prioritizing landowner incentive programs, developing agreements with private landowners, and implementing other conservation and land management programs.

We are herein providing notice of availability of an analysis of the economic impacts of designating these areas as critical habitat, along with an opportunity for the public to formally comment on this analysis. This economic analysis along with the analysis of other relevant beneficial and detrimental impacts will serve as the basis of our analysis under section 4(b)(2), and our determination of any exclusions from critical habitat finalized in our future final rule. The final rule will contain our analysis of economic factors and other relevant impacts of designating critical habitat in Missouri, and our consideration of comments received during the public comment period. As a result, we may identify certain areas that will be excluded from the final critical habitat designation, and if so, the final critical habitat determination may exclude or reduce in extent the areas described in this proposal.

In Missouri, the Topeka shiner historically occurred in small, headwater streams in northern portions of the State, within the Missouri/Grand River Watershed. The Topeka shiner has been a focal species for planning and conservation efforts in the State since the mid-1990s. In 1995, the Missouri Department of Conservation (MDC) established a 5-member Topeka Shiner Working Group, and a 16-member Advisory Group to direct, implement, and facilitate Topeka shiner recovery actions in Missouri. In 1996, the MDC, with approval of the Conservation Commission of Missouri (Conservation Commission), listed the Topeka shiner as an endangered species under the State's Wildlife Code (Conservation Commission 2001).

In 1999, the Conservation Commission established the Private Lands Services Division within the MDC. Eighty-three MDC staff were redirected to private land conservation throughout the State, including a minimum of 16 Private Lands Services personnel with responsibility for the counties with Topeka shiner habitat. Duties of personnel within this division include the facilitation of conservation efforts on private property throughout Missouri for all federally listed species, including the Topeka shiner. Additionally, there are at least 86 fisheries, forestry, natural history, protection, and wildlife staff delivering services to private landowners as a routine aspect of their job within the Missouri/Grand River Watershed.

In January 1999, MDC adopted and approved an Action Plan for the Topeka shiner in Missouri (MDC 1999). The Action Plan identifies comprehensive

conservation measures and programs necessary to achieve recovery of the Topeka shiner in Missouri.

Implementation of recovery efforts for the Topeka shiner in Missouri, as outlined in this plan, is ongoing. The current status of tasks in the Action Plan is described in Table 1 below:

TABLE 1.—STATUS OF TASKS IN THE MISSOURI STATE ACTION PLAN FOR THE TOPEKA SHINER

Item	Status
Establishment of the Missouri Topeka Shiner Working Group	Complete & Ongoing.
Development & ongoing implementation of the Action Plan	Complete (1999) & Ongoing.
Establishment of permanent sampling sites & standardized monitoring of Missouri's Topeka shiner populations & completion of recent Statewide survey for the species.	Annual Monitoring—Ongoing/Initiated (began in 2000) Statewide Surveying-Complete & Ongoing.
Initiation of artificial propagation of Topeka shiners, including the development & refinement of captive rearing techniques.	Complete & Ongoing.
Completion of genetic analysis of different populations of Topeka shiners in Missouri	Complete.
Incorporation of Topeka shiner recovery & conservation efforts in State strategic planning documents on several different levels.	Complete & Ongoing.
Development & dissemination of public outreach & education materials throughout Missouri & elsewhere.	Complete & Ongoing.
Completion & dissemination of several ecological & life history studies involving Topeka shiner	Ongoing/Initiated.
Securing matching funds from the Service to conduct surveys & ecological studies, & for various habitat restoration & enhancement activities.	Complete & Ongoing.
Revision of the Action Plan that will include actions not yet completed since 1999 & those uncompleted actions identified in the Service's preliminary draft Recovery Plan.	Planned.
Implementation of a landowner incentive program & completion of a study on the potential impacts of Confined Animal Feeding Operations (CAFO) within the Moniteau Creek Watershed.	Completed (CAFO study). Ongoing/Initiated (landowner incentive program).
Development of 10-year fish monitoring plans for Moniteau, Bonne Femme, & Sugar Creek Watersheds.	Complete—Plan developed with initial sampling conducted in 2000 & annual sampling since.
Development & implementation of Sugar Creek subbasin management plan.	Complete & Ongoing.
Development & implementation of a Three Creeks Conservation Area management plan	Complete & Ongoing.
Protection & management of Bonne Femme Creek by establishing these watersheds as Missouri Department of Natural Resources' Non-point Source Pollution Special Area Land Treatment watersheds.	Complete & Ongoing.
Reestablishment or restoration of riparian corridors through tree plantings, natural regeneration, fencing to restrict livestock use of stream banks, creation of alternative livestock watering sources, establishment of warm season grass buffer strips, stream bank stabilization activities, & actions outlined in grazing plan developed for private landowners within the Bonne Femme, Moniteau, & Sugar Creek Watersheds.	Initiated/Ongoing.

Assurances that the Action Plan will be implemented and conservation of the Topeka shiner will be achieved in Missouri is demonstrated by the following actions. Between January 1999 and December 31, 2003, at least $351,100 was spent on recovery actions for the Topeka shiner in Missouri, and that total is likely to increase to at least $600,000 within the next 10 years. Eighty percent (*i.e.*, 12 of 15) of the priority 1 tasks (*i.e.*, those actions deemed necessary to prevent extinction of the species) identified and outlined in the implementation schedule of a Service preliminary draft Recovery Plan have either been completed or are currently being implemented (this includes 20 percent of tasks that are 100 percent completed, 47 percent of tasks that are 50 percent or greater completed, and 33 percent of tasks that are 25 percent or less completed) by the MDC in cooperation with us, the Topeka Shiner Recovery Team, and other Federal, State, and private entities. The Private Land Services Division within MDC greatly facilitates the implementation of recovery actions on private property where the species currently exists or where the species may be reintroduced. The planned expansion of our Partners for Fish and Wildlife Program within Topeka shiner-occupied habitat will benefit an additional 10–15 landowners at an estimated cost of $100,000 within the next 5 years (Kelly Srigley Werner, Missouri Private Lands Coordinator, pers. comm.). MDC Fisheries and Natural History Division staffs have committed to help coordinate and implement Topeka shiner recovery efforts between the MDC and Federal, State, and private entities, and MDC's Topeka Shiner Recovery Coordinator. The MDC is actively participating in the Topeka Shiner Recovery Team. MDC's revisions to the Action Plan, scheduled for completion in 2004, will focus on incorporating any of the recovery actions outlined in a Service preliminary draft Recovery Plan that are currently not addressed. The scientific soundness of the MDC's Action Plan was further validated by us and the Recovery Team when the Action Plan's monitoring protocol and recommendations for reducing and eliminating threats to the Topeka shiner were incorporated, in part, into a Service preliminary draft Recovery Plan. In addition, the MDC, in implementing the Action Plan, has established cooperative working relationships with private landowners. These relationships have allowed for the implementation of conservation programs for the benefit of the Topeka shiner.

We provide the following preliminary 4(b)(2) analysis of the benefits of inclusion and the benefits of exclusion in assessing the potential exclusion of critical habitat in Missouri.

(1) Benefits of Inclusion

Federal actions that adversely affect critical habitat must undergo consultation under section 7 of the Act. Consultations on Federal actions involving critical habitat ensure that habitat needed for the survival and recovery of a species is not destroyed or adversely modified. However, if adequate protections are provided in another manner (*e.g.*, implementation of MDC's State Action Plan), there is no benefit due to designation of critical habitat.

Other possible benefits of critical habitat include educating the public

regarding the conservation value of an area, focusing conservation activities on these essential areas, and assisting other parties in conservation and land management programs. In Missouri, the educational benefits that may be afforded by a critical habitat designation are already provided through implementation of the Action Plan.

(2) Benefits of Exclusion

The benefits of excluding Missouri from designated critical habitat would include: Maintenance of effective working partnerships to promote the conservation of the Topeka shiner and its habitat; establishment of new partnerships; providing benefits from the Action Plan to the Topeka shiner and its habitat which exceed those that would be provided by the designation of critical habitat; avoiding added administrative costs to the Service, Federal agencies, and applicants; and future regulatory flexibility for the Service and landowners by maintaining the ability to reintroduce the shiner to formerly occupied streams in Missouri by experimental populations under section 10(j) of the Act.

Recovery of listed species is often achieved through partnerships and voluntary actions. Through the Action Plan, the MDC has gained the cooperation of landowners and has been successful in developing voluntary conservation partnerships with these landowners. Cooperators, with the assistance of MDC, are implementing conservation measures for the Topeka shiner and its habitat in accordance with management objectives outlined in the Action Plan. These actions range from allowing access to private lands for surveys and site visits to rehabilitation of habitat and implementation of measures to control erosion and sedimentation. The partners have committed to conservation measures benefiting the Topeka shiner that are greater than the benefits of designating critical habitat. It is likely that many current and potential partners will not assume the cost and work associated with implementing voluntary management and protection if critical habitat is designated regardless of their desire to contribute to the conservation of the species. The MDC has advised us that the support of voluntary conservation actions of private landowners that benefit Topeka shiner recovery in the State could be withdrawn if critical habitat is designated.

In the draft Economic Analysis of Critical Habitat Designation for the Topeka Shiner, Industrial Economics, Inc. (2003) determined that two of the three proposed areas in Missouri (Bon Femme and Moniteau Creeks) would have significantly higher costs for consultation under section 7 of the Act than most areas proposed as Topeka shiner critical habitat. This is despite the fact that minimal project modifications requiring consultation under section 7 of the Act are projected for activities conducted within these two watersheds. Consequently, Industrial Economics, Inc. estimates that consultations conducted within these two watersheds would be administratively and economically burdensome to local communities (Jessica Sargent-Michaud, Industrial Economics, Inc., pers. comm.).

In summary, we view the continued implementation of the Action Plan and the cooperative conservation partnerships with landowners to be essential for the conservation of the Topeka shiner in Missouri. We believe that the benefits of including critical habitat in Missouri are small due to the successful implementation of conservation actions, as identified in the Action Plan, through multiple partnerships. We believe the benefits of excluding Missouri areas from critical habitat greatly exceed the limited benefits of including them. Furthermore, we believe that exclusion from critical habitat in this State will not result in the extinction of the Topeka shiner. In accordance with 4(b)(2) of the Act, we believe that the benefits of excluding critical habitat in Missouri outweigh the benefits of designating critical habitat, and are proposing to exclude areas in Missouri containing primary constituent elements from the critical habitat designation.

In making our final decision with regard to areas in Missouri containing primary constituent elements, we will consider several factors, including the benefits provided to the Topeka shiner from the Missouri Action Plan for the Topeka Shiner, as described in the August 2002 proposal. You may request a copy of the Action Plan by contacting the Field Supervisor, U.S. Fish and Wildlife Service, 101 Park DeVille Dr., Suite A, Columbia, MO 65203.

South Dakota

In our proposal to designate critical habitat for Topeka shiner published on August 21, 2002 (67 FR 54262), we proposed to designate 40 stream segments in South Dakota totaling 1,475 km (917 mi) of stream channel. In the Big Sioux River basin of South Dakota and Minnesota, we also proposed off-channel/side-channel pool habitat for designation. After the publication of the August 2002 proposal, we received information on additional Topeka shiner habitat in South Dakota. In examining this information, we concluded that habitat within Stray Horse Creek, Hamlin County, South Dakota, contains the necessary elements for proposal as critical habitat. We are proposing one additional 24-km (15-mi) long stream segment in South Dakota, based on information received since the proposed rule was published in 2002 (see "Proposed Regulation Promulgation" section of this document for legal description and map of this stream segment). Off-channel and side-channel habitat, as well as main-channel habitat, also is proposed for this additional stream.

1. *Stray Horse Creek (one stream segment), Big Sioux River Watershed, Hamlin County, South Dakota.* The stream reach proposed for designation runs upstream from the confluence with the Big Sioux River, including adjacent off-channel pool habitat.

We are giving consideration to exempting South Dakota from critical habitat designation under section 4(b)(2) of the Act. Since the listing of the Topeka shiner in 1998, additional surveys conducted for this species in South Dakota have located extensive occupied habitat that was unknown at the time of listing. These demonstrate that the entire historical range of the Topeka shiner continues to be occupied in South Dakota. Furthermore, these surveys have considerably increased the known number of occupied streams in South Dakota. South Dakota has also completed a State Management Plan for the Topeka shiner. We will continue to evaluate whether listing of areas in South Dakota as critical habitat will appreciably benefit the Topeka shiner beyond the protection already afforded the species under the Act and that afforded by the State Management Plan.

Kansas

We are giving consideration to exempting Kansas from critical habitat designation under section 4(b)(2) of the Act. The Topeka shiner is a State-listed threatened species in Kansas under the Kansas Nongame and Endangered Species Conservation Act. The State has also designated its own critical habitat for the Topeka shiner. We will continue to evaluate whether listing of areas in Kansas as critical habitat will appreciably benefit the Topeka shiner beyond the protection already afforded the species under the Act and State laws and regulations.

Land Ownership

The majority of stream segments containing primary constituent elements

in Missouri and South Dakota are in private ownership and are primarily used for grazing and crop production. Additionally, a portion of the Charles Green State Wildlife Management Area, owned by the State of Missouri and managed by the MDC, is within the Bonne Femme Creek Complex of Missouri.

Economic Analysis

The draft economic analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. The Service will make its final decisions about exclusions based on economic impact, when it has obtained public comments on the economic analysis and produced an addendum to the economic analysis containing its final conclusions. The Service is interested in comments from the public on the draft economic analysis, on whether any of the areas identified in the economic analysis as having economic effects should be excluded for economic reasons, and whether those or any other areas should be excluded for other reasons.

The Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating these areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. The draft economic analysis serves as the basis of our economic analysis under section 4(b)(2), and of any recommended exclusions made in this document for Missouri. Since the economic analysis supplement will not be completed until after we receive comments from the public on the draft economic analysis, we cannot identify final exclusions from critical habitat designation under section 4(b)(2) in this document. However, we have identified and recommended areas in Missouri that we believe, at this time, qualify for exclusion under section 4(b)(2). Upon completion of the economic analysis supplement, we will analyze the supplement, public comments on the draft economic analysis, and this proposal, and the benefits of designating areas as critical habitat in Missouri. At that time, we will make a final determination whether certain areas containing primary constituent elements should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from the proposal.

Public Meeting

The Act provides for one or more public hearings or meetings on critical habitat proposals, if requested. Previously, following the publication of the initial proposed rule on August 21, 2002 (67 FR 54261), we held six public meetings across the species' range concerning the designation of critical habitat for the Topeka shiner. Due to the reopening of the comment period, and the changes herein to the proposed designation of critical, we have scheduled an additional public meeting.

The public meeting will be held at Boonville High School, 1690 Ashley Rd., Boonville, Missouri, on April 13, 2004, from 7 p.m. to 9 p.m.

Author

The primary author of this proposed rule is Vernon Tabor, Kansas Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Proposed Regulation Promulgation

For the reasons stated in the preamble, we propose to amend the proposed amendments to part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as published in the **Federal Register** of August 21, 2002, starting on page 54262, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In §17.95, as proposed to be amended by 67 FR 54262:

a. Revise paragraph (e)(1);

b. Redesignating paragraphs (e)(15) through (e)(18) as paragraphs (e)(16) through (e)(19) and adding a new paragraph (e)(15);

c. Adding Map 10a and related text after the new paragraph (e)(15); and

d. Adding new paragraphs (e)(20) through (e)(22), including maps and legal descriptions:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.* * * *

* * * * *

Topeka Shiner (*Notropis topeka*)

(1) Critical habitat is depicted for Calhoun, Carroll, Dallas, Greene, Hamilton, Lyon, Osceola, Sac, Webster, and Wright Counties, Iowa; Butler, Chase, Dickinson, Geary, Greenwood, Marion, Marshall, Morris, Pottawatomie, Riley, Shawnee, Wabaunsee, and Wallace Counties, Kansas; Lincoln, Murray, Nobles, Pipestone, and Rock Counties, Minnesota; Boone, Cooper, Daviess, Harrison, and Moniteau Counties, Missouri; Madison County, Nebraska; Aurora, Beadle, Brookings, Clay, Davison, Deuel, Hamlin, Hanson, Hutchinson, Lincoln, McCook, Miner, Minnehaha, Moody, and Turner Counties, South Dakota, on the maps and as described below.

* * * * *

(15) Map 10a follows:

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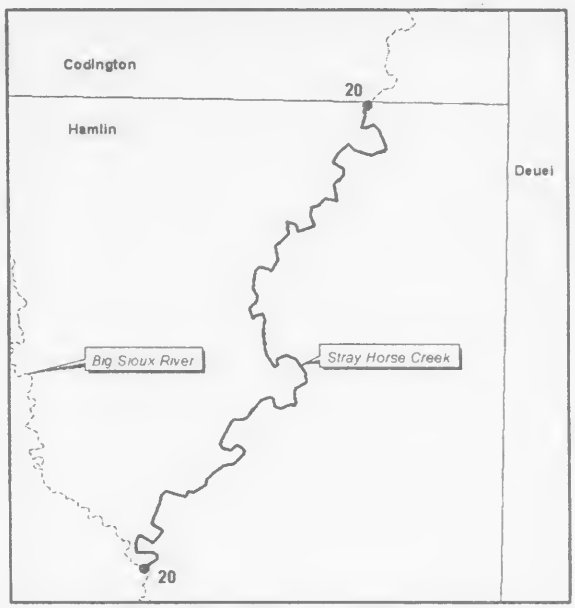
Map 10a: General Locations of Proposed Critical Habitat for the Topeka Shiner *(Notropis topeka)*

South Dakota - Upper Big Sioux Watershed
Stray Horse Creek



2 0 2 4 Kilometers

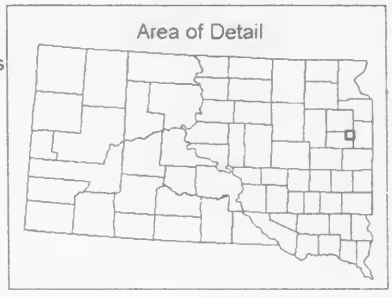
2 0 2 4 Miles

Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

Reaches
20. Stray Horse Creek

N

Area of Detail

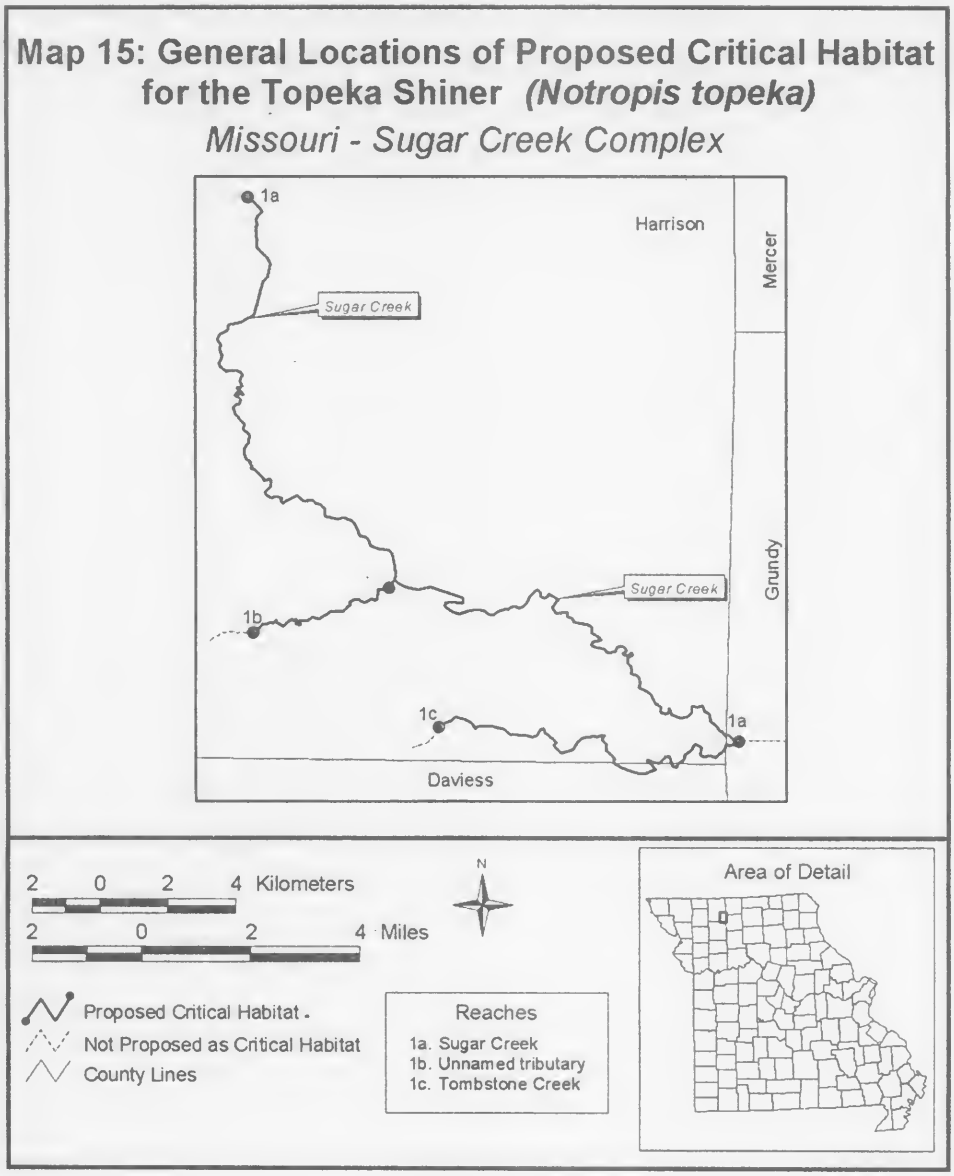


Stray Horse Creek—Hamlin County, South Dakota

20. Stray Horse Creek from its confluence with the Big Sioux River (T114N, R51W, Sec. 7), upstream through T115N, R51W, Sec. 3.

* * * * *

(20) Map 15 follows:



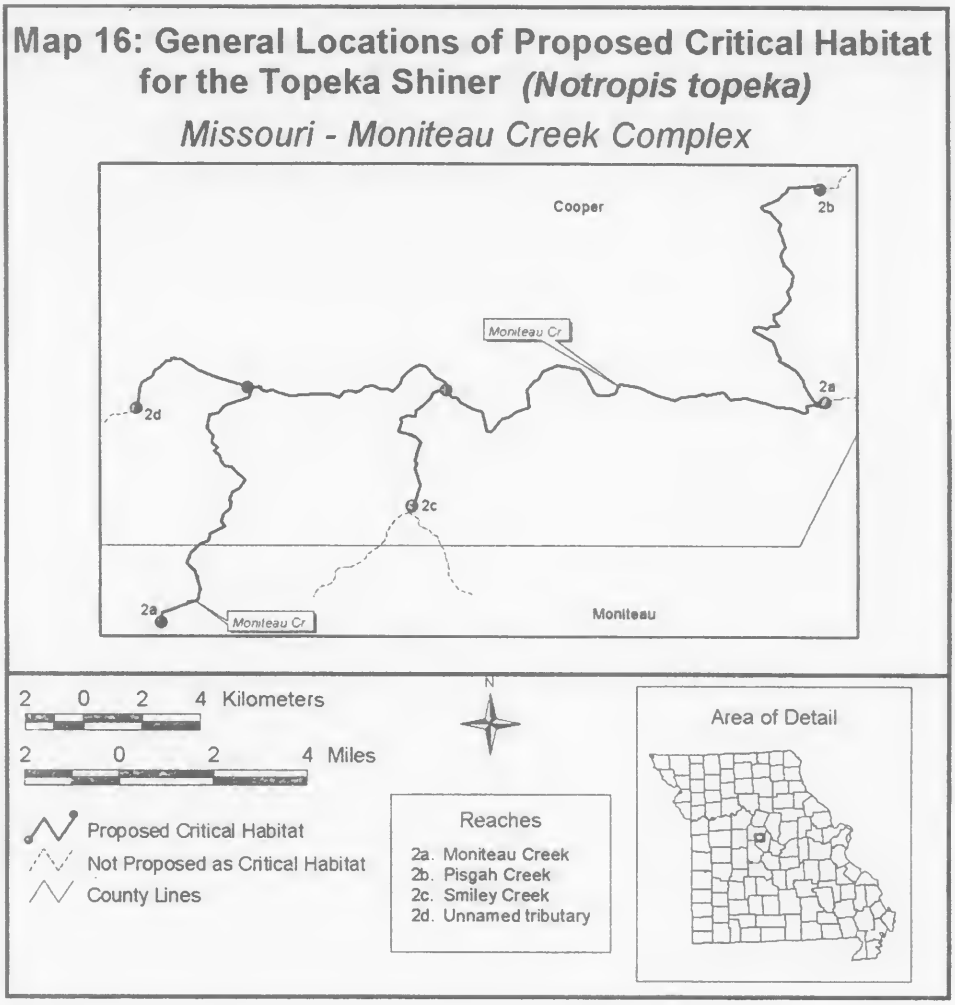
Sugar Creek Complex

1a. Sugar Creek from its confluence with Tombstone Creek (T62N, R26W, Sec. 25), upstream through T64N, R27W, Sec. 35.

1b. Unnamed tributary to Sugar Creek from its confluence with Sugar Creek (T62N, R26W, Sec. 8), upstream through T62N, R27W, Sec. 14.

1c. Tombstone Creek from its confluence with Sugar Creek (T62N, R26W, Sec. 25), upstream through T62N, R26W, Sec. 29.

(21) Map 16 follows:



Moniteau Creek Complex

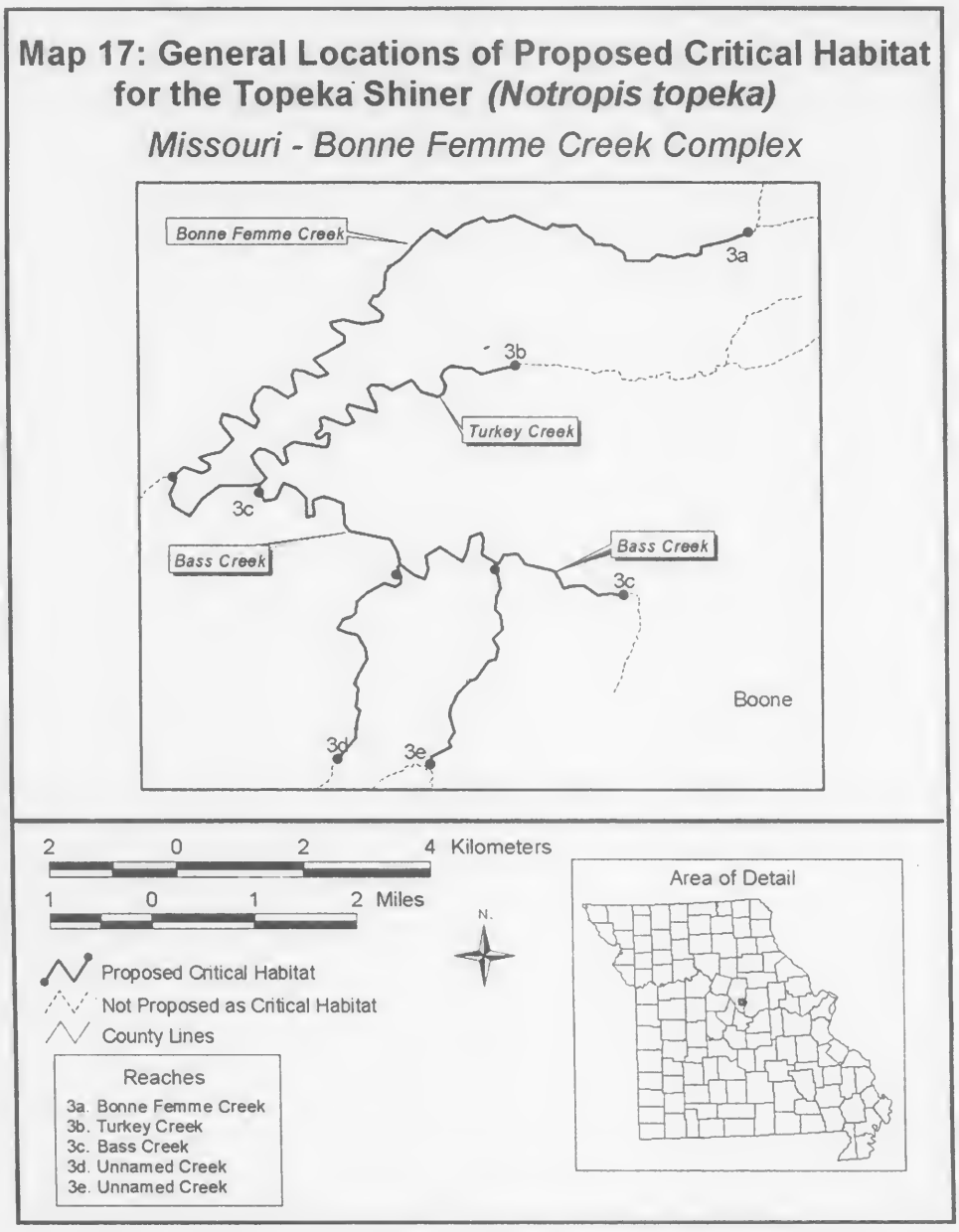
2a. Moniteau Creek from its confluence with Pisgah Creek (T46N, R15W, Sec. 19), upstream through T45N, R17W, Sec. 17.

2b. Pisgah Creek from its confluence with Moniteau Creek (T46N, R15W, Sec. 19), upstream through T47N, R16W, Sec. 36.

2c. Smiley Creek from its confluence with Moniteau Creek (T46N, R17W, Sec. 24), upstream through T46N, R17W, Sec. 36.

2d. Unnamed tributary to Moniteau Creek from its confluence with Moniteau Creek (T46N, R17W, Sec. 21), upstream through T46N, R17W, Sec. 19.

(22) Map 17 follows:



Bonne Femme Creek Complex

3a. Bonne Femme Creek from its confluence with Turkey Creek (T47N, R12W, Sec. 20), upstream through T47N, R12W, Sec. 12.

3b. Turkey Creek from its confluence with Bonne Femme Creek (T47N, R12W, Sec. 20), upstream to U.S. Highway 63 (T47N, R12W, Sec. 15).

3c. Bass Creek from its confluence with Turkey Creek (T47N, R12W, Sec. 20), upstream through T47N, R12W, Sec. 35.

3d. Unnamed tributary to Bass Creek from its confluence with Bass Creek (T47N, R12W, Sec. 27), upstream through T46N, R12W, Sec. 4.

3e. Unnamed tributary to Bass Creek from its confluence with Bass Creek (T47N, R12W, Sec. 27), upstream through T46N, R12W, Sec. 3.

Dated: March 5, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–5926 Filed 3–16–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 52
Wednesday, March 17, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Notice of request for proposals.

SUMMARY: Section 2503 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Food Security Act of 1985 to include the Farm and Ranch Lands Protection Program (FRPP), formerly called the Farmland Protection Program (FPP). Congress delegated authority to administer FRPP to the Chief of the Natural Resources Conservation Service (NRCS). NRCS, on behalf of the Commodity Credit Corporation (CCC) and using its authorities, requests proposals from Federally-recognized Indian tribes, States, units of local government, and nongovernmental organizations to cooperate in the acquisition of conservation easements on farms and ranches. Eligible land includes farm and ranch land that has prime, unique, or other productive soil, or that contains historical or archaeological resources. These lands must also be subject to a pending offer from eligible entities for the purpose of protecting topsoil by limiting conversion of that land to nonagricultural uses. Over $84 million in FRPP funds is available to purchase conservation easements in fiscal year 2004.

DATES: Proposals must be received in the NRCS State Office by May 3, 2004.

ADDRESSES: Written proposals should be sent to the appropriate NRCS State Conservationist, Natural Resources Conservation Service, USDA, in the State where the parcel is located. The telephone numbers and addresses of the NRCS State Conservationists are in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, NRCS; phone: (202) 720–9476; fax: (202) 720–0745; or e-mail: *denise.coleman@usda.gov*; Subject: FRPP, or consult the NRCS Web site at *http://www.nrcs.usda.gov/programs/farmbill/2002/PubNotc.html*. This announcement will also be posted at the following Web site: *http://www.fedgrants.gov*.

SUPPLEMENTARY INFORMATION:

Background

Urban sprawl continues to threaten the Nation's farm and ranch land as social and economic changes over the past three decades have influenced the rate at which land is converted to non-agricultural uses. Population growth, demographic changes, the housing market, expansion of transportation systems, and economic prosperity have contributed to increases in agricultural land conversion rates. The amount of farm and ranch land lost to development and the quality of farmland being converted are significant concerns. In most States, prime farmland is being converted at two to four times the rate of other, less-productive agricultural land.

There continues to be an important national interest in the protection of farmland. Land use devoted to agriculture provides an important contribution to environmental quality, protection of the Nation's historical and archaeological resources, and scenic beauty.

Availability of Funding

Effective on the publication date of this notice, NRCS announces the availability of up to $84 million for FRPP, until September 30, 2004. The NRCS State Conservationist must receive proposals for participation within 45 days of the date of this notice. State, Tribal, and local government entities and nongovernmental organizations, as defined herein, may apply. Selection will be based on the criteria established in this notice, and additional criteria developed by the applicable State Conservationist. Pending offers by an eligible entity must be for acquiring an easement for perpetuity, except where State law prohibits a permanent easement.

Under the FRPP, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. For the entity, two cost-share options are available when providing its matching offer. One option is for the entity to provide in cash at least 25 percent of the appraised fair market value of the conservation easement. The second option is for the entity to provide at least 50 percent of the purchase price, in cash, of the conservation easement. The second option may be preferable to an entity in the case of a large bargain sale by the landowner. If the second option is selected, the NRCS share cannot exceed the entity's contribution.

The following two examples illustrate how these two cost-share options may function. Under Option 1 where 25 percent of the appraised fair market value is selected by the entity, the total appraised fair market value of the conservation easement is $1 million. The landowner chooses to donate 40 percent of the appraised fair market value, resulting in the actual easement purchase price being $600,000. In this case, the cooperating entity contributes $250,000 and NRCS contributes $350,000. Option 2, where 50 percent of the purchase price is selected, occurs when a landowner makes a large charitable donation, and 25% of the appraised fair market value exceeds 50 percent of the purchase price. For example, the total appraised fair market value of the conservation easement is $1 million. The landowner chooses to donate 60 percent of the appraised fair market value, resulting in the actual easement purchase price being $400,000. In this case, NRCS and the cooperating entity both contribute $200,000.

Definitions

For the purposes of this notice, the following definitions apply:

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for

FRPP, and NRCS administers FRPP on its behalf.

Conservation Easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation Plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

(3) Is approved by the local soil conservation district in consultation with the local committees established under Section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Secretary, or by the Secretary.

Eligible entities means Federally recognized Indian Tribes, States, units of local government, and certain non-governmental organizations, which have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to non-agricultural uses of the land. Additionally, to be eligible for FRPP, the entity must have pending offers, for acquiring conservation easements for the purpose of protecting agricultural land from conversion to non-agricultural uses.

Eligible land is privately owned land on a farm or ranch that has prime, unique, Statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land.

Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer. Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. In valuing conservation easements, the appraiser estimates both the fair market value of the whole property before the easement acquisition and the fair market value of the remainder property after the conservation easement has been imposed. The difference between these two values is deemed the value of the conservation easement.

Field Office Technical Guide (FOTG) is the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historical and archaeological resources must be:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*), or

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA), or

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101 (b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).

Impervious Surface—Impervious surface is the area on the easement parcel covered by non-seasonal, permanent roof tops, concrete and asphalt.

Land Evaluation and Site Assessment System (LESA) is the land evaluation system approved by the NRCS State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act rule at 7 CFR part 658.)

Landowner means a person, persons, estate, corporation, or other business or nonprofit entity having fee title ownership of farm or ranch land.

Natural Resources Conservation Service is an agency of the U.S. Department of Agriculture.

Non-governmental organization is defined as any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code;

(3) Is described in section 509(a)(2) of that Code; or is described in section 509(a)(3) of that Code; and is controlled by an organization described in section 509(a)(2) of that Code.

Other productive soils are soils that are contained on farm or ranch land and that are identified as farmland of Statewide or local importance and is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines Statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed according to acceptable farming methods. In some States and localities, farmlands of Statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance. 7 CFR part 657, sets forth the process for designating soils as Statewide or locally important.

Pending offer is a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime and unique farmland are defined separately, as follows:

(1) Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

(2) Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and

vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Marianna Islands).

Overview of the Farm and Ranch Lands Protection Program

The CCC, acting through NRCS, will accept proposals submitted to the NRCS State Offices from eligible entities, including Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations that have pending offers for acquiring conservation easements for the purposes of protecting topsoil by limiting nonagricultural use of the land and/or protecting historical and archaeological sites on farm and ranch lands. Reference information regarding the FRPP can be found in the "Catalog of Federal Domestic Assistance 10.913."

All proposals must be submitted to the appropriate NRCS State Conservationist within 45 days from the date of this notice. The NRCS State Conservationist may consult with the State Technical Committee to evaluate the merits of the proposals.

The NRCS State Conservationist will review and evaluate the proposals based on State, Tribal or local government or nongovernmental organization eligibility, land eligibility, and the extent to which the proposal adheres to the objectives outlined in the NRCS State FRPP plan. Proposals must provide adequate proof of a pending offer for the subject land. Adequate proof includes a copy of a written bid, contract, commitment, or option extended to a landowner. Pending offers based upon appraisals completed and signed by State-certified or licensed appraisers will receive higher priority for FRPP funding. Proposals submitted directly to the NRCS National Office will not be accepted, and will be returned to the submitting entity.

Development of the State Farm and Ranch Lands Protection Program Plan

Funding awards to participants will be based on National and State criteria. FRPP will be available in those States for which an NRCS State Office submits a State FRPP Plan to the NRCS National Office. Prior to submitting an application, interested entities should contact the appropriate State Conservationist, and ensure a State FRPP Plan has been submitted. At a minimum, the State FRPP Plan contains the following:

- Acreage of prime and important farm and ranch land estimated to be protected;
- Acreage of prime and important farm and ranch land converted to nonagricultural uses;
- Number or acreage of historic and archaeological sites estimated to be protected on farm or ranch lands;
- Total acres needing protection;
- FRPP cost per acre;
- Rate of land conversion;
- Percentage of funding guaranteed to be provided by cooperating entities;
- History of cooperating entities' commitments to conservation planning and implementing conservation practices;
- Participating entities' histories of acquiring, managing, holding, and enforcing easements (including average annual farmland protection expenditures over the past five years, accomplishments, and staff);
- Amount of FRPP funding requested; and
- Participating entities' estimated unfunded backlog of conservation easements on acres eligible for FRPP assistance.

At the State level, each State Conservationist will develop a State FRPP Plan to submit to NRCS National Office. This State FRPP Plan may be completed in consultation with the State Technical Committee, and it will include ranking considerations used by the State, including the above-mentioned criteria and other NRCS State ranking criteria. The following examples of NRCS State ranking criteria may be used to evaluate and rank specific parcels, including but not limited to proximity to protected clusters, viability of the agricultural operations, parcel size, type of land use, maximum cost expended per acre, an entity's commitment to assuring farm and ranch succession and transfer to viable farming operations, and percentage of funding guaranteed to be provided by cooperating entities. State ranking criteria will be developed on a State-by-State basis and will be available to interested participating entities before proposal submission. Interested entities should contact their State Conservationist for a complete listing of applicable National and State ranking criteria.

The National Office will allocate funds to States based on the information provided in the State FRPP Plan. Within 30 days after the Request for Proposal deadline has closed, the NRCS State Conservationist may make awards to eligible entities based on the funds provided. Once selected, eligible entities must work with the appropriate NRCS State Conservationist to finalize and sign cooperative agreements, incorporating all FRPP requirements.

The conveyance document (*i.e.*, conservation easement deed or conservation easement deed template) used by the eligible entity must be reviewed and approved by the USDA Office of General Counsel before being recorded. Since title to the easement is held by an entity other than the United States, the conveyance document must contain a clause that all rights conveyed by the landowner under the document will become vested in the United States should the Federally recognized Indian tribe, State, local unit of government, or nongovernmental organization (*i.e.*, the participant(s)) abandons, fails to enforce, or attempts to terminate the conservation easement.

As a condition of participation, all highly erodible land in the easement shall be included in a conservation plan. The conservation plan will be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12, unless otherwise determined by the State Conservationist, in partnership with the eligible entity. The conservation plan will be implemented in a timely manner, as determined by the State Conservationist, following FRPP enrollment.

Organization and Land Eligibility Selection Criteria

To be eligible, a Federally recognized Indian tribe, State, unit of local government, or nongovernmental organization must have a farmland protection program that purchases conservation easements for the purpose of protecting prime, unique, or other productive soil or historical and archaeological resources by limiting conversion of farm or ranch land to nonagricultural uses. FRPP funds may not be used to place an easement on a property in which an employee, board member, or immediate family member of an employee or board member of the FRPP applicant and any other organizations partnering with the applicant in the acquisition of the easement has a property interest.

Criteria for Proposal Evaluation

Proposals must contain the information set forth below in order to receive consideration for assistance:

1. Organization and programs: Eligible entities must describe their farmland protection program and their record of acquiring and holding permanent agricultural land protection easements or other interests.

Information provided in the proposal should:

(a) Demonstrate a commitment to long-term conservation of agricultural lands through the use of voluntary easements that protect farmland from conversion to nonagricultural uses;

(b) Demonstrate the capability to acquire, manage, and enforce easements;

(c) Demonstrate the number and ability of staff that will be dedicated to monitoring easement stewardship;

(d) Demonstrate the availability of funds. The purchase price may not exceed the appraised fair market value of the conservation easement. If a landowner donation is included in the entity's match, the entity must demonstrate in cash, the availability of 25 percent of the appraised fair market value or 50 percent of the purchase price; and

(e) Include pending offer(s). A pending offer is a written bid, contract, commitment, or option extended to a landowner by an eligible entity to acquire a conservation easement that limits nonagricultural uses of the land before the legal title to these rights has been conveyed. The primary purpose of the pending offers must be for protecting topsoil by limiting conversion to nonagricultural uses. Pending offers having appraisals completed and signed by State-certified general appraisers will receive higher funding priority by the NRCS State Conservationist. Appraisals completed and signed by a State-certified or licensed general appraiser must contain a disclosure statement by the appraiser. The disclosure statement should include at a minimum the following: the appraiser accepts full responsibility for the appraisal, the enclosed statements are true and unbiased, the value of the land is limited by stated assumptions only, the appraiser has no interest in the land, and the appraisal conforms to the Uniform Standards of Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisitions.

2. Lands to be acquired: The proposal must describe the lands to be acquired with assistance from FRPP. Specifically, the proposal must include the following:

(a) A map showing the proposed protected area(s);

(b) The amount and source of funds currently available for each easement to be acquired;

(c) The criteria used to set the acquisition priorities; and

(d) A detailed description of the land parcels, including:

(i) The priority of the offers;

(ii) The names of the landowners;

(iii) The address and location maps of the parcels;

(iv) The size of the parcels, in acres;

(v) The acres of the prime, unique, or State-wide and locally important soil in the parcels;

(vi) The acreage of permanent, non-seasonal impervious surface;

(vii) The number or acreage of historical or archaeological sites, if any, proposed to be protected, and a brief description of the sites' significance;

(viii) A map showing the location of other protected parcels in relation to the land parcels proposed to be protected;

(ix) Estimated cost of the easement(s): The consideration to be paid to any landowners for the conveyance of any lands or interests in lands cannot be more than the fair market value of the land or interests conveyed, as determined by an appraiser licensed in the State;

(x) An example of the cooperating entity's proposed easement deed used to prevent agricultural land conversion;

(xi) Indication of the accessibility to markets;

(xii) Indication of an existing agricultural infrastructure, on- and off-farm, and other support system(s);

(xiii) Statement regarding the level of threat from urban development;

(xiv) A description of the eligible entity's farmland protection strategy and how the FRPP proposal submitted by the entity corresponds to the entity's strategic plan;

(xv) Other factors from an evaluation and assessment system used by the applicant for selecting parcels. For example, the eligible entity may use the LESA system or a similar land evaluation system as its tool and include the scores for the land parcels slated for acquisition;

(xvi) Other partners involved in acquisition of the easement and their estimated financial contribution; and

(xvii) Other information that may be relevant as determined by the NRCS State Conservationist.

Ranking Considerations

When the NRCS State Office has assessed organization eligibility and the merits of each proposal, the NRCS State Conservationist will determine whether the farm or ranch land is eligible for financial assistance from FRPP. NRCS will use the National, as well as State criteria, which may include a LESA system or other comprehensive system, to evaluate the land and rank the parcels.

NRCS will only consider enrolling eligible land in the program that is of sufficient size and has boundaries that allow for efficient management of the area. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in FRPP that is owned in fee title by an agency of the United States, is publicly-owned land, or land that is already subject to an easement or deed restriction that limits agricultural viability.

NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FRPP would not be effective because of onsite or offsite conditions. For example, as it relates to on-site conditions, a proposal may nominate a parcel that contains hazardous material, or it may nominate a parcel that contains or may allow over two percent impervious surface coverage on the land under easement. The presence of hazardous waste or the extensive impervious surface coverage will likely cause NRCS to determine that the use of FRPP funds is not appropriate. As it relates to offsite conditions, NRCS may avoid acquiring land that is surrounded by a developed area or slated to be zoned for development by a local government.

NRCS will place a priority on acquiring easements that provide permanent protection from conversion to nonagricultural use. NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements. NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure. NRCS may place a higher priority on lands and locations that correlate with the efforts of Federal, State, Tribal, local, or nongovernmental organizations' efforts that have complementary farmland protection objectives (*e.g.*, open space or watershed and wildlife habitat protection). NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing

government or private conservation projects.

Cooperative Agreements

The CCC, through NRCS, enters into a cooperative agreement with a selected eligible entity to document participation in FRPP. The cooperative agreement will address, among other subjects—

(1) The easement type, terms, and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role and responsibilities of NRCS and the cooperating entity;

(4) The responsibilities of the easement manager on lands acquired with FRPP assistance; and

(5) Other requirements deemed necessary by the CCC, acting through NRCS, to protect the interests of the United States. The cooperative agreement will also include an attachment listing the pending offers accepted in FRPP, landowners' names, addresses, location map(s), and other relevant information. Interested entities should contact their State Conservationist for a copy of a draft cooperative agreement before submitting an application.

Signed in Washington, DC, on March 11, 2004.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

NRCS State Conservationists

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[FR Doc. 04–6109 Filed 3–16–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Region; Authorization of Livestock Graving Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, New Mexico

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare a final environmental impact statement for the authorization of livestock graving on the Sacramento Grazing Allotment.

SUMMARY: In a previous **Federal Register** announcement (December 8, 2003, Vol 68, No. 235, page 68325) the Forest service provided notice it would prepare a final environmental impact statement on a proposal to authorize livestock graving activities on the Sacramento Grazing Allotment by January 2004. The project area encompasses approximately 115,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing allotment comprises approximately 25% of the ranger district. The project has generated controversy on three main points; effects to threatened and endangered animal and plan specifies, concern for degraded riparian areas, and forage competition between wildlife and livestock. This notice is to advise interested parties that a final environmental impact statement (FEIS) will be available for public review in March 2004.

Responsible Official: The District Ranger will decide whether or not to authorize domestic livestock grazing on the Sacramento Allotment which will include appropriate forest plan standards and guidelines in part 3 of the existing grazing permit. If grazing is authorized, the District Ranger will decide on the permitted number of animals and season of use, range facilities to be constructed, allowable utilization standards, required monitoring, and mitigation measures (best management practices, BMPs).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Rick Newmon or Mark Cadwallader at (505) 682–2551.

Dated: February 25, 2004.

Jose M. Martinez,

Forest Supervisor, Lincoln National Forest.

[FR Doc. 04–5974 Filed 3–16–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2004

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of funds for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction and acquisition and rehabilitation of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA). A

"Notice of Timeframe for Section 514 Farm Labor Housing Loan and Section 516 Farm Labor Housing Grant for Fiscal Year 2004" was published in the **Federal Register** on February 6, 2004 (69 FR 5818). This was done soon after passage of a final appropriations act to allow sufficient time for applicants to complete an application and for the Agency to select and process selected applications within the current fiscal year. In the notice dated February 6, 2004, the Agency announced a deadline of May 6, 2004, 5 p.m., local time for each Rural Development State Office, for submitting applications for sections 514/516 Farm Labor Housing Loans and Grants and section 521 RA funds. Detailed information regarding the application and selection process, as well as a listing of the Rural Development State Offices, can be found in the February 6, 2004, notice.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Doug MacDowell, Senior Loan Specialist, of the Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–1627 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The Farm Labor Housing program is authorized by the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance (RA)) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, public agencies (such as local housing authorities) and with section 514 loans to nonprofit limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

Because RHS has the ability to adjust loan and grant levels, final loan and grant levels will fluctuate. The estimated funds available for fiscal year (FY) 2004 for off-farm housing are:

Section 514 loans—$35,774,000
Section 516 grants—$13,400,759

Applications will be selected based on a national competition, as outlined in the February 6, 2004, notice.

II. Funding Limits

A. Individual requests may not exceed $3 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds unless an exception is granted from the Administrator.

C. Rental Assistance will be held in the National Office for use with section 514 loans and section 516 grants and will be awarded based on each project's financial structure and need.

Dated: March 9, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–5963 Filed 3–16–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for Fiscal Year 2004

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of new construction loan funds for the section 515 Rural Rental Housing (RRH) program for Fiscal Year (FY) 2004. A "Notice of Timeframe to Submit Applications for the Section 515 Rural Rental Housing Program for Fiscal Year 2004" was published in the **Federal Register** on February 6, 2004 (69 FR 5821). This was done soon after passage of a final appropriations act to allow sufficient time for applicants to complete an application and for the Agency to select and process selected applications within the current fiscal year. In the notice dated February 6, 2004, the Agency announced a deadline of April 6, 2004, 5 p.m. local time for each Rural Development State Office, for submitting applications for section 515 new construction loan funds and section 521 Rental Assistance (RA) funds. Detailed information regarding the application and selection process, as well as a listing of the Rural Development State Offices, can be found in the February 6, 2004, notice.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Barbara Chism, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 690–1436 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental Assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and may be requested with applications for such facilities.

B. Distribution Methodology

The total amount available for FY 2004 for section 515 is $115,857,375, of which $30,057,375 is available for new construction as follows:

Section 515 new construction funds—$7,837,343
Set-aside for nonprofits—$10,427,163
Set-aside for Underserved Counties and Colonias—$5,792,869
Set-aside for EZ, EC, and REAP Zones—$5,000,000
State Rental Assistance (RA) Designated reserve—$ 1,000,000

C. Set-asides and State RA Reserve

1. *Nonprofit set-aside.* An amount of $10,427,163 has been set aside for nonprofit applicants. Details on this set-

aside are provided in the notice published on February 6, 2004 (69 FR 5821).

2. *Underserved counties and colonias set-aside.* An amount of $5,792,868 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

3. *EZ, EC, and REAP set-aside.* An amount of $5,000,000 has been set aside to develop units in EZ, EC, or REAP communities. If requests for this set-aside exceed available funds, selection will be made by point score.

4. *State RA Reserve.* $1,000,000 is available nationwide in a reserve for States with viable State Rental Assistance (RA) programs. In order to participate, States are to submit specific written information about the State RA program, *i.e.*, a memorandum of understanding, documentation from the provider, etc., to the National Office.

Dated: March 9, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–5962 Filed 3–16–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 533 Housing Preservation Grants for Fiscal Year 2004

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of funds for section 533 Housing Preservation Grant (HPG) Program. A "Notice of Timeframe for Section 533 Housing Preservation Grants for Fiscal Year 2004" was published in the **Federal Register** on February 6, 2004 (69 FR 5824). This was done shortly after passage of a final appropriations act to allow sufficient time for applicants to complete an application and for the Agency to select and process selected applications within the current fiscal year. Detailed information regarding the application and selection process, as well as a listing of the Rural Development State Offices, can be found in the February 6, 2004, Notice. Also, in the Notice dated February 6, 2004, the Agency announced a deadline of May 6, 2004, 5 p.m., local time for each Rural Development State Office, for submitting applications for the Section 533 Housing Preservation Grant Program.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Tammy Daniels, Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–0021 (voice) (This is not a toll free number.) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.433, Rural Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are referred to 7 CFR 1944.674 and 1944.676(f), (g), and (h) for specific guidance on these requirements relative to the HPG program.

Discussion of Notice

Authority and Distribution Methodology

A. Authority

The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners to repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons.

B. Distribution Methodology

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the State office to determine the allocation and the State maximum grant level, if any. For FY 2004, $8,882,000 is available for the Housing Preservation Grant Program. A set aside of $894,690 has been established for grants located in Empowerment Zones, Enterprise Communities, and REAP Zones, $882,200 has been set aside for the Administrator's reserve and $7,099,110 has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds." Decisions on funding will be based on preapplications.

Dated: March 9, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–5961 Filed 3–16–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year (FY) 2004

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of funds for the section 538 Guaranteed Rural Rental Housing Program for FY 2004. Congress appropriated $99.410 million to the section 538 GRRHP for FY 2004. All applicants that submitted responses to the section 538 GRRHP notice published in the **Federal Register** on February 6, 2004 (69 FR 5826) will be considered for FY 2004 funding. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation as described in the February 6, 2004, **Federal Register** Notice. The Agency will continue to review applications submitted hereafter from eligible applicants until all funds are expended.

The Agency will issue a notice to inform the public when funds have been exhausted for FY 2004.

Dated: March 9, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–5960 Filed 3–16–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the

Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 17, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Acting Director, Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implanting provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to: Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, Room 5166-South, STOP 1522, Washington, DC 20250–1522. FAX: (202) 720–4120. E-mail: *dawn.wolfgang@usda.gov.*

Title: 7 CFR 1777, Section 306C Water and Waste Disposal (WWD) Loans and Grants.

OMB Control Number: 0572–0109.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) authorizes the Rural Utilities Service to make loans and grants to low-income rural communities whose residents face significant health risks. These communities do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities, as determined by the Secretary. The Section 306C WWD Loans and Grants program is administered through 7 CFR part 1777.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Not for profits; State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812. FAX: (202) 720–4120. E-mail: *dawn.wolfgang@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 11, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–5992 Filed 3–16–04; 8:45 am]

BILLING CODE 3410–15–P

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 1 p.m., Thursday, March 18, 2004.

PLACE: The Cosmos Club, 2121 Massachusetts Avenue, Washington, DC 20008.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Review and approval of the minutes of the March 13th, 2003 Board of Trustees meeting which was accomplished by correspondence.
2. Report on financial status of the Foundation fund.
   A. Review of investment policy and current portfolio.
3. Report on results of Scholarship Review Panel.
   A. Discussion and consideration of scholarship candidates.
   B. Selection of Goldwater Scholars.
4. Other Business brought before the Board of Trustees.

FOR FURTHER INFORMATION CONTACT: Gerald J. Smith, President, Telephone: (703) 756–6012.

Gerald J. Smith,

President.

[FR Doc. 04–6077 Filed 3–15–04; 8:45 am]

BILLING CODE 4738–91–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, title 5, United States Code, Appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to the reengineered 2010 decennial census of population and housing, including the American Community Survey, the short-form-only 2010 census, and other related decennial programs. Last minute changes to the schedule are possible, which could prevent advance notification.

DATES: April 29–30, 2004. On April 29, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:15 p.m. On April 30, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233. telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census and data users' needs during its deliberations. The Committee provides an outside-user perspective about how research-and-design plans for the 2010 reengineered decennial census, the American Community Survey, and related decennial programs will realize

those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010 reengineered decennial census, the American Community Survey, and related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: March 11, 2004.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 04–6003 Filed 3–16–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta from Italy and Turkey: Extension of Preliminary Results of 2002/2003 Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 17, 2004.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey at (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

Time Limits

Statutory 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 August 22, 2003, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 2002 to June 30, 2003 (68 FR 50750). The preliminary results are currently due no later than April 1, 2004.

Extension of Preliminary Results of Reviews

As a consequence of the number of respondents in these reviews, the Department has not had an opportunity to consider sales-below-cost allegations against eight of the respondents or schedule verifications. We therefore determine that it is not practicable to complete the preliminary results of these reviews within the original time limits, and we are extending the time limits for completion of the preliminary results until no later than July 29, 2004. *See* Decision Memorandum from Melissa Skinner to Holly A. Kuga, dated March 10, 2004, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 10, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 04–6018 Filed 3–16–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Notice of Extension of Time Limit for the Preliminary Results of New Shipper Reviews: Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the new shipper reviews on Shanghai R&R Imp./Exp. Co., Ltd., Changshan Import/Export Co., Ltd., and Shandong Huihe Trade Co., Ltd. under the antidumping duty order on petroleum wax candles from the People's Republic of China until no later than July 26, 2004. The period of review for these new shipper reviews is August 1, 2002, through July 31, 2003. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: March 17, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Jacky Arrowsmith, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3782 or (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 351.214(i)(1) of the regulations requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 351.214(i)(2) of the regulations allows the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the new shipper review was initiated.

Background

On August 14, 2003, the Department received timely requests from Shanghai R&R Imp./Exp. Co., Ltd. and Changshan Import/Export Co., Ltd., and on August 28, 2003, the Department received a timely request from Shandong Huihe Trade Co., Ltd. pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (the Act) and in accordance with 19 CFR

351.214(c), for new shipper reviews under the antidumping duty order on petroleum wax candles from the PRC. This order has an August anniversary month. On September 30, 2003, the Department initiated these three new shipper reviews. *See Petroleum Wax Candles: Initiation of Antidumping Duty New Shipper Reviews,* 68 FR 57876 (October 7, 2003).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that these cases are extraordinarily complicated, and the preliminary results of these new shipper reviews cannot be completed within the statutory time limit of 180 days. The Department finds that these new shipper reviews are extraordinarily complicated because there are a number of issues that must be addressed. For example, the Department is in the process of issuing supplemental questionnaires requesting additional information concerning affiliation and the *bona fides* of the sales. Given the issues in this case, the Department may find it necessary to request even more information in these new shipper reviews. Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of preliminary results to three hundred days. The preliminary results will now be due no later than July 26, 2004.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: March 11, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–6016 Filed 3–16–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Notice of 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 administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results in the current administrative review of the countervailing duty order on certain pasta from Italy. The period of review is January 1, 2002 through December 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: March 17, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2003, the Department of Commerce ("the Department") published a notice of initiation of administrative review of the countervailing duty order on certain pasta from Italy, covering the period January 1, 2002 through December 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 50750 (August 22, 2003). The preliminary results for this review are currently due no later than April 1, 2004.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act") requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Several of the respondents in this proceeding have outstanding supplemental questionnaire responses. Additionally, one respondent, Pastificio Carmine Russo S.p.A., was not issued the original questionnaire until more than a month after the other respondents because it was still participating in a concurrent new shipper review of this order (a review which has since been terminated). Because the Department requires time to review and analyze these responses once they are received and to issue supplemental questionnaires if necessary, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, April 1, 2004). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than July 30, 2004, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 11, 2004.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 04–6020 Filed 3–16–04; 8:45 am

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Tuesday, April 6, 1 p.m. to 6 p.m.; Wednesday, April 7, 8:45 a.m. to 3 p.m.

ADDRESSES: On April 6th, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Conference Room #1W611, Silver Spring, Maryland 20910. On April 7th, Sea Grant Association Office, 1201 New York Avenue, Northwest, 4th Floor Conference Room, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler, Designated Federal Official, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11837, Silver Spring, Maryland 20910, (301)713–2445.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Tuesday, April 6, 2004

1 p.m.–6 p.m.
1 p.m.—Welcoming and Opening Remarks
1:15 p.m.—New Officers Election
1:30 p.m.—Executive Committee Report
1:45 p.m.—National Sea Grant Office (NSGO) Director Report
2:15 p.m.—Panel Strategy Discussion
3:30 p.m.—Break
3:45 p.m.—Communications Review Report
5:30 p.m.—Old Panel Business
6 p.m.—Adjourn

Wednesday, April 7, 2004

8:45 a.m.–3 p.m.
8:45 a.m.—New Panel Business
9 a.m.—NOAA Research Assistant Administrator Update
9:45 a.m.—NOAA Ocean Service Deputy Administrator Update
10:15 a.m.—Break
10:30 a.m.—Congressional Reports
11:30 a.m.—Sea Grant Association Report
12 noon—Lunch
1 p.m.—NSGO Update
1:30 p.m.—Consortium for Oceanographic Research and Education (CORE) Report
2 p.m.—NSGO Update (continued)
2:30 p.m.—Wrap-up
3 p.m.—Adjourn

This meeting will be open to the public.

Dated: March 12, 2004.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 04–6023 Filed 3–16–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031204C]

Marine Mammals; File No. 350–1739

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Brendan Kelly, Ph.D., University of Alaska Southeast, 11120 Glacier Highway, Juneau, Alaska 99801, has applied in due form for a permit to take ringed seals (*Phoca hispida*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 16, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 350–1739.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to study site fidelity, behavior, and the ecological significance of home ranges of ringed seals in the Prudhoe Bay, Alaska region of the Beaufort Sea. This will be accomplished through capturing, genetics sampling, and tagging with flipper and VHF tags up to 50 ringed seals per year. Of these, up to 15 seals would have satellite tags attached, 10 would have sonic transmitters attached, and 10 would have video cameras attached. The applicant requests a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 12, 2004.

Amy C. Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–6050 Filed 3–16–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Legal Processes.

Form Number(s): None.

Agency Approval Number: 0651–0046.

Type of Request: Extension of a currently approved collection.

Burden: 29 hours annually.

Number of Respondents: 157 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 1 hour to gather the necessary information, prepare the appropriate documents, and submit the required information to the USPTO.

Needs and Uses: This collection covers information requirements related to civil actions and claims involving current or former employees of the United States Patent and Trademark Office (USPTO). The rules for these

legal processes may be found under 37 CFR part 104, which outlines procedures for service of process, demands for employee testimony and production of documents, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. 2672). The public uses this collection to serve a summons or complaint on the USPTO, demand employee testimony or documents related to a legal proceeding, or file a tort claim against the USPTO under the Federal Tort Claims Act. This collection is also necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification. No forms are provided by the USPTO for submitting the information in this collection.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and State, local or tribal governments.

Frequency: On occasion.

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 Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before April 16, 2004, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: March 10, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–5938 Filed 3–16–04; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, April 2, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–6124 Filed 3–15–04; 1:53 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, April 9, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–6125 Filed 3–15–04; 1:52 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, April 16, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–6126 Filed 3–15–04; 1:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, April 23, 2004.

PLACE: 1155 21st St., N.W., Washington, DC Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–6127 Filed 3–15–04; 1:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, April 30, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–6128 Filed 3–15–04; 1:52 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: April 26–27, 2004.

ADDRESSES: The University of Virginia, Colonnade Club, Pavilion VII, West Lawn, Charlottesville, VA 22903.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*.

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: March 11, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5975 Filed 3–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: May 20, 2004.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*.

SUPPLEMENTARY INFORMATION: The Board meeting is open to the Public.

Dated: March 11, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 04–5976 Filed 3–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Gated Auscultatory Device

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/495,126 entitled "Gated Auscultatory Device," filed August 15, 2003. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This new device is an electronic circuit that interfaces with electronic stethoscopes or other types of heart sound recording equipment and allows the health care provider (1) to listen to heart sounds during all periods of the cardiac cycle as he/she would with a regular stethoscope (normal use) and (2) to selectively listen to specific parts of the cardiac cycle. This new device allows health care providers or trainees to listen to either systole or diastole or shorter intervals within these periods to facilitate identification of normal or abnormal heart sounds.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–5972 Filed 3–16–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Skin Temperature Feedback for Microclimate Cooling

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in the U.S. Provisional Patent Application Docket No. RIEM 03–28X entitle "Skin Temperature Feedback for Microclimate Cooling." The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates in general to methods for removing heat from humans and in particular to methods for removing heat from humans using liquid cooling garments.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–5971 Filed 3–16–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a Computer Matching Agreement.

SUMMARY: On March 10, 2004, the Department of Defense published 2 Privacy Act notices on Privacy Act of 1974; Computer Matching Program. This notice is to correct the effective date for the notice published on page 11391 (agreement between DoD and VA) and the notice published on page 11392 (agreement between DoD and OPM). The effective date for both documents is hereby corrected to read "April 9, 2004." All other information is unchanged.

Dated: Match 11, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5977 Filed 3–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement/ Environmental Impact Report for the Yuba River Basin Project, Yuba County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Army Corps of Engineers (Corps), Sacramento District, is preparing a Draft Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS/EIR) to evaluate modifications to the previously authorized plan to reduce flood damages in the lower Yuba River Basin, part of the Feather River Basin, and the city of Marysville in Yuba County, California. The modifications are needed to resolve previously unknown levee foundation problems in portions of the authorized project, thereby ensuring the level of flood protection previously planned. The basic study authority for the Yuba River Basin study was provided under the Flood Control Act of 1962.

ADDRESSES: Send written comments and suggestions concerning this study to Ms. Kim Stevens, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J Street, Sacramento, California 95814. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Stevens, E-mail at *Kim.L.Stevens@usace.army.mil,* telephone (916) 557–7332, or fax (916) 557–7856.

SUPPLEMENTARY INFORMATION:

1. Public Involvement: The Yuba River Basin project will be coordinated between Federal, State, and local governments; local stakeholders; special interest groups; and any other interested individuals and organizations. The Corps will announce availability of the draft supplemental document in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments, which will be addressed in the Final SEIS/EIR. A 45-day public review period will be provided for individuals and agencies to review and comment on the SEIS/EIR. All interested parties should respond to this notice and provide a current address if they wish to be notified of the SEIS/EIR circulation.

2. Project Information: The Yuba River Basin is located in western Yuba County about 50 miles north of Sacramento. The project focuses on approximately 21 miles of levees along the Yuba and Feather Rivers in the vicinity of Marysville, California. The Yuba River Basin project area is divided into three reaches: reach 1—Yuba River/ Feather River; reach 2—Feather River; and reach 3—Marysville ring levee.

The Feasibility Report and Final EIS/ EIR were completed in April 1998. Congress authorized the project in the Water Resources Development Act of 1999, and the Record of Decision was signed in June 2000. The authorized project included specific levee modifications on 6.1 miles of the left bank of the Yuba River upstream of the confluence with the Feather River; 10 miles of levee on the left bank of the Feather River downstream of the confluence of the Yuba River; and 5 miles of the Marysville ring levee. The levee modification work as authorized was intended to bring the level of protection for these levees up to about a 200-year level of protection.

Since the final Yuba River Basin project was authorized, geotechnical investigations and new hydrology have identified previously unknown levee foundation problems in portions of the specifically authorized project. Because flooding is still a significant problem for the affected communities along the Yuba and Feather Rivers, the State of California Reclamation Board has requested that the Corps initiate a reevaluation of the project.

3. Proposed Action: The proposed action would be limited to a reevaluation of the elements of the authorized project and the design changes required to provide the level of protection previously planned.

4. Alternatives: Potential alternatives to reduce flood damages include: (1) No Action, (2) Authorized Project, and (3) Proposed Project. Under the Authorized Project, no modifications would be made to the features of alternative 3 as described in the 1998 Feasibility Report and Final EIS/EIR. Under the Proposed Project, several modifications would be made to the Authorized Project, including deeper slurry walls, deleting some berms, installing some new slurry walls, increasing some berm widths, adding impervious fill and drain blankets to the levees, relocating slurry walls from the levee toe to crown, and reshaping some levees.

Dated: February 24, 2004.

Michael J. Conrad, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 04–5970 Filed 3–16–04; 8:45 am]

BILLING CODE 3710–E7–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the DOE Clothes Washer Test Procedure to Fisher & Paykel (Case No. CW–012)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of decision and order.

SUMMARY: Notice is given of the Decision and Order granting a Waiver to Fisher & Paykel Appliances Limited (Fisher & Paykel) from the existing Department of Energy (DOE or Department) clothes washer test procedure for its IW model clothes washer which has an adaptive control system.

FOR FURTHER INFORMATION CONTACT: Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8714, email: *barbara.twigg@ee.doe.gov;* or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, email: *Francine.Pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27, notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Fisher & Paykel has been granted a Waiver from the existing Department of Energy clothes washer test procedure for the company's clothes washer model IW which has an adaptive control system. The Waiver allows Fisher & Paykel to use a modified test procedure for rating its IW clothes washer model. Fisher & Paykel shall be allowed to test its IW clothes washer using the default cycle, the midpoint of the five settings controlled by the washer's "How Dirty" button. That cycle is the closest equivalent to the energy test cycle for washing cotton or linen clothes used in 10 CFR part 430, subpart B, appendix J1.

Issued in Washington, DC, on March 12, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

Department of Energy

Office of Energy Efficiency and Renewable Energy

In the Matter of: Fisher & Paykel. (Case No. CW–012)

Background: Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S. C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. Among its provisions, it requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including clothes washers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. The test procedures for clothes washers are set forth in 10 CFR part 430, subpart B, appendix J1.

The Department's regulations in 10 CFR 430.27 set forth a process by which an interested person may seek a waiver and an interim waiver from the test procedure requirements for a covered consumer product. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy (now known as the Assistant Secretary for Energy Efficiency and Renewable Energy) to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Waivers generally remain in effect until a revised test procedure becomes effective, thereby resolving the problem that is the subject of the waiver. 10 CFR 430.27(l)

An Interim Waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27 (g). An Interim Waiver remains in effect for a period of 180 days from the date of issuance or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h)

In addition to the waiver process outlined in 10 CFR 430.27, the clothes washer test procedure published August 27, 1997, specifically requires manufacturers of clothes washers with an adaptive control system, other than an adaptive water fill control system, to obtain a waiver to establish an acceptable test procedure for each such clothes washer. 62 FR 45501, 45514. Neither Appendix J (in effect through December 31, 2003) nor Appendix J1 (effective January 1, 2004) of that test procedure provides a means for determining the energy consumption of a clothes washer with an adaptive control system.

On March 26, 2003, Fisher & Paykel filed an Application for Interim Waiver and a Petition for Waiver regarding its clothes washer model IW which has an adaptive control system that affects more than the water fill and cannot be tested accurately using the existing test procedure. The Department granted the Interim Waiver on October 30, 2003, and published its decision in the **Federal Register** on November 7, 2003. 68 FR 63075. In the same **Federal Register** notice, the Department published Fisher & Paykel's Petition for Waiver, and solicited comments, data, and information respecting the petition.

Fisher & Paykel requested the waiver because its clothes washer model IW does not have the conventional "normal" cycle used by the DOE clothes washer test procedure set forth in 10 CFR, Part 430, Subpart B, Appendix J, or the energy test cycle for washing cotton or linen clothes used in Appendix J1. Instead, Fisher & Paykel proposed an alternate test cycle that would be equivalent to the normal cycle and the energy test cycle, the default cycle that begins when a user pushes the power button to start the model IW clothes washer. This default cycle is the midpoint of the five settings controlled by the washer's "How Dirty" button, setting three. This waiver only confirms which test cycle to use. Fisher & Paykel will then follow the remaining steps of the existing test procedure to determine the energy consumption of the clothes washer.

Comments and FTC Consultation: The Department did not receive any comments on the Petition for Waiver. The Department, as required, consulted with the Federal Trade Commission (FTC) concerning Fisher & Paykel's petition. The FTC did not have any objections to the issuance of the waiver to Fisher & Paykel.

Conclusion: After careful consideration of all the material that Fisher & Paykel submitted and consultation with the FTC, it is ordered that:

(1) The "Petition for Waiver" filed by Fisher & Paykel Appliances Limited (Case No. CW–012) is hereby granted as set forth in paragraph (2) below.

(2) Fisher & Paykel shall be permitted to test its adaptive control clothes washer model IW on the basis of the test procedure specified in 10 CFR part 430 subpart B, appendix J1, with one modification to section 1.7 which specifies the Energy test cycle. Because model IW does not have the specified Energy test cycle, described in section 1.7 as the cycle recommended by the manufacturer for washing cotton or linen clothes, Fisher & Paykel shall test its clothes washer model IW using the default cycle which begins when a consumer presses the power/start button and does not manually select an alternative "How Dirty" setting. This default cycle is the midpoint of the five settings controlled by the washer's "How Dirty" button, setting three.

With the exception of the modification set forth above, Fisher & Paykel shall comply in all respects with the test procedure requirements specified in 10 CFR part 430 subpart B, appendix J1.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes a final test procedure appropriate to adaptive control clothes washers.

(4) This Waiver applies only to Fisher & Paykel's testing of its clothes washer model IW.

(5) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

Effective March 12, 2004, this Waiver supersedes the Interim Waiver granted Fisher & Paykel on November 7, 2003. 68 FR 63075 (Case No. CW–012).

Issued in Washington, DC, on March 12, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 04–5996 Filed 3–16–04; 8:45 am

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–13; Operating/Runtime Systems for Extreme Scale Scientific Computation

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the area of operating and runtime systems for extreme scale scientific computation. Partnerships among universities, National Laboratories, and industry are encouraged. The full text of Program Notice 04–13, is available via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.*

DATES: Preapplications referencing Program Notice 04–13, should be received by March 26, 2004.

Formal applications in response to this notice should be received by 4:30 p.m., Eastern Time, May 4, 2004, to be accepted for merit review and funding in Fiscal Year 2004.

ADDRESSES: Preapplications referencing Program Notice 04–13, should be sent via e-mail using the following address: *osruntime.preproposal@science.doe.gov* with a copy to *fjohnson@er.doe.gov.*

Formal applications referencing Program Notice 04–13, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.science.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Frederick Johnson, U.S. Department of Energy, Office of Science, SC–31/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–3601, fax: (301) 903–7774, E-mail: *fjohnson@er.doe.gov.*

SUPPLEMENTARY INFORMATION:

The Forum to Address Scalable Technologies for Runtime and Operating Systems (FAST–OS) has conducted a series of workshops focused on issues associated with operating and runtime systems for very large computing systems used for high end scientific modeling and simulation. This workshop series was sponsored by the Office of Advanced Scientific Computing Research of the DOE Office of Science. The most recent workshop was held in July 2003, and the final report, together with other results of the workshop series may be found at: *http://www.cs.unm.edu/~fastos.* An interagency workshop, the Workshop on the Roadmap for the Revitalization of High-End Computing was held in June of 2003. Section 5 of the workshop report addresses runtime and operating systems. The charter of the researchers that produced this section was to establish baseline capabilities required in the operating systems for projected High-End Computing systems scaled to the end of this decade and determine the critical advances that must be undertaken to meet these goals. The report is available at: *http://www.itrd.gov/hecrtf-outreach/20040112_cra_hecrtf_report.pdf.*

Background Operating and Runtime Systems (OS/R)

Operating and runtime systems provide mechanisms to manage system hardware and software resources for the efficient execution of large scale scientific applications. They are essential to the success of both large scale systems and complex applications. By the end of this decade petascale computers with thousands of times more computational power than any in current use will be vital tools for expanding the frontiers of science and for addressing vital national priorities. These systems will have tens to hundreds of thousands of processors, an unprecedented level of complexity, and will require significant new levels of scalability and fault management. The overwhelming size and complexity of such systems poses deep technical challenges that must be overcome to fully exploit their potential for scientific discovery. Applications require multiple services from OS/R layers, including: resource management and scheduling, fault-management (detection, prediction, recovery, and reconfiguration), configuration management, and file systems access and management. Current and future large-scale parallel systems require that such services be implemented in a fast and scalable manner so that the OS/R does not become a performance bottleneck. The current trend in large-scale scientific systems is to leverage operating systems developed for other areas of computing—operating systems that were not specifically designed for large-scale, parallel computing platforms. Unix, Linux and other Unix derivatives are the most popular OS's in use for high end scientific computing, and these all reflect a technological heritage nearly 30 years old with no fundamental mechanisms to support parallel systems.

Without reliable, robust operating systems and runtime environments the computational science research community will be unable to easily and completely employ future generations of extreme systems for scientific discovery. The application research community will miss important scientific opportunities in areas such as computational fusion, nanotechnology, and computational biology that are on the threshold of rapid advance through the innovative use of extreme-scale scientific computation. New investments in both basic and applied research are required to maintain the creative pace established by terascale computation for scientific discovery.

Background: High-End Computing Revitalization Task Force (HECRTF) and Academic Research

During the past summer, several federal agencies with interests in high performance computing participated in the HECRTF and developed a plan for future government investments in high-end computing. As part of this plan a renewed emphasis has been placed on coordination of federally-funded

research in this area. As a major contributor to the HECRTF activity, the Office of Science is a leading participant in the coordination of research investments. The research activities described in this Notice have been coordinated with participating HECRTF research agencies, and this coordination will continue throughout the lifetime of the research activities. Additional information on the HECRTF may be found at: *http://www.itrd.gov/hecrtf-outreach/index.html.*

The Opportunity and the Challenge

By the end of this decade extreme scale systems will be available that are based on a variety of challenging architectures ranging from distributed memory clusters of unprecedented scale to the systems resulting from the DARPA High Productivity Computing Systems program that are likely to be based upon innovative architectural concepts, such as PIMs, FPGAs, and complex memory hierarchies that have no analog in today's terascale systems. Systems with tens to hundreds of thousands of processors and new architectural concepts will differ greatly in scale and complexity from today's systems, and this difference will place new and very difficult challenges on OS/R design and implementation.

There are many fundamental questions in operating system and runtime research that must be explored in order to enable scientific application developers and users to achieve maximum effectiveness and efficiency on this new generation of systems, including (but not limited to):

- *Ease of use.* Application users need a coherent, cohesive picture of these huge systems—they need to be able to look at jobs running on 100,000 processors in a meaningful way.
- *Support for architectural innovation.* Current operating systems often limit hardware innovation through the use of a hardware abstraction layer that cannot support innovative hardware paradigms.
- *Dynamic support for multiple management policies.* Current operating systems limit application development through the use of fixed resource management policies rather than dynamic policies responsive to changing application needs.
- *Leveraging mainstream technology.* Strategies are needed that enable OS/R systems developed to meet specialized needs of the HEC community to leverage the talents and technology development of the mainstream open source OS community.
- *Support for fault tolerance.* Extreme scale systems will require innovative new approaches to OS/R support for fault detection and management. Interrupts are likely to be the norm rather than the exception during any lengthy application run.
- *Rethinking the OS in terms of scalability and usability.* We need to determine how HPC requirements differ from those of general computing. HPC requirement differences will surely continue to dictate innovation in both OS structure and exported interfaces.
- *Scalability of operating systems.* What should an operating system for a hundred thousand processor machine look like? Is a hierarchical approach best? How can the operating system make a fundamentally unreliable machine, in which some components are always broken, continue to effectively function?
- *Self awareness and optimization.* How can an extreme scale system (hardware and software) monitor and adapt to meet changing requirements of long running applications?

Technical challenges such as these represent an opportunity for basic and applied research to provide new insights into mechanisms for harnessing the potential of next generation extreme-scale systems.

Investment Plan of the Office of Science

The Secretary of Energy recently released a twenty year vision and plan for research facilities in the Office of Science in the document, Facilities for the Future of Science: A Twenty-Year Outlook. A copy of the plan may be found at: *http://www.sc.doe.gov/Sub/Facilities_for_future/20-Year-Outlook-screen.pdf.* The plan contains a prioritized list of new research facilities, and the number two priority is an UltraScale Scientific Computing Capability (USSCC), which will increase by at least a factor of 100 the computing capability available to support open scientific research and which will reduce from years to days the time required to simulate complex systems of interest to the Department. When fully realized, the computing capability of the USSCC will enable computation-based scientific advances that are unachievable by current large-scale computing systems. USSCC systems will place new and critical demands on operating systems and runtime environments to support complex applications and enable these systems to reach their full potential. The research supported by this notice is a critical step towards developing OS and runtime systems able to meet these needs.

Solicitation Emphasis

This notice is focused on research and development of operating and runtime systems which enable the effective management and use of extreme-scale systems (petascale and above) for scientific computation. The overall goal of this notice is to stimulate research and development related to operating and runtime systems for petascale systems in the 2010 timeframe. It is likely that these systems will include a combination of commodity and custom components, with different systems reflecting different degrees of customization. The research into runtime and operating systems must be driven from the needs of current and future applications. The primary focus is on supporting the needs of existing and anticipated SC and other DOE applications; however, the resulting systems should address issues related to the broader HEC code base. An ultimate and perhaps idealistic goal would be to develop a unified runtime and operating system that could fully support and exploit petascale and beyond systems and autonomously adapt for performance. upgrades, security, and fault tolerance. The activities supported by this notice may be a combination of basic and applied research, development, prototyping, testing and ultimately deployment.

Example Research Topics

Runtime and operating systems provide the glue that bind running applications to hardware. The research activities supported by this activity need to bridge the gap between new languages and/or programming models and next-generation hardware, including interactions with novel architectures. Consequently, there are a wide variety of research topics that are appropriate for this effort. A brief listing of candidate topics is provided below, but research in other relevant areas and combinations of areas is encouraged:

- *Virtualization.* A key aspect of OS/R systems is that they provide "virtual devices." Virtualization must balance ease of use by detail hiding vs achieving scalability and performance by exploiting details.
- *Adaptation.* Traditionally, runtime and operating systems have been designed to provide a fixed set of services and to provide a single implementation for each of these services. Future runtime and operating systems will need to provide different sets of services and/or different implementations of these services based on the needs of applications and/or characteristics of the underlying system.

• *Usage models.* Large machines have typically been used in batch mode. Other modes of operation, including interactive usage for computational steering will also need to be supported in the future.

• *Metrics.* Metrics, benchmarks, and test suites are needed to evaluate progress and guide design. Challenges include determining what to measure and how to generate understandable analyses. Benchmarks and test suites must accurately reflect the needs of applications.

• *Support for fault handling in OS and run-time.* Many jobs will encounter an interrupt in service during their execution. Research is needed to address all aspects of fault tolerance, including fault detection, anticipation, management and tolerance. Research in checkpointing systems is also needed.

• *Memory hierarchy management.* It is clear that the memory hierarchy is going to become deeper and/or more complex. Applications will need significantly improved support for managing memory.

• *Security.* Scalable security mechanisms are needed to support new authorization, authentication and access control requirements.

• *Common API.* Research in common runtime/OS API's is required to greatly enhance application portability and ease the introduction of new systems. The current POSIX standard has been beneficial to the general community, but it is lacking in the support of high-end systems.

• *Scalable, single-system image.* In principle, the ability to treat a very large system as a single system has many advantages and provides significant simplifications from an end user perspective. However, it is not clear what the technical trade-offs are for single system image technology at extreme scale, and additional research is needed.

• *Parallel and Network I/O.* Some classes of future HEC systems will have specialized interconnect fabrics to provide communications and data movement among processors or groups of processors or storage devices. Operating systems and/or runtime systems will be required to share, schedule, and control these resources.

• *OS Support for efficient interprocessor communication.* Standard OS's do not recognize the concept of a parallel job. Support is needed for global operations which minimize local variations and avoid degradation of performance for the whole job.

• *Light-weight low-level communication paradigms.* Research in light-weight and low level communication mechanisms is needed to improve scalability and performance.

Community Building

An important goal of this notice is to foster the development of an active research community in operating systems and runtime environments for high end systems. In order to meet this goal the following are mandatory requirements for awardees:

• All developed code must be released under the most permissive open source license possible. This is to enable other researchers and vendors to build upon research successes with a minimum of intellectual property issues.

• Each research team should plan to send representatives to annual or semi-annual PI meetings and give presentations on the status and promise of their research. Meeting attendees will include invited participates from other relevant research communities, including the Linux community. Objectives of these meetings are to foster a sense of community and serve as a venue for exchange of information. These meetings will also serve as a means to exchange information on complementary programs including the DARPA HPCS program, NNSA ASC program and SciDAC.

Frameworks and Novel Approaches

Operating system and runtime research often requires a large overhead of supporting infrastructure code, such as device drivers, that must be developed before undertaking the core ideas of the research. This may be alleviated if an existing OS framework, such as Linux, K42, or Plan9, is chosen as a base of the research. Applications to this notice may choose to use an existing framework for their OS/Runtime research or they may propose to develop a new framework as part of the research activity. Any proposed new framework must be described and discussed at the community PI meetings. Smaller novel approaches are also encouraged.

Testbed Strategy

Testbeds are essential to the future of the research sponsored by this notice, and the development of an effective testbed strategy is an important overall objective. Each proposal should contain a section which discusses the characteristics of the test environments necessary for the research and identify the time frames in which specific testbed support will be required.

Operating system and runtime applications to the ASCR base programs through the Continuing Solicitation for all Office of Science Programs Notice 04–01, found at: *http://www.science.doe.gov/production/grants/grants.html,* which may have the potential for contributing to extreme scale systems, should so indicate.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Program Funding

It is anticipated that up to $3 million annually will be available for multiple awards for this program. Initial awards will be made late in Fiscal Year 2004 or early Fiscal Year 2005, in the categories described above, and applications may request project support for up to three years. All awards are contingent on the availability of funds and programmatic needs. Annual budgets for successful projects are expected to range from $500,000 to $1,500,000 per project although smaller projects of exceptional merit may be considered. Annual budgets may increase in the out-years but should remain within the overall annual maximum guidance. Any proposed effort that exceeds the annual maximum in the out-years should be separately identified for potential award increases if additional funds become available. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Preapplications

Preapplications are strongly encouraged but not required prior to submission of a full application. However, notification of a successful preapplication is not an indication that an award will be made in response to the formal application. The preapplication should identify on the cover sheet the institution(s), Principal Investigator name(s), address(es), telephone, and fax number(s) and E-mail address(es), and the title of the project. A brief (one-page) vitae should be provided for each Principal Investigator. The preapplication should

consist of a two to three page narrative describing the research project objectives, the approach to be taken, a description of any research partnerships, the duration, and an annual cost estimate.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay particular attention to:

(a) The potential of the proposed project to make a significant impact in operating systems and runtime research.

(b) The demonstrated capabilities of the applicants to perform basic research related to operating systems/runtime and transform these research results into software that can be widely deployed.

(c) The likelihood that the methodologies and software components that result from this effort will have a substantial impact on the operating system research and vendor community outside of the projects.

The evaluation under item 2, Appropriateness of the Proposed Method or Approach, will also consider the following elements related to Quality of Planning:

(a) Quality of the plan for effective coupling of operating system and runtime research, with application needs and transition to testbed environments.

(b) Quality and clarity of proposed work schedule and deliverables.

(c) Quality of the proposed approach to intellectual property management and open source licensing.

Note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. Reviewers will be selected to represent expertise in the technology areas proposed, applications groups that are potential users of the technology, and related programs in other Federal Agencies or parts of DOE, such as the Advanced Strategic Computing Initiative (ASCI) within DOE's National Nuclear Security Administration.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures including detailed procedures for submitting applications from multi-institution partnerships may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html*. The Project Description must be 20 pages or less, including tables and figures, but exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short vitae.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on March 10, 2004.

Martin Rubinstein,

Acting Director, Grants and Contracts Division, Office of Science.

[FR Doc. 04–5997 Filed 3–16–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AK–04–001; FRL–7637–6]

Adequacy Status of the Anchorage, Alaska Carbon Monoxide Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this action, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Anchorage, Alaska Serious Carbon Monoxide (CO) Maintenance Plan, submitted by the Governor on February 18, 2004, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Municipality of Anchorage, Alaska Department of Transportation & Public Facilities, and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets in this submitted maintenance plan for future transportation conformity determinations.

DATES: This finding is effective April 1, 2004.

FOR FURTHER INFORMATION CONTACT: The finding will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/adequacy.htm*. You may also contact Wayne Elson, U.S. EPA, Region 10 (OAQ–107), 1200 Sixth Ave, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to The Alaska Department of Environmental Conservation on March 5, 2004, stating that the motor vehicle emissions budgets in the Maintenance Plan for the Serious Carbon Monoxide (CO) Maintenance Area for Anchorage are adequate.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires transportation plans, programs, and projects to conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budget is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 8, 2004.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 04–6000 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0069; FRL–7349–2]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group Working Committee on Pesticide Operations and Management; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (WC/POM) will hold a 2–day meeting, beginning on April 5, 2004, and ending April 6, 2004. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, April 5, 2004, from 8:30 a.m. to 5 p.m., and Tuesday, April 6, 2004, from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at The Edgewater, 2411 Alaskan Way, Pier 67, Seattle, WA 98121. Telephone number: (206) 728–7000.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov*, or

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. All parties are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0069. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

II. Tentative Agenda

This unit provides a tentative agenda for the meeting.

1. Update on Minimum Age Issue paper and Survey of States.

2. Update on multiple restricted entry intervals.

3. Telone respirator/OSHA language, enforcement of the label requirements.

4. E-Labeling.

5. E-Commerce enforcement.

6. Worker Protection Standard forms workgroup.

7. 24C use for liability, indemnification statements.

8. 24C use for sites with section 3 registration.

9. Phosphide fumigant issues.

10. POM Working Committee Reports.

11. Reconciling label directions and waste requirements.

12. Metolachlor/S-metolachlor registration issues.

13. Endangered species decisions in 9th Circuit, implementation affects and precedents.

14. Endangered species program implementation status.

15. Fipronil on poultry.

16. Container/Containment Rule and implementation issues.

17. EPA Update/Briefing:

a. Office of Pesticide Programs update.

b. Office of Enforcement Compliance Assurance update.

18. POM Working Committee Workgroups issue papers/updates.

List of Subjects

Environmental protection.

Dated: March 5, 2004.

Jay S. Ellenberger,

Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 04–6005 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0062; FRL–7349–6]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on April 6, 2004. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on April 6, 2004, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 Fishbowl, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: James C. Lin, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9591; fax number: (703) 305–6309; e-mail address: *lin.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0062. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

II. Background

On a quarterly interval, the Exposure Modeling Workgroup meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Tentative Agenda

1. Welcome and introductions.

2. Old action items.

3. Brief updates.

- EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) model.
- Direct application of herbicides to water bodies.
- GW model.
- Drinking Water Treatment Workshop.
- Terrestrial Field Dissipation Symposium.
- Environmental Fate and Effects Division (EFED) Water Quality projects.

4. Major topics:

Morning Session

- The Refined Level II Aquatic Models for Probabilistic Ecological Assessments of Pesticides.
- A summary of the Fumigant Emission Modeling System (FEMS).

Afternoon Session

- Introduction and Demonstration of EFED's Pesticide Fate Data base.

List of Subjects

Environmental protection, Pesticides, Pests, Modeling.

Dated: March 9, 2004.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticides Programs.

[FR Doc. 04–5878 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0250; FRL–7318–5]

Notice of Availability of the Preliminary Risk Assessment for Wood Preservatives Containing Arsenic and/or Chromium Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's six-phase public participation reregistration process for wood preservatives containing arsenic and/or chromium (chromium copper arsenate (CCA), ammoniacal copper zinc arsenate (ACZA), and/or ammoniacal copper arsenate (ACA)). Acid copper chromate (ACC) is also a wood preservative containing arsenic and/or chromium; however, it is subject to a voluntary cancellation action and is not part of this Reregistration Eligibility Decision. These wood preservatives, which are inorganic compounds, have been registered with EPA since the mid–1960's as pesticides for wood preservation. Presently, 23 products are registered for above and below ground wood protection treatments as well as in marine environments. Wood treated with these preservatives containing arsenic and/or chromium are specified for commercial, institutional, and some residential construction uses in indoor and outdoor sites. This notice starts the 60–day public comment period for the preliminary risk assessment for the wood preservatives containing arsenic and/or chromium. EPA will review all comments received and address them accordingly. The Agency will then announce and conduct a public technical briefing on the revised risk assessment to provide an opportunity for the public to learn more about the data, information, and methods used to develop the revised risk assessment. The revised assessment will then be made available to the public, and the public will be invited to submit risk management ideas and/or proposals. By allowing access and opportunity for comments on the preliminary risk assessment, the Agency is seeking to strengthen stakeholder involvement and help ensure its decisions under the Food Quality Protection Act are transparent, and based on the best available information.

DATES: Comments, identified by docket ID number OPP–2003–0250, must be received on or before May 17, 2004.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0250 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *By mail*: Dr. Bonaventure Akinlosotu, Antimicrobials Division (7510C), Office of Pesticide Programs Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Office location for commercial courier delivery, telephone number and e-mail address: Rm. 308, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605–0653; e-mail: *akinlosotu.bonaventure@epa.gov*.

SUPPLEMENTARY INFORMATION: This announcement consists of two parts. The first part contains general information. The second part provides information on what actions the Agency intends to take.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use CCA, ACZA, or ACA products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0250. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving

comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0250. 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–2003–0250. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0250.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0250. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the wood preservatives containing arsenic and/or chromium. The Agency is providing the opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemical specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with this reregistration case for the wood preservatives containing arsenic and/or chromium. Failure to comment on any issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by May 17, 2004.

List of Subjects

Environmental protection, Acid copper chromate, Ammoniacal copper arsenate, Ammoniacal copper zinc arsenate, Chemicals, Chromated copper arsenate, Pesticides and pests.

Dated: March 9, 2004.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 04–6007 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0012; FRL–7346–8]

Tributyltin Methacrylate and Bis(tributyltin) Oxide; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, the Agency is issuing a Cancellation Order announcing its approval of the voluntary cancellations submitted by Atofina Chemicals, Inc., for certain manufacturing and end-use products containing tributyltin methacrylate. The Agency is also issuing a Cancellation Order announcing its approval of the amendments requested by Atofina and Crompton Corporation, to terminate the use for formulating antifouling paints from certain of their manufacturing-use products containing bis(tributyltin) oxide. These Orders follow a December 5, 2003 Notice of Receipt of requests by Atofina Chemicals, Inc. and Crompton Corporation to voluntarily cancel or amend to terminate uses of their product registrations as described above. As noted in the December 5, 2003 Notice of Receipt, Atofina and Crompton requested that they be allowed to sell the subject products only

until November 30, 2003. Since that date has passed, no separate existing stocks orders are needed to permit continued sale. The Cancellation Orders set forth the applicable terms and conditions for the affected registrations. Under these Orders, no further distribution, sale or use of the affected products by Atofina and Crompton is permitted.

FOR FURTHER INFORMATION CONTACT: Jill Bloom; telephone number: (703) 308–8019; fax number: (703) 308–8041; e-mail address: *Bloom.Jill@epa.gov*; address: Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0291. 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), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

II. Background

A. What Action is the Agency Taking?

The Agency is approving the requested cancellations of one end-use and eight manufacturing-use products containing tributyltin methacrylate, and the amendments to terminate the use to formulate antifouling paints of two manufacturing-use products containing bis(tributyltin) oxide registered under section 3 of FIFRA. The subject registrations are specifically identified in Tables 1 and 2 below. These requests were made by Atofina Chemicals, Inc. and Crompton Corporation, and were announced in the **Federal Register** on December 5, 2003 (68 FR 68039) (FRL–7331–1). Atofina and Crompton requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C) for their requests. In light of this requested waiver, EPA provided a 30–day public comment period on the voluntary cancellation and use termination requests.

As part of the December 5, 2003 Notice, the Agency indicated that it would issue Orders granting the registration amendments and cancellations unless the Agency received any substantive comment within the 30–day public comment period that would merit its further review of these requests. EPA received two comments in response to the Notice. These comments are discussed in Unit III. of this Notice. The Agency has made note of the concerns expressed in the comments, but does not believe the commenters' intent is to delay the Agency's granting of the subject requests. Likewise, the Agency does not believe the comments provide a basis for rejecting the requests. Accordingly, EPA is issuing Orders in this Notice canceling the nine registrations identified in Table 1 and amending the two registrations listed in Table 2.

TABLE 1.—MANUFACTURING AND END-USE PRODUCT CANCELLATIONS FOR TRIBUTYLTIN METHACRYLATE

Company Name and Address	EPA Registration #	Product Name	Chemical Name
Atofina Chemicals, Inc. 2000 Market Street Philadelphia, PA 19103–3222	5204–63	Biomet 300 Antifouling Agent	Tributyltin methacrylate
	5204–65	Biomet 302 Antifouling Agent	Tributyltin methacrylate
	5204–67	Biomet 304 Antifouling Agent	Tributyltin methacrylate
	5204–80	Biomet 303/60 Antifouling Agent	Tributyltin methacrylate
	5204–81	Biomet 304/60 Antifouling Agent	Tributyltin methacrylate
	5204–83	Polyflo 4024	Tributyltin methacrylate
	5204–87	Biomet 305	Tributyltin methacrylate
	5204–88	Biomet 309	Tributyltin methacrylate
	5204–90	Biomet 300/60 Antifouling Agent	Tributyltin methacrylate

Of the registrations listed in Table 1, Registration number 5204–83 is an end-use product, and the remainder are manufacturing-use products.

TABLE 2.—MANUFACTURING-USE PRODUCT REGISTRATION AMENDMENTS FOR BIS(TRIBUTYLTIN) OXIDE

Company Name and Address	EPA Registration #	Product Name
Atofina Chemicals, Inc. 2000 Market Street Philadelphia, PA 19103–3222	5204–1	Biomet TBTO
Crompton Corporation 1 American Way Greenwich, CT 06831	8898–17	Eurotin TBTO

The registrations listed in Table 2 are amended to terminate the use for formulating antifouling paints. The cancellations and amendments to terminate a use are effective upon the date of publication of this document.

Any distribution, sale or use of products identified in Tables 1 and 2 in a manner inconsistent with the terms of the Cancellation Orders (including the provisions dealing with existing stocks described in Unit IV. of this Notice) will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

B. What is the Agency's Authority for Taking this Action?

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations and amendments to terminate a use of the affected registrations identified in Tables 1 and 2 of this Notice. Accordingly, the Agency orders that the end-use and manufacturing-use product registrations identified in Table 1 are hereby canceled. The Agency also orders that the use identified for deletion from the manufacturing-use product registrations identified in Table 2 is hereby terminated.

III. What Comments did the Agency Receive?

The Agency received two comments during the 30–day public comment period announced in the December 5, 2003 notice of receipt of requests to cancel or terminate a use of the subject registrations. Both commenters, Arch Chemicals, Inc. and Interlux, support the cancellation and use terminations requested by the registrants.

Arch Chemicals also comments that the existing stocks provisions discussed in the December 5, 2003, Notice, which proposed to allow the continued distribution, sale, and use by dealers and users of the Atofina and Crompton products until stocks are exhausted, are inconsistent with the Agency's interest in addressing the environmental risks associated with the use of such products. Arch Chemicals notes that the existing stocks provisions also are inconsistent with the January 1, 2003 target date for the tributyltin (TBT) ban in the International Convention on the Control of Harmful Anti-Fouling Systems on Ships. Based on the shelf-life of the TBT antifouling additives and paints, Arch concludes that the use of these paints could continue for another 3 years. Arch Chemicals also comments that because levels of TBT are already of concern in the aquatic environment, companies who continue to sell TBT antifouling paints in the United States should be required to provide continuous TBT-level monitoring data until sales cease.

Interlux similarly opposes the existing stocks provisions, and notes that it phased-out its TBT antifouling paint registrations in anticipation of the ban, while some other paint companies chose to continue sales. Interlux notes that vessels painted with TBT antifouling paints after January 1, 2003, may require repainting with non-TBT systems when the Convention is ratified or enters into force. Interlux asks the Agency to implement additional measures to prevent the continued sale and use of TBT antifouling paints for what it considers to be an indefinite period. Both Arch Chemicals and Interlux are concerned about the continued sale, distribution, and use of TBT antifouling paints formulated from the Atofina and Crompton products.

The Agency shares the concern that continued use of the TBT antifouling paints poses risks to the environment and potential problems for users, particularly when use could go on for an indefinite period. The Agency will continue its efforts to negotiate the cancellation of the remaining TBT antifouling paint registrations based on this concern. In the past year, negotiations have resulted in requests for voluntary cancellation of the majority of the TBT antifouling registrations. With the cancellations and use terminations of the manufacturing-use TBT antifoulant products (as subject to this Notice). the remaining TBT antifouling paint formulators have a finite source for the TBT they use to manufacture their products. The best information available to the Agency at this time indicates that existing stocks of the manufacturing-use products in the hands of formulators, and of the formulated products themselves, are limited. Cancellation of the remaining registrations for these formulated products will result in specific existing stocks provisions for each of them. Because the TBT manufacturing-use product registrations are canceled, registrants of the remaining TBT products have lost the generic data exemption afforded them when Atofina and Crompton were developing the long-term monitoring data required for continued registration of TBT antifouling products. As a result, the remaining TBT registrants are obligated to satisfy all outstanding TBT Data Call-In data requirements for which they previously had a generic data exemption. The Agency is addressing this issue separately from the Cancellation Orders for the Atofina and Crompton products.

For these reasons, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation and use termination. Rather than undertake to modify the terms of the Cancellation Orders for the manufacturing-use products announced herein, the Agency will address the use of existing stocks of the formulated products at the time their cancellations are requested or proposed.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale or use of existing stocks in a manner inconsistent with the terms of the cancellation Order or the existing stocks provisions contained in the Order will be considered a violation of section 12(a)(2)(K) and/or section 12(a)(1)(A) of FIFRA. The following summarizes the effective dates of cancellation as well as the existing stocks provisions for each product subject to the cancellation Order.

1. *Canceled registrations (Table 1 in Unit II.)* The effective date of

cancellation is the date of publication of this document. As of the date of publication of this document, Atofina may not sell, distribute, or use products listed in Table 1. Sale, distribution, or use by persons other than the registrant may continue until supplies are exhausted. Additionally, sale, distribution or use of the stocks by persons other than the registrant in the channels of trade may continue until depleted, provided any sale, distribution, or use is in accordance with the existing label of that product.

2. *Registrations amended to delete terminated uses (Table 2 in Unit II.)* The effective date of the cancellation effectuating the use terminations is the date of publication of this document. As of the date of publication of this document, Atofina and Crompton may not sell, distribute, or use the products listed in Table 2 bearing labels allowing the use which is the subject of the use termination request. Sale, distribution, or use of these products bearing labels allowing the use which is the subject of the use termination request by persons other than the registrants may continue until supplies are exhausted. Additionally, sale, distribution or use of the stocks with such labels in the channels of trade by persons other than the registrant may continue until depleted, provided any sale, distribution or use is in accordance with the existing label of that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 2, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E4–557 Filed 3–16–04; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0048; FRL–7348–3]

Notice of Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations for Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by Bayer CropScience to voluntarily cancel certain pesticide registrations containing amitraz.

DATES: Unless a request is withdrawn by April 16, 2004, for EPA Registration Numbers: 264–625 and 264–636, orders will be issued canceling these registrations.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; e-mail address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0048. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of an application from Bayer CropScience to cancel two pesticide products registered under section 3 of FIFRA. The registrant has requested that EPA waive the 180–day comment period. EPA is granting the registrant's request to waive the 180–day comment period. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice. Therefore, EPA will provide a 30–day comment period on the proposed requests. These registrations are listed by registration number in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
264–625	Ovasyn Insecticide/ Miticide	Amitraz
264–636	Mitac W Insecticide	Amitraz

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day comment period.

Table 2 of this unit lists the name and address of record for the only registrant of the products in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
264	Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, by [*insert date 30 days after date of publication in the* **Federal Register**]. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation order publishes. This policy is in accordance with the Agency's Statement of Policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 3, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E4–558 Filed 3–16 –04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0057; FRL–7348–8]

Aspergillus flavus NRRL 21882; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Microbial Pesticide in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0057, must be received on or before April 16, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket

facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0057. 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–2004–0057. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0057.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0057. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 8, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Circle One Global, Inc.

PP 4F6815

EPA has received a pesticide petition, 4F6815, from Circle One Global, Inc., One Arthur Street, P.O. Box 28, Shellman, GA 39886–0028, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Aspergillus flavus* NRRL 21882 on peanuts.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Circle One Global, Inc., has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Circle One Global, Inc., and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Aspergillus flavus NRRL 21882 is a naturally occurring fungus that does not produce aflatoxin even though it is an *Aspergillus flavus* fungal strain. Its application to soil around peanut plants, results in significant reductions in aflatoxin contamination of peanuts. The reduction in aflatoxin contamination is a form of biological control that is achieved by competitive exclusion, i.e., the nontoxigenic strain applied to the field exclude native, toxigenic strains from infecting and growing in peanuts. This benefit is realized without increasing the overall concentration *Aspergillus flavus* in the environment in the long term. Similarly, the total concentration of *Aspergillus flavus* found in the peanuts is not increased above naturally occurring levels when the product is used as directed. Conidia of *Aspergillus flavus* NRRL 21882 are coated onto the surface of hulled barley and this product is applied to the soil at a proposed use rate of 20 pound product/acre for the end use product, Afla-Guard™ (0.002 pound active ingredient/acre). The product is applied once during the season, typically 40 to 80 days after planting, using a Gandy box or similar device fitted to a tractor. Peanuts are harvested approximately 2 to 3 months after the target treatment period.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Aspergillus flavus* NRRL 21882 is a non-aflatoxin-producing strain of *Aspergillus flavus* that was isolated from a peanut seed at the National Peanut Research Laboratory in 1991. This naturally occurring strain acts as a microbial pest control agent. The corresponding residues are *Aspergillus flavus* NRRL 21882. The active ingredient is cultured from spores originally obtained from the Agricultural Research Service (ARS) Patent Culture Collection in Peoria, IL. It is cultured on a selective isolation medium and can be identified according to the following criteria: Morphological characteristics; pairing nitrate-nonutilizing mutants with a tester strain to demonstrate it belongs to a specific vegetative compatibility group; and its inability to produce aflatoxins and/or cyclopiazonic acid. Cultures of *Aspergillus flavus* NRRL 21882 have been analyzed by chloroform or chloroform methanol extraction followed by high-performance liquid chromatography (HPLC). These analyses demonstrated that *Aspergillus flavus* NRRL 21882 does not produce potential metabolites of toxicological concern such as aflatoxins B1, B2, G1, or G2, cyclopiazonic acid, or numerous metabolites reportedly produced by *Aspergillus flavus* strains or other fungi. Additionally, *Aspergillus flavus* NRRL 21882 was tested, following multiple methodologies, and found to be free of human pathogens.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Trials have been conducted which measure the percent toxic strains of total *Aspergillus flavus* found in peanuts when the product is used as directed. Typically, the percent toxic strains found in the treated peanuts is significantly lower than in the untreated peanuts. In trials conducted in 2000 and 2001, the percentage of toxigenic strains was 19.9 and 24.3 for the treated peanuts, vs. 69.8 and 95.0 for the untreated, control peanuts, respectively. A dilution plating method (Dorner, J.W., Journal of AOAC International, Vol. 85, No. 4, 2002, p. 911–916) was used to quantify the *Aspergillus flavus* colonization of peanuts in these trials. These trials also determined that aflatoxin contamination in peanuts treated with *Aspergillus flavus* NRRL 21882 was reduced by 71.3% and 92.8% in 2000 and 2001, respectively.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* A petition for exemption from tolerances is being submitted. The data indicate that residues of naturally occurring *Aspergillus flavus* populations on peanuts exist, and that the proposed use does not increase the total level of *Aspergillus flavus* above naturally occurring levels. Further, the composition of the total *Aspergillus flavus* residues on the peanuts is such that the percent of the toxigenic strains is decreased with use of the product. Total levels of fungus on peanuts, therefore, will remain unchanged while the amount of aflatoxin will be reduced through use of Afla-Guard™.

In addition, both the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) set regulatory limits for aflatoxin in food. The FDA action level for aflatoxin in peanuts and peanut products is 20 parts per billion (ppb). The USDA has implemented a regulatory program to inspect peanuts for aflatoxin. Under this program, USDA inspects peanuts immediately after harvest (still in shell) and, using visible *Aspergillus flavus* as a surrogate for aflatoxin, segregates those with visible *Aspergillus flavus* to a category of peanuts not eligible for human consumption without additional processing. The USDA sets a maximum allowable aflatoxin level in peanuts of 15 ppb. Thus, a regulatory inspection program is already in place that will assure that any peanuts with visible levels of *Aspergillus flavus* NRRL 21882 will be segregated and subjected to further conditioning, should that be necessary.

The potential residues of *Aspergillus flavus* NRRL 21882 on peanut hay are not expected to be any different than those which occur naturally and generally are low because peanut hay is not a good substrate for fungal growth. FDA also sets aflatoxin action levels for peanut products used as animal feed. These action levels range from 20 ppb for dairy and immature animals to 300 ppb for finishing (i.e., feedlot) beef cattle.

Because use of Afla-Guard™ will not increase total *Aspergillus flavus* levels above background, naturally occurring levels, the establishment of a tolerance and an analytical method to measure the pesticide residues are not needed.

C. Mammalian Toxicological Profile

1. *Acute oral toxicity/pathogenicity study.* An acute oral toxicity study was performed in which 12 male and 12 female rats were treated with *Aspergillus flavus* NRRL 21882 at a dose of 2.35–3.80 x 10^8 colony forming units (CFU) per rat. In addition, three male and three female rats were treated with autoclaved test material, and three male and three female rats were treated with a sterile culture filtrate. The culture filtrate was included to investigate the possibility of other toxins being released into the agar medium by *Aspergillus flavus* NRRL 21882. Animals which received the viable test material were sequentially sacrificed at intervals throughout the study and subjected to macroscopic examination. Samples of blood, tissues, intestinal contents, and faeces were removed for microbiological determination of test substance recovery. There were no treatment-related effects for any animal receiving either the viable test material, the autoclaved test material, or the sterile culture filtrate.

2. *Acute intraperitoneal toxicity/pathogenicity study.* An initial acute intraperitoneal toxicity and pathogenicity study in the rat resulted in all animals receiving viable *Aspergillus flavus* NRRL 21882 dying or being euthanized for humanitarian reasons. Animals treated with autoclaved test material also showed severe adverse effects, although they were not lethal. In this study, there were three groups of rats. Group A rats were dosed with the test substance. Group B rats were dosed with autoclaved test material. Group C rats were an untreated control group. Group A rats were given a single dose by intraperitoneal injection of *Aspergillus flavus* NRRL 21882 (5.67–6.75 x 10^7 viable spores). The test substance was suspended in sterile physiological saline with 0.1% Tween 80. Group B rats similarly received a single dose by intraperitoneal injection, but the test solution was autoclaved so the *Aspergillus flavus* NRRL 21882 was not viable. All animals from Group A died or were sacrificed due to clinical signs on day 5 or 6. Surviving animals were sacrificed on day 22 and subjected to macroscopic examination.

Samples of blood, tissues, intestinal contents, and faeces were removed for microbiological determination of test substance recovery. All surviving animals were considered to have achieved satisfactory body weight gains throughout the study. There were no differences from controls which were considered attributable to treatment. No trends indicative of pyrogenic response to treatment were seen in any of the treated groups receiving active or inactivated test material in comparison with the controls or pre-dose values. Macroscopic examination at study termination revealed nodules on the spleen, kidneys, and/or connective tissue in the peritoneal cavity in animal in Group B. No abnormalities were observed in any animal in Group C. Viable *Aspergillus flavus* NRRL 21882 was recovered from the majority of organs from all Group A rats that died or were sacrificed on humane grounds 5 or 6 days after dosing. Although numbers of viable *Aspergillus flavus* NRRL 21882 in some liver and spleen samples showed counts of 10^4 to $>10^5$ colony forming units/grams (unit of measure for bacteria) (cfu/g), this was considered to have resulted from accumulation of the test organism in these organs and was not attributable to an infective proliferation of the test organism in these organs.

There was no evidence of infectivity by *Aspergillus flavus* NRRL 21882 in this study. It was concluded that viable *Aspergillus flavus* NRRL 21882 caused a severe inflammatory response in the abdominal cavity of rats leading to death. Rats dosed with inactivated *Aspergillus flavus* NRRL 21882 also showed an inflammatory response, but it was sub-lethal in nature. Because the animals dosed with autoclaved test material also showed adverse effects in this study it was hypothesized that this could be the result of some interaction with the Tween 80 or its breakdown products, or that *Aspergillus flavus* NRRL 21882 produces some toxins.

A second acute intraperitoneal toxicity and pathogenicity study of *Aspergillus flavus* NRRL 21882 in the rat was conducted. In this study, the dosing solution contained only physiological saline (no Tween 80), and another control group of rats was added. The latter group received sterile culture filtrate to evaluate the possibility of endotoxin release by *Aspergillus flavus* NRRL 21882. Groups of rats (15 male and 15 female) were given a single dose by intraperitoneal injection of *Aspergillus flavus* NRRL 21882 (1.12–1.47 x 10^7 viable spores/rat). Surviving animals were sacrificed on day 22 and subjected to macroscopic examination.

Samples of blood, tissues, intestinal contents and faeces were removed for microbiological determination of test substance recovery. The animals receiving viable test material were given group numbers 1 through 5, with designated sacrifice days of 1, 4, 8, 15, and 22. The group that received autoclaved material consisted of two males and two females. The sterile culture filtrate group consisted of three males and three females. There was only one unscheduled death in the study and it was not treatment-related. In surviving animals, only two showed any clinical signs. One male showed

abnormal posture characterized by head tilting to the left on days 9 to 22 (to study termination) and circling to the left from days 11 to 14; and one female showed abnormal posture characterized by head tilting to the right from day 16 to day 22 (to study termination). These clinical signs are considered to be more likely than not treatment-related, but only affected 2 of the 30 animals treated with viable test material. No clinical signs considered related to treatment were observed in any animal from either the autoclaved test substance or sterile culture filtrate groups.

The results of the second study were dramatically different from those of the first. Adverse clinical effects were seen only in one male and one female, both of whom survived through study termination. Recovery of viable test material at sacrifice demonstrated clearance of the test material. No *Aspergillus flavus* NRRL 21882 was found in blood at any time period and on day 22 no viable test material was recovered from any organ or from the gastrointestinal tract (GI). The addition of the sterile culture filtrate demonstrated that *Aspergillus flavus* NRRL 21882 did not generate endotoxins. Based on results from the second study, it can be concluded that the most likely explanation for the adverse effects in the first study was the presence of the surfactant, Tween 80, and not any toxicity due to *Aspergillus flavus* NRRL 21882. Further, the results from the sterile filtrate group indicate that no endotoxins are produced by *Aspergillus flavus* NRRL 21882 and therefore these could not have been the cause of the adverse effects seen in the first I.P. study.

3. *Acute pulmonary toxicity/pathogenicity study.* The acute pulmonary toxicity/pathogenicity of *Aspergillus flavus* NRRL 21882 in the rat was assessed. Groups of rats were given a single dose by intratracheal instillation of the test substance (4.6–6.9 x 10^7 viable spores) suspended in sterile physiological saline containing 0.1% Tween 80. Animals were sequentially sacrificed at intervals throughout the study and subjected to a macroscopic examination. Samples of blood, tissues, intestinal contents, and faeces were removed for microbiological determination of the test substance recovery. One female in Group C was found dead on day 2. Macroscopic examination of this one animal revealed congestion (characterized by blood vessels injected) of the brain with enlarged, swollen thickened tissues and patchy areas of darkened and pale tissue in the lungs. Fluid contents were noted along the intestinal tract. There were no clinical signs that were considered to be associated with the test substance. All surviving animals were considered to have achieved satisfactory body weight gains throughout the study.

There were no differences from controls which were considered to be attributable to the treatment. No trends indicative of pyrogenic response to treatment were seen in any of the treated groups receiving active or inactivated test material in comparison with the controls or pre-dose values. No abnormalities were observed in any of the terminal animals at the macroscopic examination at termination. Substantial numbers of viable *Aspergillus flavus* NRRL 21882 were recovered from the lungs of the majority of treated rats sacrificed early in the study period. As the study progressed it was evident, from the counts of viable *Aspergillus flavus* NRRL 21882 obtained from the lungs of treated rats, that *Aspergillus flavus* NRRL 21882 rapidly lost viability following intra-tracheal dosing into rats. Some clearance of *Aspergillus flavus* NRRL 21882 from the lungs of treated rats by the pulmonary muco-ciliary escalator system was evident from the recovery of viable *Aspergillus flavus* NRRL 21882 from faecal contents and faeces. At no point over the study period did any substantial increase in viable counts occur that may have been indicative of a proliferation of *Aspergillus flavus* NRRL 21882 within treated rats. It was concluded the *Aspergillus flavus* NRRL 21882 showed no evidence of toxicity or pathogenicity to rats following a single intratracheal administration.

Based on these studies the petitioner concludes that *Aspergillus flavus* NRRL 21882 does not present either a toxicological or infectious risk to mammals.

4. *Data waiver requests.* Data waivers were requested for the following toxicology studies: acute dermal toxicity/pathogenicity, primary dermal irritation, primary eye irritation, and immune response. The rationales for the waiver requests are:

i. The active ingredient occurs naturally in the environment.

ii. USDA researchers have been handling the product in lab and in field settings for many years without reports of adverse effects, even though some fungi in the genus *Aspergillus flavus* are known dermal sensitizers. The formulation is granular, is ground applied, and is used only once per season which limits exposure and thus any potential adverse dermal effects. Any potential dermal irritation can be adequately mitigated with appropriate personal protective equipment, which, in this case, is a long sleeved shirt, long pants, shoes, socks, and gloves.

iii. At the proposed use rate of 20 pound/acre, the equivalent amount of active ingredient applied is only 0.002 pound/acre. Thus, exposure to *Aspergillus flavus* NRRL 21882 is not likely to exceed the naturally occurring, ubiquitous *Aspergillus flavus* in the environment.

iv. No eye irritation effects have been reported during the several years of experimentation and field trials conducted by the USDA researchers.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* *Aspergillus flavus* NRRL 21882 is a naturally occurring organism that does not produce aflatoxins and thus is safer than toxigenic *Aspergillus flavus* isolates. At the proposed use rate, the total population of *Aspergillus flavus* on the crop will not increase beyond naturally occurring background levels. Total levels of fungus on peanuts, therefore, will remain unchanged while the amount of aflatoxin will be reduced through use of Afla-Guard™. In addition, USDA inspection procedures for peanuts identify peanuts with visible *Aspergillus flavus* contamination and remove these from the food supply. USDA has implemented these procedures for decades to manage aflatoxin levels in peanuts (historically using visible *Aspergillus flavus* as a surrogate for aflatoxin). USDA procedures keep levels of aflatoxin in peanuts and processed peanut products below USDA and FDA action levels. Also, subsequent processing steps in the production of peanut products such as peanut butter and peanut oil will kill the fungus. Consequently, dietary exposure to *Aspergillus flavus* NRRL 21882 is expected to be quite low. The residues on peanut hay are not expected to be different in the treated fields than in untreated fields because hay is not a good substrate for fungal growth.

ii. *Drinking water.* The use of *Aspergillus flavus* NRRL 21882 is not likely to increase the natural concentration of *Aspergillus flavus* in water bodies and is not considered to be a risk to drinking water. Although the soil concentrations of *Aspergillus flavus* NRRL 21882 will increase immediately after application, as expected, to displace the toxigenic strain, this effect is temporary.

2. *Non-dietary exposure.* The proposed use site is limited to the agricultural crop peanuts. The product is applied as a granular formulation, using a Gandy box or similar device fitted to a tractor. Uptake in moisture by the granules results in growth of the

Aspergillus flavus NRRL 21882 in the soil. Migration of the *Aspergillus flavus* out of the treated fields is not expected. Therefore, there will be no non-occupational, non-dietary exposure to the general population.

E. Cumulative Exposure

There are no other registered products containing *Aspergillus flavus* NRRL 21882. Another strain, *Aspergillus flavus* AF 36, is conditionally registered for cotton in Arizona and Texas, but is not registered for use on peanuts. Peanuts are grown in several states, chiefly in the South.

F. Safety Determination

1. *U.S. population. Aspergillus flavus* NRRL 21882 is a naturally occurring organism. The long-term population of *Aspergillus flavus* in the environment is not increased either in the environment or in the crop. Thus, there is a reasonable certainty that no harm will result from the use of this product. In addition, there is the benefit of reduced aflatoxin production.

2. *Infants and children. Aspergillus flavus* NRRL 21882 is a naturally occurring organism that does not produce aflatoxins and thus is safer than toxigenic *Aspergillus flavus* isolates. At the proposed use rate, the total population of *Aspergillus flavus* on the crop will not increase beyond naturally occurring background levels. Total levels of fungus on peanuts, therefore, will remain unchanged while the amount of aflatoxin will be reduced through use of Afla-Guard™. In addition, USDA inspection procedures removes visible *Aspergillus flavus* from the food supply and food processing steps to produce peanut products such as peanut butter and peanut oil kill the fungus. Finally, toxicity studies completed on *Aspergillus flavus* NRRL 21882 do not raise risk concerns. Based on its lack of toxicity and the natural occurrence of Aspergillus flavus NRRL 21882, there is a reasonable certainty that no harm will result to infants and children from exposure to potential residues. The reduction in aflatoxin resulting from the use of this product will be a significant benefit to children's health.

G. Effects on the Immune and Endocrine Systems

Aspergillus flavus NRRL 21882 is a naturally occurring organism which does not produce aflatoxin and is thus safer than *Aspergillus flavus* isolates producing aflatoxins. There are no reliable data to suggest that *Aspergillus flavus* NRRL 21882 affects the immune or endocrine systems.

H. Existing Tolerances

There are no existing tolerances for *Aspergillus flavus* NRRL 21882.

I. International Tolerances

There are no Codex maximum residue levels for *Aspergillus flavus* NRRL 21882.

[FR Doc. 04–6002 Filed 3–16–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0034; FRL–7345–2]

Indoxacarb; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0034, must be received on or before April 16, 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: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provide 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. North American Industrial Classification System (NAICS) codes shave been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0034. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will

not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," then key in docket ID number OPP–2004–0034. 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–2004–0034. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0034.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0034. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:February 27, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by E. I. DuPont de Nemours and Company, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

E. I. DuPont de Nemours and Company

PP 3G6797

EPA has received a pesticide petition (PP 3G6797) from E. I. DuPont de Nemours and Company, DuPont Crop Protection, Wilmington, DE, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a temporary tolerance for combined residues of indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno [1,2e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantiomer (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno [1,2-e] [1,3,4] oxadiazine-4a(3H)-carboxylate] in a 75:25 mixture (DPX MP062), respectively, in or on the raw agricultural commodity as follows: cherry, sweet, 1 part per million (ppm) and cherry, tart, 1 ppm. An analytical enforcement method (LC-UV) is available for determining plant residues. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This action is in response to university extension specialists, IR-4 and DuPont Crop Protection's combined efforts to generate the information necessary for use of the reduced risk pesticide, indoxacarb, on cherries for the control of plum curculio. This proposed temporary tolerance supports an Experimental Use Permit (EUP) under section 5 of the Federal Insecticide, Fungicide,and Rodenticide Act (FIFRA) authorizing use of indoxacarb on cherries in the state of Michigan. This regulation proposes to establish a maximum permissible level for residues of indoxacarb in this food commodity pursuant to section 408(e) of FFDCA, as amended by FQPA.

A. Residue Chemistry

The active ingredient in the end-use formulation, Avaunt, is a 75:25 mixture of two isomers, indoxacarb (DPX-KN128) and IN-KN127. Only one of the isomers, indoxacarb (DPX-KN128), has insecticidal activity. Since the insecticidal efficacy is based on the concentration of indoxacarb (DPX-KN128), the application rates have been normalized on an indoxacarb (DPX-KN128) basis. The proposed tolerance expression includes both indoxacarb (DPX-KN128) and IN-KN127 and the residue method does not distinguish between the enantiomers; therefore, residues are reported as the sum of indoxacarb (DPX-KN128) combined with IN-KN127. Residues of indoxacarb (DPX-KN128)combined with IN-KN127 will be referred to as "KN128/KN127."

1. *Plant metabolism.* The metabolism of indoxacarb in plants is adequately understood to support these tolerances. Plant metabolism studies in cotton, lettuce, and tomatoes showed no significant metabolites. The only significant residue was parent compound.

2. *Analytical method.* The plant residue enforcement method detects and quantitates indoxacarb in various matrices including sweet corn, lettuce, tomato, broccoli, apple, grape, cottonseed, tomato, peanut and soybean commodity samples by high performance liquid chromotography using ultra-violet detection (HPLC-UV). The limit of quantitation in the method allows monitoring of crops with indoxacarb residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues.* Cherries IR-4 with the support from DuPont has conducted magnitude of residue trials in tart cherry for an additional crop use for DuPont Avaunt insecticide (indoxacarb 30WG). An initial seven field trials have been conducted, making four applications at 7 (+ 1) day intervals with the last application 14 (+ 2) days before harvest.

Two test plots were established at each test site. One plot was untreated and provided control samples for analysis. The treated plot received four foliar applications of Avaunt at the maximum expected label use rate of 0.11 lb a.i./A/Application (6 oz. product/A). All application rates were within ±5% of the target rate. Maximum residues of KN128/KN127 in individual duplicate samples were 0.635 ppm at a pre-harvest interval (PHI) of 14 days (range 0.005 0.635 ppm).

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA criteria, indoxacarb is classified as follows for Toxicity Categories:

Guideline	Title	Results	Category
870 1100	Acute Oral Toxicity	LD_{50}: 1,730 milligrams/kilogram (mg/kg) (male rat) LD_{50}: 268 mg/kg (female rat)	Category II
870.1200	Acute Dermal Toxicity	LD_{50}: >5,000 mg/kg (rat)	Category IV
870.1300	Acute Inhalation Toxicity	LC_{50}: >5.5 milligrams/liter (mg/L) (male rat) (70% MUP)	Category IV
870.2400	Primary Eye Irritation	Effects reversed within 72 hours (rabbit)	Category III
870.2500	Primary Dermal Irritation	No irritation (rabbit)	Category IV
870.2600	Skin Sensitization	Sensitizer (guinea pig)	----------

Formulated products are slightly less acutely toxic than indoxacarb.

In an acute neurotoxicity study, indoxacarb exhibited decreased forelimb grip strength, decreased foot splay, and some evidence of slightly reduced motor activity, but only at the highest doses tested. The no observed adverse effect level (NOAEL) was 100 mg/kg for males and 12.5 mg/kg for females based on body weight effects in females ≥50 mg/kg.

2. *Genotoxicty.* Indoxacarb has shown no genotoxic activity in the following listed *in-vitro* and *in-vivo* tests:

i. *Ames--Negative.*

ii. *In-vitro* mammalian gene mutation Chinese hampster ovary/hypoxanthine guanine phophoribopsyl transferase (CHO/HGPRT)--Negative.

iii. *In-vitro* unscheduled DNA synthesis--Negative.

iv. *In-vitro* chromosomal aberration--Negative.

v. *In-vivo* mouse micronucleus--Negative.

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental orteratogenic hazards associated with the use of indoxacarb. In a 2-generation rat reproduction study, the parental NOAEL was 1.5 mg/kg/day. The parental NOAEL was based on observations of reduced weight gain and food consumption for the higher concentration groups of the F0 generation and potential treatment-related changes in spleen weights for the higher groups of the F1 generation. There was no effect on mating or fertility. The NOAEL for fertility and reproduction was 6.4 mg/kg/day. The off spring NOAEL was 1.5 mg/kg/day, and was based on the reduced mean pup weights noted for the F1 litters of the higher concentration groups. The effects on pup weights occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams. In studies conducted to evaluate developmental toxicity potential, indoxacarb was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). Developmental studies conducted in rats and rabbits demonstrated that the rat was more susceptible than the rabbit to the maternal and fetal effects of DPX-MP062. Developmental toxicity was observed only in the presence of maternal toxicity. The NOAEL for maternal and fetal effects in rats was 2 mg/kg/day based on body weight effects and decreased food consumption at 4 mg/kg/day. The NOAEL for developmental effects in fetuses was >4 mg/kg/day. In rabbits, the maternal and fetal NOAELs were 500 mg/kg/day based on body weight effects, decreased food consumption in dams and decreased weight and delayed ossification in fetuses at 1,000 mg/kg/day.

4. *Subchronic toxicity.* Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In a 90–day feeding study in rats, the NOAEL was 3.1 and 2.1 mg/kg/day for males and females, respectively. In male rats, the NOAEL was based on decreased body weight and nutritional parameters, mild hemolytic anemia and decreased total protein and globulin concentration. In female rats, the NOAEL was based on decreased body weight and food efficiency. In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity at 11.9 and 6.09 mg/kg/day, the highest dose tested for males and females, respectively. The subchronic NOAEL in dogs (5.0 mg/kg/day, modifying factor (M/F) was based on hemolytic anemia. Erythrocyte values for most dogs were within a range that would be considered normal for dogs in a clinical setting. Mice were less sensitive to indoxacarb than the rats or dogs. NOAELs (23 mg/kg/day, males, 16 mg/kg/day, females) were based on mortality (males only); increased reticulocytes and Heinz bodies and decreased body weight, weight gain, food consumption, food efficiency; and increased clinical signs (leaning to one side and/or with abnormal gait or mobility) (females only). In a 28–day repeated dose dermal study, the NOAEL was 50 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters, the spleen and clinical signs of toxicity in both sexes in rats.

5. *Chronic toxicity.* Chronic studies with indoxacarb were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies. Indoxacarb was not oncogenic in rats or mice. The chronic NOAEL in male rats was 5 mg/kg/day based on body weight and nutritional effects. In females, the NOAEL of 2.1 mg/kg/day was based on body weight and nutritional changes, as well as biologically significant hematologic changes at 3.6 mg/kg/day and above. Hemolytic effects were present only through the 6–month evaluation and only in females. The regenerative nature of indoxacarb-induced hemolytic anemia was demonstrated by the absence of significant changes in indicators of circulating erythrocyte mass at later evaluations. In mice, the chronic NOAEL of 2.6 mg/kg/day for males was based on deceased body weight and weight gain effects and food efficiency at 13.8 mg/kg/day and above. The NOAEL for females was 4.0 mg/kg/day based on body weight nutritional effects, neurotoxicity, and clinical signs at 20 mg/kg/day. In dogs, the chronic NOAEL was about 2.3 and 2.4 mg/kg/day in males and females, respectively based on hemolytic effects similar to those seen in the subchronic dog study.

6. *Animal metabolism*—i. *Livestock animal metabolism.* Animal metabolism has been studied in the rat, hen, and

cow and is well understood. In contrast to crops, indoxacarb is extensively metabolized in animals.

ii. *Poultry.* In poultry, hens were fed at 10 ppm/day for 5 days, 87–88% of the total administered dose was excreted; parent comprised 51–54% of the total dose in excreta. Concentration of residues in eggs were low, 0.3–0.4 of the total dose, as was the concentration of residues in muscle, 0.2% of the total dose. Parent and metabolite IN–JT333 were not detected in egg whites; only insecticidally inactive metabolites were identified. Parent and IN–JT333 were found in egg yolks; however, their concentrations were very low, 0.01–0.02 ppm. Concentrations of parent and IN–JT333 in muscle were at or below the limit of quantitation, (LOQ) (0.01 ppm).

iii. *Poultry feeding study.* A poultry feeding study was not conducted for the initial section 3 registration because finite concentrations of residues would not be expected based on the low concentration of residues in the metabolism study. However, the Agency has required a poultry feeding study as a condition of registration for indoxacarb. The study was submitted on October 31, 2003. Once the Agency has determined the components of the tolerance expression, poultry meat, fat, by products and egg tolerances will be proposed.

iv. *Cattle.* For the cow study, the cattle were fed at 10 ppm/day for 5–days; approximately 20% of the total administered dose was excreted in urine and 53–60% was excreted in feces in 5–days. Four tenths to 1.2% of the total dose in urine was parent indicating extensive metabolism; parent represented 46–68% of the fecal activity. Thus, most residues were not absorbed; those residues that were absorbed were extensively metabolized. Less than 1% of the total administered dose was in milk, most of which was parent compound. The insecticidally active metabolite IN–JT333 was not found in milk. Residues in muscle represented less than 0.01% of the total administered dose most of which was parent. IN–JT333 was not detected in muscle. No other metabolites were seen above 10% of the dose, thus only parent and IN–JT333 were monitored in the cattle feeding study.

v. *Cattle feeding study.* A cattle feeding study was conducted with indoxacarb at doses of 7.5 ppm, 22.5 ppm and 75 ppm. The mean KN128/KN127 concentrations were proportional to the dosing level in whole milk, skim milk, cream, muscle, fat, liver and kidney. Based on final residue values for the respective commodities contributing to the cattle diet, the anticipated dietary burden in dairy cattle is 51.7 ppm and the anticipated dietary burden in beef cattle is 49.1 ppm. The proposed grape use will not increase the animal dietary burden. Based on standard curves constructed from data in the cattle feeding study, KN128/KN127 concentrations at the 51.7 ppm feeding level are 0.123 ppm for whole milk, 0.033 ppm for skim milk and 1.46 ppm for cream. The KN128/KN127 concentrations at the 49.1 ppm feeding level are 0.046 ppm for muscle, 1.37 ppm for fat, 0.012 ppm for liver and 0.026 ppm for kidney. Tolerances have been established at 1.5 ppm in fat (cattle, goat, horse, sheep and hog), 0.05 ppm in meat, 0.03 ppm in meat by-products, 0.15 ppm in milk and 4.0 ppm in milk fat.

7. *Metabolite toxicology.* In rats, indoxacarb was readily absorbed at low dose (5 mg/kg), but saturated at the high dose (150 mg/kg). Indoxacarb was metabolized extensively, based on very low excretion of parent compound in bile and extensive excretion of metabolized dose in the urine and feces. Some parent compound remained unabsorbed and was excreted in the feces. No parent compound was excreted in the urine. The retention and elimination of the metabolite IN–JT333 from fat appeared to be the overall rate determining process for elimination of radioactive residues from the body. Metabolites in urine were cleaved products (containing only one radiolabel), while the major metabolites in the feces retained both radiolabels. Major metabolic reactions included hydroxylation of the indanone ring, hydrolysis of the carboxylmethyl group from the amino nitrogen and the opening of the oxadiazine ring, which gave rise to cleaved products. Metabolites were identified by mass spectral analysis, NMR, ultraviolet (UV) and/or by comparison to standards chemically synthesized or produced by microsomal enzymes

8. *Endocrine disruption.* Lifespan, and multigenerational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine-related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of indoxacarb is negligible.

C. Aggregate Exposure

Temporary tolerances for indoxacarb are proposed to support agricultural use on cherries. Tolerances for indoxacarb are pending to support agricultural use on grapes. There are residential uses of indoxacarb pending (fire ant bait), however, the risk from that use has been found to be negligible. The amount of acreage for cherry use proposed in this Experimental Use Permit program is not significant enough to alter the recent chronic dietary exposure, acute dietary exposure, and aggregate exposure risk assessments previously submitted to the Agency in March 2003, with the submission of the grape petition. In those exposure analyses, there was adequate chronic, acute and aggregate safety to all sub-populations. Therefore, the proposed new experimental use of Avaunt on cherries does not pose any additional risk beyond that of the currently registered and pending crop uses.

1. *Dietary exposure.* The chronic RfD of 0.02 mg/kg bw/day is based on a NOAEL of 2.0 mg/kg bwt/day from the subchronic rat feeding study, the subchronic rat neurotoxicity study, and the chronic/carcinogenicity study, using an uncertainty factor of 100. The acute RfD for the general population is 0.12 mg/kg/day, based on the NOAEL of 12.5 mg/kg in the acute neurotoxicity study and an uncertainty factor of 100. The acute RfD for females 13–50 years of age is 0.02 mg/kg/day, based on the NOAEL of 2 mg/kg/day observed in the developmental rat toxicity study and using an uncertainty factor of 100.

i. *Food.* Chronic dietary exposure assessment. Chronic dietary exposure resulting from the currently approved use of indoxacarb on apples, Crop group 5 (brassica vegetables), cotton, pears, peppers, sweet corn, tomatoes, eggplant, alfalfa, head and leaf lettuce, peanuts, potatoes, soybeans, cranberries (current section 18 use) and the proposed use on grapes are well within acceptable limits for all sectors of the population. The Chronic Module of the Dietary Exposure Evaluation Model (DEEM, Exponent, Inc., formerly Novigen Sciences, Inc., Version 7.76) was used to conduct the assessment with the reference dose (RfD) of 0.02 mg/kg/ day. The analysis used overall mean field trial values, processing factors and projected peak percent crop treated values. Secondary residues in milk, meatand poultry products were also included in the analysis. The chronic dietary exposure to indoxacarbis 0.000089 mg/kg/day, and utilizes 0.4% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.000238 mg/kg/day, and utilizes 1.2% of the RfD. The table below lists the results of this analysis, which indicate large margins of safety for each population subgroup and very low

probability of effects resulting from chronic exposure to indoxacarb.

Subgroup	Maximum Dietary Exposure (mg/kg/day)	% RfD
U.S. population	0.000089	0.4
Non-nursing infants (<1 year old)	0.000063	0.3
Children (1–6 years)	0.000238	1.2
Children (7–12 years)	0.000126	0.6
Females (13+, nursing)	0.000073	0.4
Males (13–19 years)	0.000090	0.5

Acute dietary exposure. Acute dietary exposure resulting from the currently approved use of indoxacarb on apples, Crop Group 5 (brassica vegetables), cotton, pears, peppers, sweet corn, tomatoes, eggplant, alfalfa, head and leaf lettuce, peanuts, soybeans, potatoes, cranberries (current section 18 use) and the proposed use on grapes are well within acceptable limits for all sectors of the population. DEEM™, was used to conduct the assessment. Margins of exposure (MOE) were calculated based on an acute NOAEL of 2 mg/kg/day for women of child-bearing age and a NOAEL of 12 mg/kg/day for children and the general population (Pesticide Fact Sheet for Indoxacarb). The Tier 3 analysis used distributions of field trial residue data adjusted for projected peak percent crop treated. Secondary residues in milk, meat and poultry products were also included in the analysis. The results of this analysis are given in the table below. The percent of the acute population adjusted dose (a PAD) for all population subgroups shows that an adequate margin of safety exists in each case. Thus, the acute dietary safety of indoxacarb for established and the follow-on use clearly meets the FQPA standard of reasonable certainty of no harm and presents acceptable acute dietary risk.

Subgroup	99.9th Percentile of Exposure	
	Exposure (mg/kg/day)	% Acute population adjusted dose (aPAD)
U.S. population	0.008795	7.3
All infants	0.024729	20.6
Non-nursing (<1 year old)	0.026036	21.7
Children (1–6 years old)	0.013973	11.6
Children (7–12 years old)	0.006882	5.7
Females (13–19 years old)	0.005119	25.6
Females (20+, not pregnant or nursing)	0.005358	26.8
Females (13–50 years old)	0.005307	26.5

ii. *Drinking water.* Indoxacarb is highly unlikely to contaminate ground water resources due to its immobility in soil, low water solubility, high soil sorption, and moderate soil half-life. Based on the PRZM/EXAMS and SCI-GROW models, the estimated environmental concentrations (EECs) of indoxacarb and its R-enantiomer for acute exposures are estimated to be 6.84 parts per billion (ppb) for surface water and 0.0025 ppb for ground water. The EEC for chronic exposures are estimated to be 0.316 ppb for surface water and 0.0025 ppb for ground water. Drinking water levels of comparison (DWLOC), theoretical upper allowable limits on the pesticide's concentration in drinking water, were calculated to be much higher than the EECs. The chronic DWLOCs ranged from 198 ppb to 697 ppb. The acute DWLOCs ranged from 440 ppb to 3,890 ppb. Thus, exposure via drinking water is acceptable.

2. *Non-dietary exposure.* Indoxacarb product registrations for residential non-food uses are pending. Non-occupational, non-dietary exposure for DPX–MP062 has been estimated to be extremely small. Therefore, the potential for non-dietary exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of indoxacarb would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and indoxacarb has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population, and ample margins of safety have been demonstrated for both situations. The chronic dietary exposure to indoxacarb is 0.000089 mg/kg/day, which utilizes 0.4% of the RfD for the

overall U.S. population, using mean field trial values, processing factors and projected peak percent crop treated values. The percent of the acute population adjusted dose (aPAD) (7.3%) for the overall U.S. population shows that an adequate margin of safety exists. Using only PHED data levels A and B (those with a high level of confidence), MOEs for occupational exposure are 650 for mixer/loaders and 1,351 for air blast applicators (worst-case). Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of indoxacarb including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of the most highly exposed subgroup in the population, children age 1–6 years old, is 0.000238 mg/kg/day or 1.2% of the RfD. For infants (non-nursing, 1 year old), the exposure accounts for 0.3% of the RfD. For acute exposure at the 99.9th percentile (based on a Tier 3 assessment) the exposure was 0.013973 mg/kg/day (11.6% aPAD) for children 1–6 years old and 0.026036 mg/kg/day (21.7% aPAD) for non-nursing infants. There are residential uses of indoxacarb pending, but exposure is calculated to be extremely minimal. The estimated levels of indoxacarb in drinking water are well below the below the DWLOC. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to indoxacarb, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of indoxacarb, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no international tolerances exist for indoxacarb.

[FR Doc. E4–550 Filed 3–16–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0011; FRL–7343–5]

Ammonium Nonanoate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of the pesticide chemical ammonium nonanoate in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0011, must be received on or before April 16, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0011. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0011. 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–2004–0011. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0011.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0011. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number

assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Falcon Lab LCC

PP 3E6789

EPA has received a pesticide petition (PP 3E6789) from Falcon Lab LLC, 1103 Norbee Drive, Wilmington, DE 19803 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for ammonium nonanoate in or on all raw agricultural commodity. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* In solution, ammonium nonanoate (CAS No. 112–05–0) is ionized and occurs as the straight chain C-9 nonanoic acid and the ammonium ion. Nonanoic acid is metabolized by beta-oxidation and by respiration through the citric acid cycle, converted to carbon dioxide and water. Suryanarayanan and McConnell (Ref. 1) showed the tracer in nonanoic acid-1-C14 was 98% assimilated into metabolites by beta-oxidation to acetyl CoA and utilized via the glyoxylate cycle in wheat stem rust uredospores.

2. *Analytical method.* In the **Federal Register** of February 19, 2003 (68 FR 7931) (FRL–7278–7), it is indicated that the analytical method for nonanoic acid is being made available to anyone interested in pesticide enforcement when requested, from Norm Cook, Antimicrobials Division (7510C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Office location and telephone number: 1921 Jefferson Davis Highway, 3rd Floor, Arlington, VA 22202, (703) 308–8253.

3. *Magnitude of residues.* Nonanoic acid is a naturally occurring component of fatty acids in plants (68 FR 7931). Lowfat chedder cheese contained small amounts of nonanoic acid (Ref. 2). Nonanoic acid is naturally present at levels up to 224 parts per billion (ppb) in apples, 385 parts per million (ppm) in the skin of grapes, and 143 ppm in grape pulp. It is present in a number of other foods as well. An average serving of grapes containing 385 ppm of nonanoic acid in the grape skins would result in exposure to nonanoic acid to an average consumer of 164 µg/kg/day (68 FR 7931).

Nonanoic acid may be safely used as synthetic food flavoring substances and adjuvants in food in the minimum quantity required to reproduce the intended effect (21 CFR 172.515). Nonanoic acid may be used in an aliphatic acid mixture for washing or to assist in the peeling of fruits and vegetables. The aliphatic acid mixture may be used at a level not to exceed 1% in the lye peeling solution (21 CFR 173.315), (68 FR 7931).

B. Toxicological Profile

1. *Acute toxicity.* Undiluted nonanoic acid administered orally to rats at a dose of 3,200 milligrams/kilogram (mg/kg) did not cause death which indicated a lethal dose LD_{50} 3,200 mg/kg; however, deaths did occur at this dose level when the chemical was administered intraperitoneally (IP) for an IP LDL0 = 3,200 mg/kg. More recently, nonanoic acid of unspecified source administered orally to rats and mice had an LD_{50} 5,000 mg/kg for both rat and mouse. For male rats, the oral LD_{50} >9,000 mg/kg.

Nonanoic acid, as undiluted material, administered to mice by the intravenous route (IV) had an IV LD_{50} = 224 mg/kg. A 10% solution of nonanoic acid in corn oil failed to kill mice at a dose of 3,200 mg/kg when given orally (mouse oral LDL_{50} 3,200 mg/kg), but caused death at a dose of 1,600 mg/kg by the intraperitoneal route (mouse IP LDL0 = 1,600 mg/kg). Symptoms in mice included labored respiration and roughing of the coat and death was observed as soon as 4 days after treatment.

The dermal LD_{50} for undiluted nonanoic acid in rabbits has been reported to be LD_{50} 5,000 mg/kg. Nonanoic acid from an unspecified source caused a dermal LD_{50} 2,000 mg/kg on rats.

Application of nonanoic acid to intact and abraded skin of rabbits had an LD_{50} 9,000 mg/kg, and caused moderate to severe irritation.

These data indicate nonanoic acid has low acute toxicity by intraperitoneal, oral or dermal routes. Intravenous exposure to ammonium nonanoate (nonanoic acid) is irrelevant to its use as an inert ingredient pesticide products. Intraperitoneal nonanoic acid may occur via skin wounds, but the relatively low acute toxicity would be of low risk. Oral and dermal exposure to nonanoic acid are of very low risk.

Nonanoic acid was delivered at 0.46 mg/liter (mg/L) as an aerosol for 4 hours (h) to 10 rats without any mortality; however, at 3.8 mg/L, 80% mortality occurred. Relatively low degree of toxicity occurred following inhalation of the aerosol. Respiratory irritation was observed at both dose levels.

Acute toxicity to other environmental species has been determined for a fatty acid similar to nonanoic acid. Fatty acid sodium salts were found to be less toxic than the parent acids, and toxicities of both increased with chain length (between 6 and 12 carbons). For capric acid (decanoic acid) C-10 in fresh water, the 48 hr lethal concentration $(LC)_{50}$ for red killifish (*Oryzias latipes*) and

gammarus (*Hyale plumulosa*) were 20 and 41 mg/L, respectively. Sodium caprate was less toxic than the acid to killifish (54 mg/L). Based on these data, nonanoic acid in the ammonium salt form (ammonium nonanoate) would be expected to be no more than slightly toxic to aquatic fauna.

Toxicity to algae may be estimated by comparison with data for soaps in general. For example, an LC_{50} range of 180–320 mg/L has been reported for *Chlorella vulgaris*. Therefore, nonanoic acid as the potassium or sodium salt would not be expected to be significantly toxic to algae at these low concentrations of approximately 0.032% w/w (320 ppm).

Toxicity to fish, fathead minnow (*Pimephales promelas*), for 96 hr exposure was reported to be LC_{50} = 104 ppm.

Fatty acids are toxic to aquatic invertebrates, but only slightly toxic to cold and warm water fish species (RED: Soap Salts; EPA–738–R–92–015). However, fatty acids are rapidly destroyed by microbial action and sorption or formation of insoluble salts of calcium or magnesium in soil and water. The proposed uses for nonanoic acid (ammonium nonanoate) as an inert would not be applied near water or on drainage ditches or onto marsh, ponds, lakes, streams or rivers.

Nonanoic acids are relatively non-toxic to waterfowl and upland game birds (RED: Soap Salts; EPA–738–R–92–015).

As a result of a number of acute toxicity studies, technical nonanoic acid is placed in the following Toxicity Categories: Primary eye irritation (Toxicity Category II); acute dermal and inhalation toxicity (Toxicity Category III); acute oral toxicity (Toxicity Category IV). Sensitization test results showed that nonanoic acid cannot be considered a dermal sensitizer (68 FR 7931).

2. *Genotoxicity*. It was reported that the Ames Test (Salmonella/reverse mutation assay) showed nonanoic acid to be non-mutgenic. Similarly, an *in vivo* cytogenetics study using micronucleus assay gave a negative result. In a mouse lymphoma forward mutation study, nonanoic acid appears to induce a weak mutagenic response at or higher than 50 milligrams/milliliter (mg/mL) level. This was observed in the presence of increasing toxicity, and may be an indication of gross chromosomal changes or damage and not actual mutational changes within the thymidine kinese gene locus (68 FR 7931).

A dermal carcinogenicity study was performed on the shaved skin area of 50 mice and treated twice-weekly with 50 mg doses of undiluted nonanoic acid for 80 weeks. No evidence of severe dermal irritation or systemic toxicity was seen. Histopathology revealed no tumors of the skin or the internal organs (68 FR 7931).

3. *Reproductive and developmental toxicity*. Development toxicity was conducted on a group of 22 pregnant Crl: COBS CD(SD)BR rats. These rats were treated with nonanoic acid in corn oil at a dose of 1,500 mg/kg on gestation days 6 through 15 (both days inclusive). Maternal body weight was not significantly affected during the treatment. Only 1 out of 22 animals showed signs of clinical toxicity. No significant histopathology signs were observed in the maternal animals. Nonanoic acid treatment did not have any significant effect on cesarean section observations. Four fetuses in one litter showed a higher incidence of cleft palate compared to the control mean. For maternal toxicity, EPA determined the no observed adverse effect level (NOAEL) to be greater than 1,500 mg/kg/day. Because fetal effects were observed at 1,500 mg/kg/day, the NOAEL for developmental toxicity was not determined. EPA has determined that this dose is in excess of the Agency's limit dose for toxic effects. The type and level of exposure expected from the active ingredient use of this chemical is much lower than the dose level shown in the study (68 FR 7931).

Nonanoic acid was weakly positive for inducing mutations in mouse lymphoma cells. Mutations were induced with nonanoic acid at greater than or equal to 50 µg/mL. Since the mutations were observed with severe cytotoxicity and small colony development, the observed mutations may have been an aberration caused by cell damage and not actual mutational changes (61 FR 5716) (February 14, 1996) (FRL–5348–9).

Nonanoic acid as single oral doses of 1,250, 2,500 and 5,000 mg/kg to ICR mice followed by bone marrow harvest at 24, 48 and 72 hr after treatment, did not significantly increase micronucleated polychromatic erythrocytes which indicated a negative micronucleus assay test (61 FR 5716).

4. *Subchronic toxicity*.In an oral toxicity study (conducted for 14 days), no systemic toxicity was observed with either sex (animal species unspecified) even at the highest nonanoic acid dose tested, 20,000 ppm (1,834 mg/kg/day). In addition, nonanoic acid showed no adverse effects on survival, clinical signs, body weight gain, food consumption, hematology, clinical chemistry or gross pathology. For each dose, three animals per sex were tested. However, the study did not report organ weights and histopathology. This was considered a deficiency in this study. Nevertheless, the Agency determined that because no toxic effects were observed at a very high level dose approaching 2,000 mg/kg, a 90–day oral study was not necessary (68 FR 7931).

Nonanoic acid at 80, 40, 20 and 10% applied as a 15 micro-liter aliquot to patches placed on the lower back of 152 women for 47 hr and evaluated at 48 and 96 hr indicated erythema (redness) decreased with time for all concentrations, but the higher concentrations increased surface changes with time (Ref. 3). Reiche *et al.* suggested nonanoic acid was an irritant rather than an allergen regardless of the increase in skin reaction over patch test exposure time. The skin reaction to 10% nonanoic acid for 47 hr was considered to be mild by the National Institute of Occupational Safety and Health (NIOSH).

Solutions of nonanoic acid at 0.5 M or 1.0 M in propanol (approximately 10 to 20% w/w) caused skin irritation when applied under occlusive patches in 25 human volunteers. A 20% nonanoic acid solution in propanol and applied as a patch test produced skin reactions in 94% of 116 healthy male volunteers. The lesions consisted of mainly erythema (redness) at 48 hr and pigmentation at 96 hr (Ref. 4).

Forty two nonatopic healthy male subjects of 18 to 47 years of age had 3 to 10 patch tests on the volar area of the forearm applied with 8 mm Finn Chambers which were assessed by two independent readers at 48 hr post application. A six point grading scale from no visible reaction to intense erythema with bulbous formation indicated chemical concentrations which produced patch test reactions of less than or equal to 2+ in at least 75% of the subjects as follows: 0.5% Benzalkonium-chloride, 5% sodium lauryl sulfate, 0.8% croton-oil, 0.02 dithranol, 80% nonanoic acid (propanol solution), 100% propylene glycol and 2% sodium hydroxide (Ref. 5).

One hundred hospitalized patients with different types of skin disease were patch tested with nonanoic acid with a 48 hr contact period followed by evaluation at 1 and 72 hr after patch removal. The nonanoic acid concentration to produce a discernible irritation reaction in 50% of the population (ID50) was calculated by conventional probit analysis. The calculated ID50 for males and females was 5.3 and 6.4%, respectively, nonanoic acid concentration. Three of 100 patients reacted to 1% nonanoic

acid and all reacted to 20 to 39.3% nonanoic acid (Ref. 6). NIOSH reported an 80 and 20% nonanoic acid solution with 48 and 24 hr human skin contact, respectively, caused moderate skin irritation.

Sensitization reactions were not observed in 25 human volunteers after patch testing with 12% nonanoic acid solution in petroleum ether.

Nonanoic acid is a non-sensitizing irritant which means it does not cause allergic reactions in most humans. Nonanoic acid is lipophilic and non-sensitizing.

Nonanoic acid at a dose of 500 mg/kg in contact with rabbit skin for 24 hr was a moderate irritant. Nonanoic acid in an undiluted form produced severe skin irritation in guinea pigs when applied to the skin.

A 28–day dermal toxicity study conducted on rabbits was submitted to EPA under TSCA section 8(e). Five male and five female New Zealand white rabbits were dermally treated with nonanoic acid present in mineral oil. In all, 10 applications were made (5 per week) at a dose level of 500 mg/kg/day (25% w/w). A 2–week recovery period was allowed for selected rabbits. During the first and second week of treatment slight body weight loss and decreased food consumption were observed. One female rabbit showed ocular discharge and hypoactivity during the second week of treatment. All rabbits dermally treated with nonanoic acid by day 14 showed signs of severe erythema and moderate edema. Dermal reactions consisting of moderate desquamation, moderate fissuring, eschar, exfoliation and necrosis were also observed at day 14. By day 29, all dermal reactions had reversed. It was evident that at the treatment level of 500 mg/kg/day of nonanoic acid, significant dermal signs of toxicity were observed but no significant systemic reaction (68 FR 7931). There is additional information on the previous study with 10 New Zealand rabbits which showed that mortality did not occur and microscopic effects on kidneys, liver, lungs, heart and brains were not observed. Slight to severe skin irritation occurred in the first week and progressed to necrosis in the second week. Skin irritation on four rabbits subsided during 2 weeks of recovery after treatments ended. NIOSH characterized the effect on rabbit skin, in the previous study, as moderate.

Severe irritation was produced by the application of 91 mg of nonanoic acid to the rabbit eye. This same study was reported for nonanoic acid as severely irritating to rabbit eyes and aerosols are also an eye irritant. NIOSH reported two eye irritation studies which showed 91 mg of nonanoic acid caused severe rabbit eye injury as reported above and published in 1964, but another study, published in 1999, with a 100 uL (0.1 mL = approx one drop) dose or droplet to the rabbit eye caused only mild injury. Since the source of nonanoic acid is unknown in the 1999 study, it is impossible to compare the actual dose; however, since nonanoic acid has a density less than water, the doses used in these studies would appear similar. Therefore, these results would appear inconclusive for eye irritation or indicate a rather large range of experimental error.

Rats exposed to atmospheric concentrations of 840 mg/cubic-meter (125 ppm) nonanoic acid for a period of 6 hr showed no symptoms of toxicity. However, in another study, test animals (species not specified) subjected to an atmospheric concentration of 3.75 mg/L (1,150 ppm) nonanoic acid for a period of 6 hr developed clinical signs of nasal discharge, blinking, and labored breathing. Inhalation exposure indicated nonanoic acid was a respiratory irritant.

5. *Chronic toxicity.* Oral exposure of 8 male rats to nonanoic acid at 4.17% in the diet (approximately 2,100 g/kg/day) for 4 weeks had no effect on survival. A slight 4% decrease in mean growth was observed, but not statistically significant.

A study on chronic toxicity/carcinogenicity in mice was conducted for 80 weeks. A dose of 50 mg of nonanoic acid was dermally applied to each shaved mouse twice/day for 80 weeks. Histopathology showed no non-neoplastic or neoplastic lesions on skins and internal organs of mice. The Agency concluded that this study although not exactly conducted according to guideline, adequately assesses the chronic toxicity and the carcinogenic potential of nonanoic acid via the dermal route (68 FR 7931).

6. *Animal metabolism.* Mammals, birds and invertebrates consume fatty acids as a normal constituent of their daily diet (RED: Soap Salts; EPA–738–R–92–015) and would metabolize nonanoic acid via normal respiration, the same as plants.

7. *Metabolite toxicology.* Nonanoic acid, as a straight chain carbon molecule, would be metabolized by beta-oxidation to form acetate molecules which enter the citric acid cycle and are metabolized to carbon dioxide, water and energy. None of the metabolites would be considered to have any toxicological risk.

8. *Endocrine disruption.* Straight chain carbon molecules, as in the C9 carbon chain of nonanoic acid would be unlikely to cause a risk of endocrine disruption. Nonanoic acid occurs naturally in plants and animals.

C. Aggregate Exposure

1. *Dietary exposure.* The Food and Drug Administration has cleared nonanoic acid as a synthetic food flavoring agent (21 CFR 172.515), as an adjuvant, production aid and sanitizer to be used in contact with food (21 CFR 178.1010(b)) and in washing or to assist in lye peeling of fruits and vegetables (up to 1%) (21 CFR 173.315). Nonanoic acid is also exempt from the requirement of a tolerance when used in or on all food commodities, as a plant regulator on plants, seeds, or cuttings after harvest in accordance with Good Agricultural Practices (GAP). It is also exempt from a tolerance when used as a herbicide on all plant food commodity provided that allocations are not made directly to the food commodity except when used as a harvest aid or desiccant to any root or tuber vegetable, bulb, or cotton (40 CFR 180.1159), (68 FR 7931). Applications of ammonium nonanoate (dissociated into nonanoic acid), as an inert ingredient additive, would potentially contact all plant parts of food crops.

A calculation of the dietary exposure is complicated by the exemption from tolerance for nonanoic acid and particularly for the 21 CFR 172.515 rule which allows direct addition of nonanoic acid into food at the minimum quantity required to produce the desired effect. However, in the aggregate, the daily consumption of nonanoic acid is probably less than 1 mg/kg/day. The worst case scenarios presented indicate nonanoic acid exposure as tens of µg/kg/day. Based on cited public data in this document, the no effect level for mice and rats for ingested nonanoic acid is 3,000 mg/kg/day and the estimated maximum human dietary exposure is 0.030 mg/kg/day; therefore, a 10,000 fold safety factor or greater is estimated for nonanoic acid in food. However, since nonanoic acid is rapidly metabolized in the human digestive system, the estimated safety factor is a temporal and minimal estimate. The petitioner believes that the surfactant properties of ammonium nonanoate (nonanoic acid) should enhance the efficacy of pesticides with a concomitant reduction of pesticide rates and reduce dietary exposure to pesticides.

i. *Food.* For nonanoic acid as a sanitizer use, a worst case dietary exposure estimate has been calculated, assuming that all food consumed by an adult or child has contacted a sanitized surface using pelargonic acid (nonanoic acid), that a 1 mg square centimeter (sq

cm) sanitizer residue remains on the surface, and that 100% of the residue (170 ppm) is transferred to the food from the surface. Using these assumptions, in which all food contacts 4,000 sq cm of sanitized non-porous food-contact surfaces a worst case dietary exposure of 680 µg/day is calculated. For a 70 kg adult this becomes 9:7 µg/kg/day and for a 15 kg child, exposure is calculated as 45 µg/kg/day (68 FR 7931).

For a typical use as an inert ingredient, nonanoic acid as ammonium nonanoate at a concentration of 0.5% w/w in the dilute spray solution applied in 20 gal/acre spray volume would apply approximately 8.7 mg/sq ft of ammonium nonanoate of which 7.8 mg is nonanoic acid. If we assume 8 cucumbers of 4.0 lb total weight completely covered the 1 sq ft area, the consumption of one-half of one cucumber (0.25 lb raw cucumber) would result in an exposure to 0.5 mg nonanoic acid. Therefore, the calculated exposure to a typical 70 kg adult would be 7 µg/kg/day; and for a child of 15 kg, the exposure would be 33 µg/kg/day nonanoic acid. The calculated human exposure would be the same for one cucumber or more per sq ft because the application is uniformly applied to the soil surface area or crop laying on the soil surface. The actual exposure in the cucumber example should be less than calculated because the consumption was assumed to occur on the day of application without cucumber washing or preparation and without consideration of normal interception of some of the spray application by plant foliage.

Some pesticide applications are directed sprays which would reduce potential contact with the edible plant parts. Translocation of nonanoic acid is unlikely to occur since its mode of action is a physical reaction with cell membranes as a lipophilic chemical. The petitioner believes that ammonium nonanoate would be a more acceptable adjuvant alternative to many surfactants in use today.

ii. *Drinking water.* Nonanoic acid, as an inert ingredient in pesticide formulations should not be applied near or on potable water. The rapid dissipation of nonanoic acid in soil, with an estimated soil half-life of 1–day for fatty acids, should mitigate any potential for water contamination by run-off from treated fields. Drainage ditches and lakes, ponds, streams and rivers will be prohibited from nonanoic acid application. KX-6116 as a sanitizer contained nonanoic acid as its active component and low concentrations of nonanoic acid could be expected to be introduced into drinking water. However, EPA concluded exposure through drinking water was expected to be low and not of significance (68 FR 7931). The petitioner believes that ammonium nonanoate (nonanoic acid) as an inert ingredient is not expected to be applied near drinking water sources. Rapid metabolism of nonanoic acid in 1 to 9 days in soil should prevent potential contamination of surface water or ground water (68 FR 7931). The soil half-life of fatty acids was estimated to be less than 1–day (RED: Soap Salts; EPA–738–R–92–015).

The nonanoic acid log octanol/water partition coefficient is 3.42 which indicated the hydrophobic molecule, nonanoic acid, would have a very strong affinity to the organic matter in soil and would not leach into ground water. Microbial degradation in soil, which proceeds at a half-life rate of 1–day for fatty acids, would probably rapidly eliminate the strongly adsorbed nonanoic acid from soil. These factors would probably assure nonanoic acid would not occur in ground water. The salts of nonanoic acid would dissociate into the ionic forms of nonanoic acid and the free salt in soil and although ammonium nonanoate is water soluble, it would be bound to soil organic matter in the dissociated form. Soils contain abundant magnesium and calcium ions which would form insoluble salts of nonanoic acid and contribute to protection of ground water.

2. *Non-dietary exposure.* Applicator exposure to nonanoic acid as an inert ingredient is not expected to exceed the currently approved uses. The use of ammonium nonanoate (nonanoic acid) with herbicides should increase the rate of plant tissue necrosis and should reduce the potential risk to adults or children who contact sprayed plant parts, because the rapidly desiccated plant cells should retain nonanoic acid, as an inert ingredient, and the herbicide active ingredient bound to collapsed cell tissues. Off-target movement of the inert ingredient additive, nonanoic acid, as ammonium nonanoate, should not be expected to exceed the potential off-target movement of the pesticide active ingredient.

Fatty acids and their salts are a potential risk for eye injury; therefore, eye protection would be recommended when handling ammonium nonanoate. The solid form of 100% ammonium nonanoate crystals could have a reduced risk to eyes compared to the 40% liquid concentrate because accidental facial exposure by splashing would be eliminated. Also 100% crystalline ammonium nonanoate would have less eye exposure risk compared to other typical liquid surfactants.

Nonanoic acid is slightly volatile and is a component of the odor of milk, cheese, fats and soap. However, the estimated half-life in the atmosphere for nonanoic acid is 1.6 days. Therefore, inhalation exposure would be minimal for most occupations. Workers in the aforementioned industries of cheese and soap, etc. have not been seriously afflicted by long-term exposure to environments with nonanoic acid in the work environment.

D. Cumulative Effects

EPA concluded that pelargonic acid (nonanoic acid) is sufficiently non-toxic that EPA can determine that it does not share a common mechanism of toxicity with other substances (68 FR 7931). The rapid dissipation of nonanoic acid in the environment, i.e. soil half-life of 1–day and atmospheric half-life of 1.6 days, and normal metabolism of nonanoic acid by humans would probably prevent an accumulation of residual levels in the environment to trigger any cumulative effects. The mechanism of action of nonanoic acid and some other fatty acids on plants is a physical effect on plant cell walls which affects cell wall integrity and would be less likely to have a cumulative effect as compared to compounds with a mode of action that affects metabolic or regulatory functions in organisms.

E. Safety Determination

1. *U.S. population.* Ammonium nonanoate forms nonanoic acid in solution and nonanoic acid occurs naturally in laundry and hygienic soaps as sodium or potassium nonanoate. Therefore, the toxicological properties of the ionized form, nonanoic acid are reviewed for the toxicological profile. Nonanoic acid is used as a antimicrobial agent or sanitizer for food contact surfaces. It is also used in lithographic plate developer solutions. The three uses described above involve disposal via public sewer systems, which indicates the low risk concern associated with nonanoic acid in the environment. Nonanoic acid is also used as a herbicide with directed and shielded applications on all food crops and is exempt from tolerance. However, the directed and shielded application would be expected to prevent contact with the edible plant parts. Nonanoic acid is exempt from a tolerance when applied to root or tuber vegetable, bulb or cotton as a desiccant or harvest aid.

The proposed use, in this notice of filing for ammonium nonanoate (nonanoic acid) as an inert ingredient,

would be for applications to agricultural commodities at rates less than those used as an herbicide or crop desiccant.

Based on the following five considerations, EPA concluded that nonanoic acid is unlikely to pose a risk under all reasonable exposure scenarios:

i. Fatty acids such as nonanoic acid are processed by known metabolic pathways within the body and contribute to normal physiological function.

ii. Nonanoic acid is naturally present at levels up to 224 ppb in apples, 385 ppm in the skin of grapes, and 143 ppm in grape pulp. It is present in a number of other foods as well. An average serving of grapes containing 385 ppm of nonanoic acid in the grape skins would result in exposure to nonanoic acid to an average consumer of 164 µg/kg/day. In comparison, a worst case estimate of dietary exposure to nonanoic acid as a result of its use as sanitizer is 9.7 µg/kg/day for a 70 kg adult and 45 µg/kg/day for a 15 kg child.

iii. The Food and Drug Administration has cleared nonanoic acid as a synthetic food flavoring agent and adjuvant (21 CFR 172.515), as an adjuvant, production aid and sanitizer to be used in contact with food (21 CFR 178.1010(b)) and in washing or to assist in lye peeling of fruits and vegetables (up to 1% nonanoic acid) (21 CFR 173.315). Nonanoic acid is also exempt from the requirement of a tolerance when used in or on all food commodities, as a plant regulator on plants, seeds, or cuttings after harvest in accordance with GAP. It is also exempt from a tolerance when used as a herbicide on all plant food commodities provided that allocations are not made directly to the food commodity except when used as a harvest aid or desiccant to any root or tuber vegetable, bulb, or cotton (40 CFR 180.1159).

iv. Dietary toxicity testing evidenced adverse reactions only at doses that were at or above limit doses. Dermal toxicity testing showed no significant systemic reaction.

v. The estimated exposures to nonanoic acid and other fatty acids from direct or indirect addition to food as well as sanitizer uses are well below the doses administered in animal studies that are required to elicit an adverse effect. Accordingly, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to nonanoic acid (68 FR 7931).

Nonanoic acid has an estimated 1–day half-life in soil (RED: Soap Salts; EPA–738–R–92–015) and the estimated half-life in the atmosphere is about 1.6 days. Volatilization half-life of nonanoic acid from a river was estimated to be 29 days from a model river and 210 days from a model lake. Nonanoic acid is also inactivated in water by the formation of calcium and magnesium salts which are insoluble precipitates and non-reactive. In summary, nonanoic acid is highly unlikely to accumulate in the environment due to rapid metabolism in soils and neutralization as insoluble salts.

2. *Infants and children.* As previously discussed the dietary safety factor for nonanoic acid is approximately 10,000 fold; therefore, risk to children and infants, with primary exposure thru ingestion, would be of minimal concern.

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. Based on the numerous considerations, EPA concluded that pelargonic acid was sufficiently non-toxic that a margin of safety analysis was not appropriate. For the same reasons, EPA has not applied an additional margin of safety for the protection of infants and children (68 FR 7931).

F. International Tolerances

Codex maximum residue levels have not been established for nonanoic acid (68 FR 7931).

G. References

1. Suryanarayanan, S. and W. B. McConnell. 1964. The metabolism of pelargonate-1-C14 by wheat stem rust uredospores. Report: NRC8214. National Research Council of Canada, Saskatoon (Saskatchewan) Prairie Regional Lab., May 8, 1964 (Abstract).

2. Haque, Z. U. and K. J. Aryana. 2002. Volatiles in lowfat chedder cheese containing commercial fat replacers. Food Sci. Tech. Res. 8(2): 188–190 (Abstract).

3. Reiche, L., C. Willis, J. Wilkison, S. Shaw and O. de Lacharriere. 1998. Clinical morphology of sodium lauryl sulfate and nonanoic acid irritant patch test reactions at 48h and 96h in 152 subjects. Contact Dermatitis 39(5): 240–243 (Abstract).

4. Wahlberg, J. E. and H. I. Maibach. 1980. Nonanoic acid irritation - A positive control at routing patch testing? Contact Dermatitis 6(2): 128–130 (Abstract).

5. Willlis, C. M., C. J. M. Stephens and J. D. Wilkinson. 1988. Experimentally-induced irritant contact dermatitis. Determination of optimum irritant concentrations. Contact Dermatitis 18(1): 20–24 (Abstract).

6. Wahlberg, J. E., K. Wrangsjo and A. Hietasalo. 1985. Skin irritancy from nonanoic acid. Contact Dermatitis 13(4): 266–269 (Abstract).

[FR Doc. E4–553 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0044; FRL–7347–1]

Buprofezin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0044, must be received on or before April 16, 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: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@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 32523)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0044. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0044. 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–2004–0044. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and

made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0044.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0044. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assignedto this action in the subject line on the first page of your response. You may also provide thename, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding theelements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions is prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 3E6636, 3E6741, and 3E6747

EPA has received pesticide petitions (3E6636, 3E6741, and 3E6747) from IR-4, 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.511 by establishing tolerances for residues of the insecticide, buprofezin, (2-tert-butylimino-3- isopropyl-5-phenyl-1,3,5-thiadiazinan-4-one) in or on the raw agricultural commodities: Fruit, pome, group 11, except apple and apple, pomace at 4.0 parts per million (ppm) (PP 3E6636), apple at 1.2 ppm (PP 3E6636), apple, pomace at 2.5 ppm (PP 3E6636), peach, apricot, and nectarine at 3.0 ppm (PP 3E6741), and avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, mamey sapote, sugar apple, cherimoya, atemoya, custard apple, ilama, soursop, biriba, guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 0.30 ppm (PP 3E6747). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on these petitions. This notice includes a summary of the petitions prepared by Nichino America, Incorporated, 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808.

A. Residue Chemistry

1. *Plant metabolism.* The plant metabolism of buprofezin is adequately understood for the pupose of the proposed tolerances.

2. *Analytical method.* The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography using nitrogen phosphorous detection.

3. *Magnitude of residues.* Residue data has been submitted for fruit, pome, group 11, except apple and apple, pomace; apple; apple, pomace; peach, apricot, and nectarine; and avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, mamey sapote, sugar apple, cherimoya, atemoya, custard apple, ilama, soursop, biriba, guava, feijoa, jaboticaba, wax jambu, starfruit,

passionfruit, and acerola. The requested tolerances are adequately supported.

B. Toxicological Profile

An assessment of the toxic effects caused by buprofezin is discussed in Unit III. A. and Unit III. B. of the **Federal Register** dated June 25, 2003 (68 FR 37765) (FRL–7310–7).

1. *Animal metabolism.* The metabolism of buprofezin has been extensively studied in various species of animals and fish. Buprofezin has several groups that can metabolize in a variety of ways thus potentially producing a very large number of metabolites. Indeed, extensive metabolism to many minor metabolites was observed in all the animal species. Metabolism in fish was, however, much more limited and clearly defined. Although not all metabolic intermediates have been detected in all the species, the major routes of metabolism have been identified in animals and fish, and a consistent pattern is observed throughout these species.

2. *Metabolite toxicology*—i. *Metabolism in rats.* The major metabolite found in rat excreta was parent buprofezin in addition to several compounds formed after extensive metabolism. Whereas plant metabolism appeared restricted mainly to oxidation of the tertiary butyl group, oxidation of the butyl group and hydroxylation of the phenyl ring were both observed in rats. Oxidation of the t-butyl group proceeded beyond an alcohol to an acid and was accompanied by ring opening. The most extensively metabolized compound identified in rats was BF23 (acetylated p-aminophenol).

ii. *Metabolism in ruminants and hens.* Residue levels were low (0.05 ppm) in all ruminant and poultry tissues and commodities, following treatment at exaggerated rates (approximately 20x and 7,500x the anticipated dietary burden, respectively). The only exceptions were cow liver (1.21 ppm), cow kidney (0.41 ppm), hen liver (0.15 ppm), and egg yolk (0.11 ppm). Extensive metabolism was observed in both species with a large number of minor metabolites being produced. The principal metabolites identified in the cow were BF2 and BF23, indicating that the major pathway of degradation in ruminants is hydroxylation of the phenyl ring followed by opening and degradation of the heterocyclic ring. The identification of trace levels of BF13 confirms this pathway. As in rats, BF23 was the most extensively metabolized compound identified. Trace levels of BF12 were also detected. This indicates that the parallel pathway of heterocyclic ring opening without hydroxylation of the phenyl ring is also in operation. Similarly in hens, the identified metabolites were derived from degradation of the heterocyclic ring either with (BF13) or without (BF9 and BF12) phenyl ring hydroxylation. No single unidentified compound accounted for more than 6% of the total residue in any animal tissue or commodity, with the exception of a component comprising 8.7% of egg white. The total residue in egg white was, however, only 0.02 ppm even at this highly exaggerated dose rate.

iii. *Metabolism in fish.* Analysis of fish tissues, following a bioaccumulation study, found a much simpler metabolic profile. Buprofezin was present in both edible and non-edible tissues, but the principle metabolites were polar conjugates of BF4. Trace levels of BF12 were also detected.

3. *Endocrine disruption.* The only effect noted on endocrine organs was an increased incidence of follicular cell hypertrophy and C-cell hyperplasia of the thyroid gland in rats administered buprofezin at dietary concentrations of 2,000 ppm for 24 months. Buprofezin also caused mild to moderate hepatotoxic effects at this dietary concentration. Nichino America, Inc. believes that the effect on the thyroid most likely resulted from increased turnover of T3/T4 in the liver with a resultant rise in TSH secretion (due to the hepatotoxicity). The rat is known to be much more susceptible than humans to these effects due to the very rapid turnover of thyroxine in the blood in rats (12 hours vs. about 5-9 days in humans). Therefore, the thyroid pathological changes which have been noted following administration of high doses of buprofezin are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of buprofezin to which humans are likely to be exposed.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.511) for the residues of buprofezin, in or on, the following raw agricultural commodities: Almond; banana; bean, snap, succulent; cattle, fat; cattle, meat byproducts; cattle, liver; citrus, oil; citrus, dried pulp; fruit, citrus; goat, fat; goat, meat byproducts; goat, liver; grape; grape, raisin; hog, fat; hog, meat byproducts; hog, liver; horse, fat; horse, meat byproducts; horse, liver; logan; lychee; milk; pistachio; pulasan; rambutan; sheep, fat; sheep, meat byproducts; sheep, liver; and spanish lime. There are also time-limited tolerances established for lettuce, head; lettuce, leaf; and vegetable, cucurbit. These tolerances are set to expire on 12/31/04. Other additional time-limited tolerances include banana; cotton, gin byproducts; cotton, undelinted seed; and tomato. The expiration date for these tolerances is 12/31/05.

i. *Food*—a. *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. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994-1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. As a result, the following assumptions were made for the acute exposure assessments: The acute dietary analysis assumed tolerance level residues, DEEM (ver. 7) default processing factors, and 100% crop treated for all registered and proposed commodities (Tier I).

b. *Chronic exposure.* Chronic dietary exposure was estimated using the 1994-98 CSFII and DEEM7. For all crops, 100% crop-treated was used. Tolerance level residues and default processing factors were used for meat and milk, succulent bean, cucurbit, almond, acerola, avocado, carambola, cherimoya, cotton, genip, guava, longan fruit, lychee, mango, papaya, passion fruit, pistachio, sapodilla, soursop, and sugar apple. Average field trial data and experimental processing factors (when available) were used for banana (including plantains), grape, lettuce, citrus, pome fruit, and peaches (including apricots and nectarines). For tomato, tolerance level residues and experimental processing factors, were used.

ii. *Drinking water.* The residue of concern in drinking water was determined to be buprofezin. There are no established maximum contaminant levels or health advisory levels for residues of buprofezin in drinking water. Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of buprofezin for acute exposures are estimated to be 102 parts per billion (ppb) for surface water and 0.08 ppb for ground water. The EECs for chronic surface water and ground water exposures are estimated to be 34 ppb, and 0.08 ppb, respectively.

2. *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). Buprofezin is not registered for use on any sites that would result in residential exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

At the present time, there are insufficient data available to allow Nichino America, Inc. to properly evaluate the potential for cumulative effects with other pesticides to which an individual may be exposed. For the purposes of this assessment, therefore, Nichino America, Inc. has assumed that buprofezin does not have a common mechanism of toxicity with any other registered pesticides. Therefore, only exposure from buprofezin is being addressed at this time.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* To estimate acute aggregate exposure risk, the Agency combined the high-end value from food and water, and compared it to the acute population adjusted dose (aPAD). Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to buprofezin for females 13–49 years (no endpoint was identified for the general population including infants and children). The acute dietary exposure from buprofezin will occupy 1.54% of the aPAD. In addition, there is potential for acute dietary exposure to buprofezin in drinking water. Acute Drinking Water Levels of Comparison (DWLOC) were calculated based on an aPAD of 2.0 milligrams/ kilogram/day. For the acute assessment, the females (13–49 years) subpopulation generated an acute DWLOC of approximately 59,076 ppb. 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.

ii. *Chronic risk.* Based on the toxicology data base and available information on anticipated residues, the chronic dietary exposure to the U.S. population (total) was estimated as 0.001464 mg/kg bwt/day, and was 14.6 % of the estimated chronic population adjusted dose (cPAD). Exposure to potential residues in drinking water is expected to be negligible, as DWLOCs of 299 ppb are substantially higher than modeled acute and long-term EECs. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to the U.S. population or any population subgroup from exposure to buprofezin.

2. *Infants and children.* Chronic exposure to children ages 1-2, the highest exposed population subgroup, was 0.005444 mg/kg bwt/day (54.4 % of the estimated cPAD). Exposure to potential residues in drinking water is expected to be negligible, as DWLOCs are substantially higher than modeled acute and long-term EECs. EPA has determined that reliable data support using the standard margin of exposure (MOE) and uncertainty factor (100 for combined interspecies and intraspecies variability) for buprofezin and that an additional safety factor of 10 is not necessary to be protective of infants and children. The acute EEC of 102 ppb is considerably less than 59,076 ppb. For the chronic assessment, the children 1-2 years old subpopulation generated the lowest chronic DWLOC of approximately 46 ppb. Thus, the chronic DWLOC of 46 ppb is higher than the chronic EEC of 34 ppb.

F. International Tolerances

Canada, Codex, and Mexico do not have maximum residue limits for residues of buprofezin in/on the proposed crops. Therefore, harmonization is not an issue.

[FR Doc. 04–5513 Filed 3–16–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0046; FRL–7347–3]

Fludioxonil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0046, must be received on or before April 16, 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: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@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).

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2. 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0046. 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–2004–0046. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0046.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0046. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically

through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

3E6551, 3E6639, 3E6701, and 3E6803

EPA has received pesticide petitions (3E6551, 3E6639, 3E6701, and 3E6803) from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.516 by establishing tolerances for residues of fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-H-pyrrole-3-carbonitrile in or on the following raw agricultural commodities:

1. PP 3E6551 proposes a tolerance for kiwifruit at 20 parts per million (ppm).
2. PP 3E6639 proposes a tolerance for leafy greens subgroup 4A, except spinach at 30 ppm.
3. PP 3E6701 proposes tolerances bean, dry and bean, succulent at 0.4 ppm.
4. PP 3E6742 proposes tolerances for fruit, pome, group 11 at 5.0 ppm, yam at 8.0 ppm, and melon subgroup 9A at 0.03 ppm.
5. PP 3E6803 proposes tolerances for citrus, crop group 10 at 10 ppm; citrus, dried pulp at 20 ppm, citrus, oil at 500 ppm, and pomegranate at 2.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of petitions prepared by Syngenta Crop Protection, Inc., Greensboro, NC 27409.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fludioxonil is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method.* Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG-597B) has passed an Agency petition method validation for several commodities, and is currently the enforcement method for fludioxonil. This method has also been forwarded to the Food and Drug Administration for inclusion into PAM II. An extensive database of method validation data using this method on various crop commodities is available.

3. *Magnitude of residues.* Complete residue data for the crops requested in this filing have been submitted. The requested tolerances are adequately supported.

B. Toxicological Profile

An assessment of toxic effects caused by fludioxonil is discussed in Unit III. A. and Unit III. B. of the **Federal Register** dated August 2, 2002 (67 FR 50354) (FRL–7188–7).

1. *Animal metabolism.* The metabolism of fludioxonil in rats is adequately understood.

2. *Metabolite toxicology.* The residues of concern for tolerance setting purposes is the parent compound. Consequently, there is no additional concern for toxicity of metabolites.

3. *Endocrine disruption.* Fludioxonil does not belong to a class of chemicals known for having adverse effects on the endocrine system. No estrogenic effects have been observed in the various short- and long-term studies conducted with various mammalian species.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Tier III acute and chronic dietary exposure evaluations were made using the Dietary Exposure Evaluation Model (DEEM™), version 7.87 from Exponent. Empirically derived processing factors for apple juice (0.09X), apple pomace (6.77X) and grape juice (0.36X) were used in these assessments. The apple juice processing factor was used as a surrogate for pear juice. All other processing factors used

the DEEM™ defaults. All consumption data for these assessments was taken from the USDA's Continuing Survey of Food Intake by individuals (CSFII) with the 1994–96 consumption database and the Supplemental CSFII children's survey (1998) consumption database. These exposure assessments included all registered uses and pending uses on leafy greens subgroup 4A, except spinach, beans, dry and succulent, kiwi fruit, citrus crop group, citrus, dried pulp, citrus, oil, pomegranate, pome fruit group 11, yam, and melon subgroup 9A. Secondary residues in animal commodities were estimated based on theoretical worst-case, yet nutritionally adequate animal diets and transfer information from feeding studies.

ii. *Drinking water.* Fludioxonil rapidly degrades via photolysis on the soil surface and in water. The half-lives are 1 day and 10 days, respectively. This potential for rapid degradation reduces the potential for ground water or surface water exposure. Fludioxonil K_{ocs} range from 991 to 2,440 indicating a relatively high affinity for binding to soil. Estimated Environmental Concentrations (EECs) of fludioxonil in drinking water were determined for the highest use rate of fludioxonil (turfgrass use). Screening Concentration in Ground Water (SCI-GROW) (Version 2.2) was used to determine acute and chronic EECs in ground water and Food Quality Protection Act (FQPA) Index Reservoir Screening Tool (FIRST) (Version 1.0) was used to determine acute and chronic EECs in surface water. Based on the model outputs, the ground water EECs for fludioxonil are 0.174 parts per billion (ppb) for acute and chronic exposure. The surface water EECs were 70 ppb and 26 ppb for acute and chronic exposure, respectively.

2. *Non-dietary exposure.* There is a potential residential post-application exposure to adults and children entering residential areas treated with fludioxonil. Since the Agency did not select a short-term endpoint for dermal exposure, only intermediate dermal exposures were considered. Based on the residential use pattern, no long-term post-application residential exposure is expected.

D. Cumulative Effects

Cumulative exposure to substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) 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 fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*—i. *Acute*: For the purpose of the aggregate risk assessment, the exposure value was expressed in terms of margin of exposure (MOE), which was calculated by dividing the no observable adverse effect level (NOAEL) by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the acute reference dose (%aRfD). Acute exposure to the females 13–50 years subpopulation resulted in a MOE of 1,919 (5.2% of the acute RfD of 1.0 milligrams/kilograms - bodyweight/day (mg/kg-bw/day)). Since the benchmark MOE for this assessment was 100 and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from dietary (food) exposure to residues arising from the current and proposed uses for fludioxonil.

Acute drinking water levels of comparison (DWLOC) were calculated based on an acute populated adjusted dose (aPAD) of 1 mg/kg/day. The females (13–50 years) subpopulation generated an acute DWLOC of approximately 28,440 ppb. The acute EEC of 70 ppb is considerably less than 28,440 ppb. The chronic and aggregate risk from fludioxonil residues in food and drinking water would; therefore, not be expected to exceed the EPA's level of concern.

ii. *Chronic*: The chronic exposure to the most exposed sub-population (children 1 and 2 years old) resulted in a MOE of 753 (13.3% of the chronic RfD of 0.033 mg/kg-bw/day). The chronic dietary exposure analysis (food only) indicated that exposure from all established and proposed fludioxonil uses would be 13.3% of the chronic RfD of 0.033 mg/kg-bw/day for the most sensitive subpopulation, children 1 and 2 years old.

Estimated concentrations of fludioxonil residues in surface and ground water were below the calculated acute DWLOC. The children 1 and 2 years old subpopulation had the lowest chronic DWLOC of approximately 286 ppb, which is considerably higher than the chronic EEC of 26 ppb.

Based on the completeness and reliability of the toxicity data supporting these petitions, and the results of the above exposure calculations, Syngenta believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues arising from all current and proposed fludioxonil uses, including anticipated dietary exposure from food, water, and all other types of non-occupational exposures.

2. *Infants and children.* No additional FQPA safety factor was applied. Syngenta has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concluded that aggregate exposure is not expected to exceed 100% of the chronic reference dose and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to fludioxonil.

[FR Doc. 04–5514 Filed 3–16–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0047; FRL–7346–8]

Flumioxazin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0047, must be received on or before April 16, 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: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@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)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0047. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

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system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0047.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0047. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions is prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous mateial, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 3E6777, 3E6788, and 3E6779

EPA has received pesticide petitions (PP 3E6777, 3E6788, and 3E6779) from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.568 by establishing tolerances for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione, in or on the following raw agricultural commodities:

1. PP 3E6777 proposes tolerances for peppermint, tops; peppermint, oil; spearmint, tops; and spearmint, oil at 0.04 parts per million (ppm).

2. PP 3E6788 proposes tolerances for onion, dry bulb; garlic, bulb; and shallot, bulb at 0.02 ppm.

3. PP 3E6779 proposes tolerances for vegetable, tuberous and corm subgroup 1C at 0.02 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by Valent USA Corporation, P.O. Box 8025, Walnut Creek, CA 94596–8025.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of flumioxazin is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method.* Practical analytical methods for detecting and measuring levels of flumioxazin have been developed and validated in/on all appropriate agricultural commodities and respective processing fractions. The limit of quantification (LOQ) of flumioxazin in the methods is 0.02 ppm which will allow monitoring of food

with residues at the levels proposed for the tolerances.

3. *Magnitude of residues.* Residue data on potato, onion, and mint have been submitted which adequately supports the requested tolerances.

B. Toxicological Profile

The toxicological profile for flumioxazin which supports these petitions for tolerances was previously published in the **Federal Register** of April 18, 2001 (66 FR 19870) (FRL–6778–5).

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Acute and chronic dietary analyses were conducted to estimate exposure to potential flumioxazin residues in/on the following crops: Peanuts and soybeans (existing tolerances), cotton, grapes, almond, pistachio, and sugarcane (tolerances pending), vegetable, tuberous and corm (Subgroup 1C), onion, dry bulb and mint (tolerances proposed in the current petitions), and nut, tree (Group 14), fruit, pome (Group 11), and fruit, stone (Group 12) (tolerances to be proposed in the future). The Cumulative and Aggregate Risk Evaluation System (CARES) Version 1.1 was used to conduct this assessment. Proposed tolerances and conservative estimates for percentages of the crop treated were used in these assessments. No adjustments were made for common washing, cooking or preparation practices. Exposure estimates for water were made based upon modeling General Expected Environmental Concentration (GENEEC 1.2).

ii. *Drinking water.* Since flumioxazin is applied outdoors to growing agricultural crops, the potential exists for the parent or its metabolites to reach ground water or surface water that may be used for drinking water. Because of the physical properties of flumioxazin, it is unlikely that flumioxazin or its metabolites can leach to potable ground water. To quantify potential exposure from drinking water, surface water concentrations for flumioxazin were estimated using GENEEC 1.2. Because K_{OC} could not be measured directly in adsorption-desorption studies because of chemical stability, GENEEC values representative of a range of K_{OC} values were modeled. The simulation that was selected for these exposure estimates used an average K_{OC} of 385, indicating high mobility. The peak GENEEC concentration predicted in the simulated pond water was 9.8 parts per billion (ppb). Using standard assumptions about body weight and water consumption, the acute exposure from this drinking water would be 0.00028 and 0.00098 milligrams/kilogram/day (mg/kg/day) for adults and children, respectively. The 56–day GENEEC concentration predicted in the simulated pond water was 0.34 ppb.

2. *Non-dietary exposure.* Flumioxazin is proposed only for agricultural uses and no homeowner or turf uses. Thus, no non-dietary risk assessment is needed.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. Although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way for most registered pesticides.

E. Safety Determination

1. *U.S. population.* The potential acute exposure from food to the U.S. population and various non-child/infant population subgroups will utilize at most 14.2% of the acute reference dose (aRfD). Addition of the worse case, dietary exposure from water (0.00028 mg/kg/day) increases this exposure at the 99.9th percentile to 23.7% of the aRfD. The Agency has no cause for concern if total acute residue contribution is less than 100% of the aRfD, because the aRfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Therefore, it can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population from aggregate, acute exposure to flumioxazin residues.

2. *Chronic risk.* The potential chronic exposure from food to the U.S. population and various non-child/infant population subgroups will utilize at most 2.5% of the chronic reference dose (cRfD). The population subgroup with the highest exposure was the U.S. population, western states. Addition of the worse case, dietary exposure from water (0.0000097 mg/kg/day) increases this exposure at the 100th percentile to 3.0% of the cRfD. The Agency has no cause for concern if total chronic residue contribution is less than 100% of the cRfD, because the cRfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Therefore, it can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population from aggregate, chronic exposure to flumioxazin residues.

3. *Infants and children*—i. *Safety factor for infants and children.* The FQPA safety factor has been retained at 10X in assessing the risk posed by flumioxazin. The reasons for retaining the 10X safety factor are as follows. First, there is evidence of increased susceptibility of rat fetuses to *in utero* exposure to flumioxazin by the oral and dermal route in the prenatal developmental toxicity studies in rats. In addition, there is evidence of increased susceptibility of young animals exposed to flumioxazin in the 2–generation reproduction toxicity study in rats. Finally, there is concern for the severity of the effects observed in fetuses and young animals when compared to those observed in the maternal and parental animals.

Since the additional 10X safety factor has been retained to account for the apparent increased susceptibility from prenatal or postnatal exposures to flumioxazin, it would be appropriate to apply the extra 10X safety factor to only selected subpopulations, e.g. infants and children <6 years old and females >13 years old. For these assessments, however, the 10X safety factor has been applied to all population subgroups for all exposure durations (acute and chronic), thus making these assessments additionally conservative.

ii. *Acute risk.* The potential acute exposure from food to children 1–2 years old (the most highly exposed child/infant subgroup) will utilize at most 26.3% of the aRfD. Addition of the worse case, dietary exposure from water (0.00098 mg/kg/day) increases this exposure at the 99.9th percentile to 59% of the aRfD. Therefore, it can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, acute exposure to flumioxazin residues.

iii. *Chronic risk.* The potential chronic exposure from food to children 1–2 years old (the most highly exposed child/infant subgroup) will utilize at most 2.4% of the cRfD. Addition of the worse case, dietary exposure from water (0.000034 mg/kg/day) increases this exposure at the 100th percentile to 4.2% of the cRfD. Therefore, it can be concluded that there is a reasonable

certainty that no harm will result to infants and children from aggregate, chronic exposure to flumioxazin residues.

F. International Tolerances

Flumioxazin has not been evaluated by the Joint Meeting on Pesticide Residues and there are no Codex Maximum Residue Limits (MRL) for flumioxazin. MRL values have been established to allow the following uses of flumioxazin in the following countries:

1. Argentina, soybean at 0.015 ppm and sunflower at 0.02 ppm.
2. Brazil, soybean at 0.05 ppm.
3. France, grape at 0.05 ppm.
4. Paraguay, soybean at 0.015 ppm.
5. South Africa, soybean at 0.02 ppm and groundnut at 0.02 ppm.
6. Spain, soybean at 0.05 ppm and peanut at 0.05 ppm.

[FR Doc. E4–552 Filed 3–16–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0051; FRL–7346–4]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period October 2003, to December 2003, to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0051. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. "Quarantine" and "public health" exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Arkansas
State Plant Board
Crisis: On August 29, 2003, for the use of spinosad on pastureland and

rangeland to control armyworms. This program ended on December 31, 2003. Contact: (Andrew Ertman)
Specific: EPA authorized the use of spinosad on pastureland and rangeland to control armyworms; August 29, 2003 to December 31, 2003. Contact: (Andrew Ertman)
California
Environmental Protection Agency, Department of Pesticide Regulation
Specific: EPA authorized the use of pyriproxyfen on strawberry to control whiteflies; December 12, 2003 to December 12, 2004. Contact: (Andrea Conrath)
Specific: EPA authorized the use of abamectin on spinach to control leafminer; December 23, 2003 to December 23, 2004. Contact: (Libby Pemberton)
Delaware
Department of Agriculture
Specific: EPA authorized the use of thiophanate methyl on mushroom to control green mold; December 16, 2003 to December 16, 2004. Contact: (Andrea Conrath)
Florida
Department of Agriculture and Consumer Services
Specific: EPA authorized the use of thymol on beehives to control varroa mites; November 6, 2003 to November 8, 2004. Contact: (Stacey Milan Groce)
Georgia
Department of Agriculture
Specific: EPA authorized the use of thymol on beehives to control varroa mites; October 14, 2003 to December 31, 2003. Contact: (Stacey Milan Groce)
Specific: EPA authorized the use of flufenacet on wheat to control ryegrass; October 27, 2003 to December 31, 2003. Contact: (Andrew Ertman)
Maryland
Department of Agriculture
Specific: EPA authorized the use of thymol on beehives to control varroa mites; October 14, 2003 to December 31, 2003. Contact: (Stacey Milan Groce)
Specific: EPA authorized the use of thiophanate methyl on mushroom to control green mold; December 30, 2003 to December 30, 2004. Contact: (Andrea Conrath)
Mississippi
Department of Agriculture and Commerce
Specific: EPA authorized the use of niclosamide on catfish ponds to control ram's horn snail; December 31, 2003 to December 31, 2004. Contact: (Stacey Milan Groce)
Nebraska
Department of Agriculture
Specific: EPA authorized the use of tebuconazole on field corn seed to control head smut; December 22, 2003 to May 30, 2004. Contact: (Libby Pemberton)
New Jersey
Department of Environmental Protection
Denial: On October 3, 2003, EPA denied a specific exemption request for the use of propamocarb hydrochloride on tomatoes to control late blight. This request was denied because available alternatives are expected to be sufficient to avert emergency losses. Concurrently, a crisis exemption which was declared by New Jersey on August 21, 2003, for this use was revoked. Contact: (Libby Pemberton)
North Carolina
Department of Agriculture
Specific: EPA authorized the use of flufenacet on wheat to control ryegrass; October 14, 2003 to December 31, 2003. Contact: (Andrew Ertman)
Pennsylvania
Department of Agriculture
Specific: EPA authorized the use of thiophanate methyl on mushroom to control green mold; December 16, 2003 to December 16, 2004. Contact: (Andrea Conrath)
South Carolina
Clemson University
Specific: EPA authorized the use of flufenacet on wheat to control ryegrass; November 20, 2003 to January 31, 2004. Contact: (Andrew Ertman)
Virginia
Department of Agriculture and Consumer Services
Specific: EPA authorized the use of flufenacet on wheat to control ryegrass; October 16, 2003 to March 31, 2004. Contact: (Andrew Ertman)
Wisconsin
Department of Agriculture, Trade, and Consumer Protection
Crisis: On March 28, 2003, for the use of imidacloprid on soybean seed to control bean leaf beetles. This program ended on April 30, 2003. Contact: (Andrew Ertman)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 4, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E4–551 Filed 3–16–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0083]; FRL–7350–7]

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 TSCA, 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 February 16, 2004 to February 27, 2004, consists of the PMNs 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–2004–0083 and the specific PMN number or TME number, must be received on or before April 16, 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: Barbara Cunningham, Director, 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–2004–0083. 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–2004–0083. 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–2004–0083 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–2004–0083 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 February 16, 2004 to February 27, 2004, consists of the PMNs 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

This status report identifies the PMNs 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. 57 PREMANUFACTURE NOTICES RECEIVED FROM: 2/16/04 TO 02/27/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0338	02/17/04	05/16/04	CBI	(G) Polymerization catalyst/initiator for thermosetting acrylic adhesive	(G) Amino alkyl organoborane
P–04–0339	02/17/04	05/16/04	Teknor apex company	(G) Plasticizer	(G) Aliphatic carboxylic acid ester
P–04–0340	02/17/04	05/16/04	CBI	(G) Polymerization additive	(G) Polyoxyether salt
P–04–0341	02/17/04	05/16/04	3M Company	(S) Solvent coating; heat transfer	(G) Hydrofluoroether
P–04–0342	02/17/04	05/16/04	H.B. Fuller	(G) Industrial adhesive	(G) Polyurethane prepolymer
P–04–0343	02/17/04	05/16/04	H.B. Fuller	(G) Industrial adhesive	(G) Polyurethane prepolymer
P–04–0344	02/17/04	05/16/04	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Sulfonyl substituted alkane
P–04–0345	02/18/04	05/17/04	Dow Corning Corporation	(G) Coating	(G) Amino silane salt
P–04–0346	02/18/04	05/17/04	CBI	(G) Binder component	(G) Copolymer of phenol and aromatic hydrocarbon
P–04–0347	02/18/04	05/17/04	CBI	(G) Binder component	(G) Copolymer of phenol and aromatic hydrocarbon
P–04–0348	02/18/04	05/17/04	Symrise Inc.	(G) Additive for industrial and consumer products dispersive use	(S) 7-cyclohexadecen-1-one, (e)8-cyclohexadecen-1-one, (z)
P–04–0349	02/19/04	05/18/04	CBI	(G) Contained use in energy production.	(G) Phosphonate salt
P–04–0350	02/19/04	05/18/04	CBI	(G) Destructive use	(G) Sulfurized pib distillate

I. 57 PREMANUFACTURE NOTICES RECEIVED FROM: 2/16/04 TO 02/27/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0351	02/19/04	05/18/04	CBI	(S) Resin for ultraviolet curable coatings; resin for ultraviolet curable inks	(G) Product of acrylic acid and a polyester polyol
P–04–0352	02/19/04	05/18/04	Mitsui Chemicals America, Inc.	(G) Manufacture of printable polymer film	(G) Ethylene-tetracyclododecene copolymer
P–04–0353	02/19/04	05/18/04	CBI	(G) Colourant	(G) Azo nickel complex
P–04–0354	02/19/04	05/18/04	CBI	(G) Nonwoven binder intermediate	(G) Acrylic polymer
P–04–0355	02/19/04	05/18/04	CBI	(G) Nonwoven binder	(G) Acrylic polymer
P–04–0356	02/19/04	05/18/04	CBI	(G) Nonwoven binder intermediate	(G) Acrylic polymer
P–04–0357	02/19/04	05/18/04	CBI	(G) Nonwoven binder	(G) Acrylic polymer
P–04–0358	02/20/04	05/19/04	CBI	(G) Crystallization aid	(G) Alkylamine sodium sulfonate
P–04–0359	02/20/04	05/19/04	CBI	(G) Crystallization aid	(G) Alkylamine sodium sulfonate
P–04–0360	02/17/04	05/16/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0361	02/17/04	05/16/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0362	02/17/04	05/16/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0363	02/17/04	05/16/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0364	02/17/04	05/16/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0365	02/17/04	05/16/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0366	02/20/04	05/19/04	CBI	(G) Hardner	(G) Blocked isocyanate
P–04–0367	02/23/04	05/22/04	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acid ester amine compound
P–04–0368	02/23/04	05/22/04	Ashland Inc., Enviornmental Health and Safety	(G) Raw material for the synthesis of multi-functional acrylate oligomers to be used in adhesives, coatings and inks	(G) Ketoester
P–04–0369	02/23/04	05/22/04	Ashland Inc., Enviornmental Health and Safety	(G) Raw material for the synthesis of multi-functional acrylate oligomers to be used in adhesives, coatings and inks	(G) Ketoester
P–04–0370	02/23/04	05/22/04	CIBA Specialty Chemicals Corporation	(S) Binder resin for coatings	(G) Acrylic polymer
P–04–0371	02/23/04	05/22/04	Essential Industries	(S) Raw material for wood coatings	(G) Aliphatic polyurethane dispersion
P–04–0372	02/23/04	05/22/04	Symrise Inc.	(G) Additive for consumer products dispersive use	(S) 1-pentanol, 2-mercapto-2-methyl-
P–04–0373	02/24/04	05/23/04	Symrise Inc.	(G) Additive for industrial and commercial products dispersive use	(S) Carbonic acid, 2-hydroxypropyl (1r,2s,5r)-5-methyl-2-(1-methylethyl)cyclohexyl ester
P–04–0374	02/24/04	05/23/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0375	02/24/04	05/23/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0376	02/24/04	05/23/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0377	02/24/04	05/23/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0378	02/24/04	05/23/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0379	02/24/04	05/23/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin

I. 57 PREMANUFACTURE NOTICES RECEIVED FROM: 2/16/04 TO 02/27/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0380	02/25/04	05/24/04	Huntsman Petrochemical Corporation	(G) Intermediate	(G) Polyether polyol
P–04–0381	02/25/04	05/24/04	CBI	(S) Intermediate for epoxy curing agent	(G) Modified amine adduct
P–04–0382	02/25/04	05/24/04	CBI	(G) Component of pvc stabilizer systems	(G) Zinc soap
P–04–0383	02/25/04	05/24/04	CBI	(G) Auxiliary for coatings	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkanediol, alkyldiisocyanate and polyalkyl ether, polyalkylene glycol ether-blocked, compounds with alkylamine
P–04–0384	02/25/04	05/24/04	Huntsman Petrochemical Corporation	(G) Resin curing agent	(G) Aliphatic polyethertriamine
P–04–0385	02/26/04	05/25/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0386	02/26/04	05/25/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0387	02/26/04	05/25/04	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0388	02/26/04	05/25/04	Apollo America Corporation	(G) Lubricating oil	(G) Saturated cyclic hydrocarbon
P–04–0389	02/26/04	05/25/04	Apollo America Corporation	(G) Lubricating oil	(G) Saturated cyclic hydrocarbon
P–04–0390	02/27/04	05/26/04	CBI	(G) Colourant	(G) Sulphonated azo dye
P–04–0391	02/27/04	05/26/04	Degussa Corporation	(S) Industrial powder coating systems	(G) Alkanediol, polymer with alkanedioic anhydride
P–04–0392	02/27/04	05/26/04	Meadwestvaco SC, LLC - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Aliphatic n-substituted carboxylic acid amide, hydrochloride
P–04–0423	02/27/04	05/26/04	CBI	(G) Additive in manufacture of carbonless paper (two polymers)	(G) Polymeric carboxylic acid salt

In Table II 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:

II. 36 NOTICES OF COMMENCEMENT FROM: 2/16/04 TO 02/27/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–1225	02/23/04	01/25/04	(G) 1,7-naphthalenedisulfonic acid, 2-[[substitutedamino]-5-hydroxy-6-[(4-methyl-2-sulfophenyl]azo]-,salt
P–02–0273	02/19/04	01/27/04	(S) D-glucopyranose, oligomeric, C_{10-12}-alkyl glycosides
P–02–0421	02/17/04	02/09/04	(G) Substituted polyoxyethylene
P–02–0989	02/24/04	01/29/04	(G) Aliphatic polyester polyurethane polymer
P–02–1072	02/25/04	01/30/04	(S) 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethyhexyl 2-propenoate, 1,6-hexanediyl di-2-propenoate and methyl 2-methyl-2-propenoate
P–02–1073	02/24/04	01/27/04	(S) 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethyhexyl 2-propenoate, 1,6-hexanediyl di-2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt
P–02–1078	02/17/04	02/11/04	(G) Mannich base
P–02–1080	02/17/04	02/11/04	(G) Mannich base
P–03–0077	02/19/04	02/12/04	(S) Phosphonium, tributyl(2-methoxypropyl)-, salt with 1,1,2,2,3,3,4,4,4-nonafluoro-n-methyl-1-butanesulfonamide (1:1)
P–03–0233	02/19/04	02/04/04	(G) Calcium salt of a polyolefin substituted phenol
P–03–0234	02/19/04	01/27/04	(G) Phenolic resin
P–03–0311	02/23/04	02/06/04	(G) Alkoxylated monobutyl ether
P–03–0549	02/24/04	01/26/04	(G) 1,3-bis(dimethoxyethylol) 4,5-dihydroxyethylene urea
P–03–0634	02/20/04	01/16/04	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin polymer
P–03–0667	02/24/04	02/02/04	(G) Urea dimethoxyethanal resin

II. 36 NOTICES OF COMMENCEMENT FROM: 2/16/04 TO 02/27/04—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0685	02/24/04	01/29/04	(G) Fatty acid ester
P–03–0690	02/23/04	02/10/04	(G) Rosin, polymer with a monocarboxylic acid, a phenol, maleic anhydride, formaldehyde and pentaerythritol.
P–03–0767	02/18/04	02/02/04	(G) Aromatic isocyanate methacrylate blocked
P–03–0803	02/27/04	01/27/04	(G) Aliphatic phosphate diacrylate
P–03–0813	02/18/04	02/12/04	(G) Polymeric modified vegetable oil
P–03–0829	02/23/04	02/06/04	(G) Telechelic polyacrylate
P–04–0001	02/25/04	02/05/04	(S) Poly(oxy-1,2-ethanediyl),.alpha.-(1-oxo-2-propenyl)-.omega.-([1,1′-biphenyl]-2-yloxy)-
P–04–0002	02/25/04	02/05/04	(S) Hexanedioic acid, polymer with 1,6-diisocyanatohexane, 1,6-diisocyanato-2,2,4-trimethylhexane, 1,6-diisocyanato-2,4,4-trimethylhexane, 1,1′-[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis[2-propanol] and 3-methyl-1,5-pentanediol, 2-hydroxyethyl acrylate-blocked
P–04–0003	02/25/04	02/05/04	(S) 2-propenoic acid, 2-methyl-, 1,2,2,6,6-pentamethyl-4-piperidinyl ester
P–04–0004	02/25/04	02/05/04	(S) Poly[oxy(methyl-1,2-ethanediyl)],.alpha.,.alpha′.-[(1-methylethylidine)di-4,1-phenylene]bis[.omega.-[(1-oxo-2-propenyl)oxy]-
P–04–0022	02/17/04	02/05/04	(S) Fatty acids, C_{14-18} and C_{16-18} unsaturated-2-ethyl hexyl esters
P–04–0034	02/23/04	02/03/04	(G) Lithium grease thickener
P–04–0045	02/26/04	01/27/04	(G) Epoxy-acrylic copolymer
P–04–0053	02/25/04	02/05/04	(S) 2-propenoic acid, 1,9-nonanediyl ester
P–04–0060	02/20/04	01/22/04	(G) Substituted metal complex
P–04–0061	02/20/04	01/22/04	(G) Substituted metal complex
P–04–0062	02/20/04	01/22/04	(G) Modified metal complex
P–04–0118	02/24/04	02/10/04	(G) Triamine adipate salt
P–04–0120	02/18/04	02/12/04	(G) Isocyanate functional polyester polyether urethane polymer
P–96–0159	02/18/04	01/30/04	(G) Polyurethane adhesive
P–96–0412	02/24/04	05/08/96	(G) Hydroxy functional oligomer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 11, 2004.

Anthony Cheatham,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–6006 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7637–5]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act, as amended and the requirements governing the National Primary Drinking Water Regulations Implementation, 40 CFR part 142, that the State of Maryland is revising its approved Public Water System Supervision Program. Maryland has adopted five new rules. Included are the Arsenic Rule, which will provide for better public health protection by lowering the maximum contaminant level (MCL), the Interim Enhanced Surface Water Treatment Rule, which will help improve control of microbial pathogens in drinking water, including specifically the protozoan *Cryptosporidium* and the Stage 1 Disinfectants and Disinfection Byproducts Rule, which will set new requirements to limit the formation of chemical disinfection byproducts in drinking water. Also included are the Filter Backwash Recycling Rule, which will require water systems to institute changes to return recycle flows of a plant's treatment process that may compromise pathogen treatment and the Radionuclides Rule, which establishes a new MCL level for uranium and revises monitoring requirements. EPA has determined that these revisions, all effective September 1, 2003, are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by April 16, 2004. This determination shall become effective on April 16, 2004, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to Steve Maslowski at *maslowski.steven@epa.gov.*

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Water Supply Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Blvd, Baltimore, MD 21230.

FOR FURTHER INFORMATION CONTACT: Steve Maslowski, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–2371 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if

necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 16, 2004, a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: March 8, 2004.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. 04–5998 Filed 3–16–04; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES AND PLACE: March 30, 2004, Washington, DC. The meeting will be held in the Crystal Ballroom of the St. Regis Hotel, 923 16th Street, NW., Washington, DC 20006.

TYPE OF MEETING: Open. Further details on the agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

PROPOSED SCHEDULE AND AGENDA: The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday, March 30, 2004, at approximately 9 a.m. The PCAST is tentatively scheduled to: (1) Discuss a draft report from its workforce-education subcommittee; and (2) continue its discussion of nanotechnology and its review of the federal National Nanotechnology Initiative through presentations and discussions concerning the management of the potential environmental and health effects of nanoscale materials. This session will end at approximately 5 p.m. Additional information on the agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

PUBLIC COMMENTS: There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456–6070, or fax your request/comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please call Stan Sokul at (202) 456–6070, prior to 3 p.m. on Monday, March 29, 2004. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Stanley S. Sokul,

Executive Director, PCAST, and Counsel, Office of Science and Technology Policy.

[FR Doc. 04–6051 Filed 3–16–04; 8:45 am]

BILLING CODE 3170–01–M

FARM CREDIT ADMINISTRATION

Systematic Collection of Standardized Loan Data

AGENCY: Farm Credit Administration.

ACTION: Notice with request for comment.

SUMMARY: The Farm Credit Administration (FCA or agency) is seeking public input on the changes it should consider making to its systematic collection of standardized loan data. The agency currently collects basic descriptive information from Farm Credit System (FCS or System) banks and associations, in a standardized format, using the Loan Account Reporting System—Modified (LARS–M). The agency is planning to reengineer its collection of standardized loan data to meet its current and future information needs. In support of this reengineering project, FCA is seeking public comment on changes the agency should consider making to the loan data it collects; what processes and technological approaches to employ when collecting loan data; how to minimize the reporting burden on System institutions while meeting agency needs; and what types of standardized reports to make available to the general public and System institutions.

DATES: Please send your comments to the FCA by May 3, 2004.

ADDRESSES: We encourage you to send comments by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of FCA's Web site, *http://www.fca.gov.* You may also send comments to Andrew Jacob, Assistant Director, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Gaylon J. Dykstra, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4073, TTY (703) 883–4434;

or

Howard Rubin, Senior Attorney, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4029, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Loan Data Does FCA Collect?

FCA currently collects certain standardized loan information from FCS banks and associations using the LARS–M. Examples of standardized variables collected include:

1. The date the loan was originated and the date on which it matures;

2. The primary agricultural commodity produced by the borrower;
3. Whether a loan is covered by a government guarantee;
4. If a loan is past due, the number of days the loan payment is delinquent;
5. The risk of the loan based on the uniform classification system as defined in the FCA Examination Manual (EM–320); and
6. Whether the borrower is in bankruptcy or the loan is in foreclosure status.

The agency also obtains direct institution-specific loan data as needed for examination purposes.

B. How Does FCA Use Loan Data?

FCA uses loan information to support its supervision and regulation of System institutions. For supervisory purposes, loan information is important for evaluating portfolio risk associated with agricultural lending and analyzing credit risks in individual agricultural loans. Loan data are also required for monitoring Systemwide trends and emerging vulnerabilities. For regulatory purposes, loan information is used for developing regulations and other public policy actions. FCA also uses loan data in fulfilling reporting requirements and informational requests.

C. Identifying Loan Portfolio Risk

Identification of risks in a loan portfolio is essential to FCA's evaluation of an institution's safety and soundness. Loan portfolio risk reflects individual loan exposures and the combined effects on a portfolio. Risk in individual loans is a function of characteristics associated with a borrower's agricultural operation and financial condition and performance. Examples of loan characteristics include the commodities produced, geographic location, payment history, financial strength, and off-farm income. These types of loan data are important determinants of the credit risk of a loan. Therefore, FCA access to loan data is critical for evaluating portfolio risks of System institutions and the credit risk of individual loans.

D. Monitoring Systemwide Trends

Analyzing Systemwide trends and emerging vulnerabilities is a critical agency activity for monitoring the overall mission accomplishment and ongoing safety and soundness of the FCS. Monitoring Systemwide trends helps FCA identify when risks are impacting the System's agricultural loans. For example, the System may show an overall increase in delinquent loans. Access to loan data allows the agency to analyze this trend and associated characteristics, such as geographic location, commodity linkage, or other commonalities among affected institutions. Similarly, the agency uses loan data to analyze the impact of emerging vulnerabilities, such as food safety concerns, trade disputes, changes in government support programs, shifts in consumer preferences, and climactic events. Using loan data, the agency can better identify vulnerable System loans. Access to loan data increases FCA's understanding of the systemic risks facing the FCS and helps the agency determine if any policy actions are needed.

E. Developing Regulations and Policy

FCA uses loan data to support its regulation of System institutions. For example, loan data provide information needed to evaluate the impact of capital adequacy standards, lending limits, and liquidity requirements. Moreover, access to loan data allows the agency to analyze the effectiveness and results achieved from regulations and policy actions.

F. Fulfilling Reporting Requirements and Responding to Information Requests

The agency is required to periodically provide reports to Congress. The agency also frequently responds to information requests from Congress and others. Ready access to loan data aids FCA in timely and accurately responding to reporting requirements and information requests.

G. Why Is FCA Considering Changing Its Standardized Collection of Loan Data?

LARS–M was first implemented in 1987 and last revised in 1993. While LARS–M provides FCA with a standardized and centralized collection of loan data, it has not kept pace with changes in financial reporting systems, is incomplete as to loan types, lacks detail, and only allows access to current quarter data. FCA, therefore, believes improvements are needed to fully meet the agency's current and future information needs.

FCA examiners also obtain loan information directly from System institutions on an as-needed basis for use in conducting examinations, but this information is not standardized or centralized. As a result, directly downloaded data are not useful or available for Systemwide analysis or reporting. More importantly, the downloaded data vary considerably by FCA field office since loan information systems vary across System institutions. Therefore, standardized and centralized collection of loan data would help overcome the variety in electronic loan information systems used by FCS institutions.

II. Objectives of This Project

The objectives of FCA's project to reengineer its standardized collection of loan data from System institutions are to:

1. Determine the appropriate set of loan data to collect on a systematic, centralized, and standardized basis that meets the agency's needs;
2. Streamline the collection process of loan data to enhance reliability, timeliness, and data accuracy;
3. Minimize the reporting burden on System institutions; and
4. Provide appropriate standardized reports to internal and, potentially, external parties.

The reengineering project will address the limitations of the current approach to a standardized collection of loan data. The agency is already considering the data elements it needs to collect on individual loans, including what specific financial information, loan performance data, and other essential information about loan characteristics that are necessary for adequately evaluating portfolio and loan risks. Moreover, the project will also address the agency's need to collect information for all loans made by System institutions. Along with these considerations, the agency is evaluating the data elements needed to model loan performance characteristics through time, such as probability of default, loss severity, and exposures at default. In the future, modeling loan performance may become a key aspect in the evaluation of a System institution's capital adequacy. FCA is also evaluating new technologies to streamline and improve the collection process. This evaluation includes reducing the reporting burden by relying on an efficient process that utilizes information readily available in the different FCS institutions' electronic loan information systems.

FCA is also evaluating the standardized reports the agency currently uses in conducting its supervisory and regulatory programs, including considering the type of reports to make available to the general public and System institutions in light of legal restrictions and other constraints regarding the release of private and sensitive business information used solely for examination purposes.

III. Questions

To augment the agency's experience and expertise with agricultural lending practices and credit analysis, FCA is seeking public input on the changes it

should consider making as it reengineers the systematic collection of standardized loan data from System institutions. Specifically, the agency requests comments on:

1. What suggestions do you have regarding loan data elements?

2. What processes and technological approaches to employ to streamline the collection of loan data?

3. How to minimize the reporting burden on System institutions while meeting the agency's informational needs?

4. What standardized reports to make available to the general public and System institutions, considering the need to protect private and proprietary confidential information?

Along with these questions, we welcome any other comments or suggestions the agency should consider as it moves forward with this initiative.

Dated: March 12, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–5988 Filed 3–16–04; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011528–025.

Title: Japan/United States Eastbound Freight Conference.

Parties: A.P. Moller-Maersk Sealand; American President Lines, Ltd.; Hapag-Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; and Wallenius Wilhelmsen Lines AS

Synopsis: The amendment deletes Wallenius Wilhelmsen Lines AS as a party to the agreement.

Agreement No.: 011871.

Title: West Coast-Security Bridge Agreement.

Parties: The members of the West Coast MTO Discussion Agreement (FMC Agreement No. 201143), on the one hand, and the members of the Maritime Security Discussion Agreement (FMC Agreement No. 011852), on the other hand.

Synopsis: The agreement would authorize the parties to meet, discuss, and exchange information related to maritime security.

Agreement No.: 201026–005.

Title: New Orleans/P&O Ports LA Terminal Lease Agreement.

Parties: Board of Commissioners of the Port of New Orleans P&O Ports Louisiana, Inc.

Synopsis: The amendment amends the lease to include a larger acreage and a roadway reservation and to permit the lessee other similar rights of way in the facility.

Agreement No.: 201150–001.

Title: Napoleon Avenue Container Terminal Lease Agreement.

Parties: The Board of Commissioners of the Port of New Orleans; P&O Ports Louisiana, Inc.

Synopsis: The modification changes the basis for calculating the rent under the lease agreement.

Dated: March 12, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–6039 Filed 3–16–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 017472N.
Name: ARC Global Logistics, Inc.
Address: 1552B NW. 82nd Avenue, Miami, FL 33126.
Date Revoked: February 9, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017120N.
Name: Celestial International Freight, Inc.
Address: 2300 E. Higgins Road, Suite 224, Elk Grove Village, IL 60007.
Date Revoked: February 27, 2004.
Reason: Failed to maintain a valid bond.

License Number: 011564N.
Name: Inter-Shipping Chartering Co.
Address: 8284 NW. 66th Street, Miami, FL 33166.
Date Revoked: February 20, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003093F.
Name: Noboru Tom Nakamura dba TN Forwarding
Address: 2627 28th Street, Santa Monica, CA 90405
Date Revoked: February 26, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016083F.
Name: Palmetto Freight Forwarding Corp.
Address: 2577 West 80th Street, Hialeah, FL 33016.
Date Revoked: February 25, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003511F.
Name: Respond Cargo Services Corporation.
Address: 15711 West Hardy Road, Suite 3, Houston, TX 77060.
Date Revoked: February 25, 2004.
Reason: Failed to maintain a valid bond.

License Number: 014454N.
Name: Seoul Express Line, Inc.
Address: 283 E. Redondo Beach Blvd., Gardena, CA 90248.
Date Revoked: February 19, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003896F.
Name: Sino AM Cargo, Inc.
Address: 1335 Evans Avenue, San Francisco, CA 94124.
Date Revoked: February 25, 2004.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–6041 Filed 3–16–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License no.	Name/address	Date reissued
014568NF	Districargo, Inc., 8015 NW 29th Street, Miami, FL 33122	May 20, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–6040 Filed 3–16–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2004.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Southwest Bancorporation, Inc., Alamosa, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Southwest Bank, Alamosa, Colorado (in organization).

Board of Governors of the Federal Reserve System, March 11, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–5954 Filed 3–16–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy

Cancellation of an Optional Form by the Department of Defense

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of Defense is cancelling the following Optional Form because of low demand in the Federal Supply Service: OF 83, Not Mission Capable Supple Label (Small).

FOR FURTHER INFORMATION CONTACT: Ms. Glynda Hughes, Department of Defense, 703 604–4578.

DATES: Effective March 17, 2004.

Dated: March 9, 2004.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 04–5985 Filed 3–16–04; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability; Correction

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice; correction.

SUMMARY: The Department published a notice in the **Federal Register** of February 25, 2004, announcing a meeting of the Advisory Committee on Blood Safety and Availability to be held on Wednesday, April 7, and Thursday, April 8, 2004. The notice contained an incorrect meeting topic.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (301) 443–2331, FAX (301) 443–4788, e-mail *jholmberg@osophs.dhhs.gov*.

Correction

In the **Federal Register** of February 25, 2004 in FR Doc Vol. 69, No. 37, on page 8661, in the second column, correct the **SUMMARY** to read:

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet to examine the impact and assessment of bacterial detection on plasma products. The meeting will be entirely open to the public.

Dated: March 11, 2004.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 04–6044 Filed 3–16–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics, Board of Scientific Counselors

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following committee meeting.

Name: Board of Scientific Counselors (BSC).

Times and Dates: 2 p.m.–5:40 p.m. e.s.t., April 22, 2004. 8:30 a.m.–3:15 p.m. e.s.t., April 23, 2004.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., conference room 705A, Washington, DC 20201.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary; the Director, CDC; and Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public.

Requests to make an oral presentation should be submitted in writing to the contact

person listed below by close of business, April 12, 2004. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, April 12, 2004.

Agenda items are subject to change as priorities dictate.

For Further Information Contact:

Linda Blankenbaker, Executive Secretary, NCHS, Office of the Director, 3311 Toledo Road, Room 7204, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 11, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5966 Filed 3–16–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimate for a Four-Person Family (FFY 2005); Notice of the Federal Fiscal Year (FFY) 2005 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of estimated State median income estimates for FFY 2005.

SUMMARY: This notice announces the estimated median income for four-person families in each State and the District of Columbia for FFY 2005 (October 1, 2004 to September 30, 2005). LIHEAP grantees may adopt the State median income estimates beginning with the date of this publication of the estimates in the **Federal Register** or at a later date as discussed below. This means that LIHEAP grantees could choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2004, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using State median income estimates must adjust their income eligibility criteria to be in accord with the FFY 2005 State median income estimates.

This listing of estimated State median incomes provides one of the maximum income criteria that LIHEAP grantees may use in determining a household's income eligibility for LIHEAP.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 2004, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, DHHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401–5304, E-Mail: *llitow@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each State, the District of Columbia, and the United States for FFY 2005 (the period of October 1, 2004, through September 30, 2005).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each State, as annually established by the Secretary of the Department of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FFY 2005 by the Coats Human Services Reauthorization Act of 1998, Pub. L. 105–285, which was enacted on October 27, 1998.

Estimates of the median income of a four-person family for each State and the District of Columbia for FFY 2005 have been developed by the Census Bureau of the U.S. Department of Commerce, using the most recently available income data. In developing the median income estimates for FFY 2005, the Census Bureau used the following three sources of data: (1) The Current Population Survey's 2003 Annual Social and Economic Supplement File; (2) the 2000 Decennial Census of Population; and (3) 2002 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce.

For further information on the estimating method and data sources, contact the Housing and Household Economic Statistics Division, at the Census Bureau (301–763–3243).

A State-by-State listing of median income, and 60 percent of median income, for a four-person family for FFY 2005 follows. The listing describes the method for adjusting median income for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 11, 2004.

Clarence H. Carter,

Director, Office of Community Services.

States	Estimated state median income for a four-person family [2]	60 percent of estimated State median income for a four person family
Alabama	$53,754	$32,252
Alaska	69,868	41,921
Arizona	56,857	34,114
Arkansas	49,551	29,731
California	65,766	39,460
Colorado	68,089	40,853
Connecticut	81,891	49,135
Delaware	69,469	41,681
Dist. of Col.	55,692	33,415

States	Estimated state median income for a four-person family [2]	60 percent of estimated State median income for a four person family
Florida	57,473	34,484
Georgia	60,676	36,406
Hawaii	67,564	40,538
Idaho	54,279	32,567
Illinois	69,168	41,501
Indiana	63,022	37,813
Iowa	61,238	36,743
Kansas	61,926	37,156
Kentucky	54,030	32,418
Louisiana	52,299	31,379
Maine	58,802	35,281
Maryland	77,938	46,763
Massachusetts	78,312	46,987
Michigan	67,995	40,797
Minnesota	72,379	43,427
Mississippi	47,847	28,708
Missouri	59,764	35,858
Montana	51,791	31,075
Nebraska	60,129	36,077
Nevada	59,588	35,753
New Hampshire	72,369	43,421
New Jersey	82,406	49,444
New Mexico	48,422	29,053
New York	65,461	39,277
North Carolina	58,227	34,936
North Dakota	57,070	34,242
Ohio	63,934	38,360
Oklahoma	51,377	30,826
Oregon	60,262	36,157
Pennsylvania	64,310	38,586
Rhode Island	67,646	40,588
South Carolina	56,110	33,666
South Dakota	55,359	33,215
Tennessee	55,605	33,363
Texas	56,278	33,767
Utah	59,864	35,918
Vermont	62,331	37,399
Virginia	66,889	40,133
Washington	66,531	39,919
West Virginia	47,550	28,530
Wisconsin	66,988	40,193
Wyoming	57,148	34,289

NOTE—FFY 2005 covers the period of October 1, 2004 through September 30, 2005. The estimated median income for a four-person family living in the United States is $62,732 for FFY 2005. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 2004, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[1] In Accordance with 45 CFR 96.85, each State's estimated median income for a four-person family is multiplied by the following percentages to adjust for family size: 52 percent for one person, 68 percent for two persons, 84 percent for three persons, 100 percent for four persons, 116 percent for five persons, and 132 percent for six persons. For each additional family member above six persons, add 3 percent to the percentage for a six-person family (132 percent), and multiply the new percentage by the State's estimated median income for a four-person family.

[2] Prepared by The Census Bureau from the Current Population Survey's 2003 Annual Social and Economic Supplement File, 2000 Decennial Census of Population and Housing, and 2002 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA). For further information, contact the Housing and Household Economic Statistics Division at the Census Bureau (301–763–3243).

[FR Doc. 04–5931 Filed 3–16–04; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0114]

Agency Information Collection Activities; Proposed Collection; Comment Request; Institutional Review Boards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for institutional review boards (IRBs).

DATES: Submit written or electronic comments on the collection of information by May 17, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Institutional Review Boards—(21 CFR Part 56.115)—(OMB Control Number 0910–0130)—Extension

When reviewing clinical research studies regulated by FDA, IRBs are required to create and maintain records describing their operations, and make the records available for FDA inspection when requested. These records include the following: (1) Written procedures describing the structure and membership of the IRB and the methods that the IRB will use in performing its functions; (2) the research protocols, informed consent documents, progress reports, and reports of injuries to subjects submitted by investigators to the IRB; (3) minutes of meetings showing attendance, votes and decisions made by the IRB, the number of votes on each decision for, against, and abstaining, the basis for requiring changes in or disapproving research; records of continuing review activities; (4) copies of all correspondence between investigators and the IRB; (5) statement of significant new findings provided to subjects of the research; and (6) a list of IRB members by name, showing each member's earned degrees, representative capacity, and experience in sufficient detail to describe each member's contributions to the IRB's deliberations, and any employment relationship between each member and the IRB's institution. This information is used by FDA in conducting audit inspections of IRBs to determine whether IRBs and clinical investigators are providing adequate protections to human subjects participating in clinical research.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
56.115	5,000	14.6	73,000	4.5	328,500
Total					328,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The recordkeeping requirement burden is based on the following: The burden for each of the paragraphs under 21 CFR 56.115 has been considered as one estimated burden. FDA estimates that there are approximately 5,000 IRBs. The IRBs meet on an average of 14.6 times annually. The agency estimates that approximately 4.5 hours of person-time per meeting are required to transcribe and type the minutes of the meeting; to maintain records of continuing review activities; and to make copies of all correspondence between the IRB and investigative member records, and written IRB procedures that are approximately five pages per IRB.

Dated: March 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5991 Filed 3–16–04; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0071]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: External Penile Rigidity Devices; 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: External Penile Rigidity Devices." This draft guidance document describes a means by which external penile rigidity devices may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is issuing a proposed rule to classify external penile rigidity devices into class II with special controls. The proposed rule also announces FDA's intent to exempt external penile rigidity devices from premarket notification requirements. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by June 15, 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: External Penile Rigidity Devices" 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 draft 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: Janine Morris, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, (301) 594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

At a public meeting held on August 7, 1997, the Gastroenterology-Urology Advisory Panel (the Panel) recommended that external penile rigidity devices be classified into class II. The Panel identified special controls as labeling recommendations with specific information for each of the devices. This draft guidance document supports the classification of external penile rigidity devices into class II. The guidance document will serve as the special control for these devices, if the proposed rule becomes final. Following the effective date of a final rule classifying the devices, a manufacturer intending to market external penile rigidity devices, who addresses the issues covered in the special control guidance before introducing its device into commercial distribution in the United States, will be able to market its device without being subject to the premarket notification requirements of section 510(k) of the Federal Food, Drug and Cosmetic Act. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. FDA may not implement the guidance until the agency completes notice and comment rulemaking to classify the devices.

The draft guidance identifies the risks to health and serves as a special control that, when followed and combined with the general controls, addresses the risks associated with this type of generic device.

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 represents the agency's current thinking on external penile rigidity devices. 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: External Penile Rigidity Devices" 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 (1231) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft 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 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 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 labeling provisions addressed in the draft guidance have been approved by OMB under the PRA 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 to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to 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: March 4, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. 04–5979 Filed 3–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: March 17, 2004.

Time: 10:45 a.m. to 11:15 a.m.

Agenda: The purpose of this meeting will be to discuss the Cancer Health Disparities Progress Review Group Report.

Place: National Institutes of Health, Building 31, Room 11A03, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cherie Nichols, Executive Secretary, National Cancer Institute, National Institute of Health, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center home page: *deainfo.nci.nih.gov/advisory/joint/htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–6010 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Loan Repayment Review.

Date: April 27, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122 Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5956 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ambulatory BP Monitoring in Chronic Renal Disease.

Date: April 8, 2004.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Esophagel Varices.

Date: April 13, 2004.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–

5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Endocrinopathies of Chronic Renal Insufficiency.

Date: April 14, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Strategies for Improved Shock Wave Lithotripsy.

Date: April 23, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes ad Digestive and Kidney Diseases Special Emphasis Panel Digestive Diseases Research Core Centers.

Date: April 26–27, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel—BWI, 1300 Concourse Drive, Linthicum, MD 21090.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–5452, (301) 594–884, *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5957 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Alcohol Abuse and Alcoholism; 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 grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 HH (12) Review of U18 Grant application.

Date: March 22, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA, 5635 Fishers Lane, 3033, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is heing published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–6009 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of U10 COGA Application.

Date: April 12–14, 2004.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 443–2860.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH (10) Grant Application Review.

Date: April 16, 2004.

Time: 8 a.m. to 5 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: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 435–5337; *jtoward@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273 Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: March 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–6011 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: March 28–30, 2004.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–3501.

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.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–6012 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SRV Related SEP Collaborative R01's.

Date: March 25, 2004.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Cooperative Agreements.

Date: April 8, 2004.

Time: 11 a.m. to 12 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: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–6013 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Androgens, Insulin Resistance and Childhood Diabetes.

Date: April 9, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–6014 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Modeling Complex Exposures and Reproductive Outcomes.

Date: April 8, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889. *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–6015 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 12, 2004, 11 a.m. to March 12, 2004, 12 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 8, 2004, 69 FR 10727–10730.

The meeting will be held March 18, 2004. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5955 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Obesity and Weight Loss.

Date: March 22, 2004.

Time: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group Cardiovascular Differentiation and Development Study Section.

Date: March 24–25, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Identification, Characterization and Inactivation of Viruses, Fungi and Parasites.

Date: March 25–26, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7808, Betehsda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Photoreceptors Response and Visual Sensitivity.

Date: March 25, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD20892, (301) 435–1023, *steinbern@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Left Ventrical Assist Devices.

Date: March 31, 2004.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel Molecular Genetics of Shark Natural Antibodies.

Date: April 2, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Heat Shock Proteins and Inflammation.

Date: April 2, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evlauate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Behavioral Neuroscience.

Date: April 5, 2004.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–35–0902, *krausem@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Quantitative Methods in Pharmacology.

Date: April 5, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Bcl–2 and Cancer Therapy.

Date: April 5, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *choe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Regulatory T cells and Cancer.

Date: April 5, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: April 6, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, 301–435–1152, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Mutation and Susceptibility to Cancer.

Date: April 6, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Opportunistic Infections and Cancer.

Date: April 7, 2004.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anti-angiogenesis and Tumor Development.

Date: April 7, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nuclear Magnetic Resonance Technology.

Date: April 7, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7806, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Opportunistic Infections and Cancer.

Date: April 8, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biomaker.

Date: April 8, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Immunology: Physiologic Cell Death.

Date: April 8, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Improvements in Wheelchair Function and Design.

Date: April 9, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, Bethesda, MD 20892, (301) 594–6376.

Name of Committee: Center for Scientific Review Special Emphasis Panel AIDS Clinical and Epidemiology.

Date: April 9, 2004.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102. MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Myocardial Ischemic Preconditioning.

Date: April 9, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5958 Filed 3–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4903–N–12]

Notice of Submission of Proposed Information Collection to OMB: Doctoral Dissertation Research Grant Program Application and Monitoring Reports

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for an extension of the approval to collect information necessary to select doctoral student grantees and monitor performance to complete their dissertation on related HUD subjects.

DATES: *Comments Due Date:* April 16, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0213) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; fax number (202) 395–6974; e-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Doctoral Dissertation Research Grant Program Application and Monitoring Reports.

OMB Approval Number: 2528–0213.

Form Numbers: SF–24, HUD–424–B, HUD–424–CB,SFLLL, HUD–2993, HUD–2994, and HUD–96010–1.

Description of the Need for the Information and its Proposed Use: This is a request for an extension of the approval to collect information necessary to select doctoral student grantees and monitor performance to complete their dissertation on related HUD subjects.

Respondents: Individuals or households, not-for-profit institutions.

Frequency of Submission: On occasion, semi-annually.

	Number of Respondents	Annual Responses	×	Hours per Response	=	Burden Hours
Reporting Burden	80	1.56		21.68		2,710

Total Estimated Burden Hours: 2,710.

Status: Extension of a currently approve collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–6021 Filed 3–16–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs (50 CFR 16.13)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Officer at the address listed below.

DATES: Submit comments on or before May 17, 2004.

ADDRESSES: Send your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; (703) 358–2269 (fax); or *Anissa_Craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead by phone at (703) 358–2445 or by e-mail at *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested parties and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (we, or the Service) plans to submit a request to OMB for approval of a collection of information related to importation certification for injurious species of live fish and their reproductive products. We are requesting a 3-year term of approval for these collection activities.

Federal agencies 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 Lacey Act (18 U.S.C. 42) ("Act") prohibits the possession or importation of any animal or plant deemed to be and prescribed by regulation to be injurious, to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States. The Department of the Interior is charged with enforcement of this Act.

The Act and our regulations at 50 CFR 16 allow for the importation of animals classified as injurious if specific criteria are met. Specifically, this information collection allows the Service to approve the importation of live salmonids and their reproductive products into the United States.

The importation of salmonids requires that we collect information from those individuals wishing to import salmonids or their reproductive products with regard to the numbers, life stages, and species to be imported, as well as their source and destination. In addition, we require a health certificate submitted by a certified Title 50 inspector to ensure the animals being imported do not pose a health risk to the nation's commercial and natural aquatic resources. Regarding the qualifications of the Title 50 inspectors, we collect information that verifies the applicants' professional qualifications and the adequacy of facilities available to those individuals to complete the inspections according to methods provided in 50 CFR 16.

We have regulated the importation of live salmonids and their reproductive products for over 25 years. in order to effectively carry out these responsibilities and protect the aquatic resources of the United States, it is essential that we gather information on the animals being imported with regard to their source, destination, and health status. It is also imperative that we ensure the qualifications of those individuals providing the relevant fish health data upon which we base our decision to allow importation. This collection allows us to gather the information necessary to make sound decisions on allowing importation of live salmonids and their reproductive products into the United States.

The information collection was approved in February 1992. We inadvertently allowed the approval to expire in February 1995 even though we were still collecting the information. At that time, we used a form to collect the qualification information from persons wishing to be designated certified Title 50 inspectors, while health certifications and import requests were generally submitted in the form of letters that varied in content and completeness. The regulations at 50 CFR 16.13 provide guidance for what must be included in the health certificate, yet these submissions were often incomplete or incorrect. In the interest of increasing efficiency and standardization, we are requesting to use three new forms to collect this information. We have submitted an emergency request to OMB to approve this information collection, including the three new forms, for six months. In addition, we are initiating the process to request regular (3-year) OMB approval of this information collection, including the three forms, through this publication and to request public comment on this information collection. The forms are described below.

Form Title: Title 50 Certifying Official Form.

OMB Control Number: 1018–0078.

Form Number: FW 3–2273.

Frequency of Collection: Every 5 years as needed.

Description of Respondents: Aquatic animal health professionals seeking to be certified Title 50 inspectors.

Total Annual Responses: 16 (estimate based on previous collection activities). There are currently approximately 80 inspectors.

Total Annual Burden Hours: 16 hours. We estimate the reporting burden at 1 hour for each of the total 16 responses, or approximately 16 hours total.

Form Title: U.S. Title 50 Certification Form.

OMB Control Number: 1018–0078.

Form Number: FW 3–2274.

Frequency of Collection: On occasion, as needed by the submitting individual or entity.

Description of Respondents: Certified Title 50 inspectors that have performed health certifications on live salmonids or their reproductive products for importation into the United States.

Total Annual Responses: Approximately 50 (estimate based on previous collection activities).

Total Annual Burden Hours: 25 hours. We estimate the reporting burden at thirty minutes for each of the total 50 responses, or approximately 25 hours total.

Form Title: Title 50 Importation Request Form.

OMB Control Number: 1018–0078.

Form Number: FW 3–2275.

Frequency of Collection: On occasion, as needed by the submitting individual or entity.

Description of Respondents: Any entity wishing to import live salmonids or their reproductive products into the United States.

Total Annual Responses: 50 (estimate based on previous collection activities)

Total Annual Burden Hours: 12.5 hours. We estimate the reporting burden at 0.25 hours for each of the total 50 responses, or approximately 13 hours total.

We invite comments on this proposed information collection on the following: (1) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents.

Dated: March 1, 2004.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 04–5450 Filed 3–16–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: Notice is here by given in accordance with the Federal Advisory Committee Act that a meeting of the Subsistence Resource Commission for Cape Krusenstern National Monument will be held at Kotzebue, Alaska. The purpose of the meeting will be to review Federal Subsistence Board wildlife proposals and continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on Thursday April 1, 2004, at the U.S. Fish and Wildlife Service conference room in Kotzebue, Alaska.

GSA regulations (41 CFR 102–3.150) governing advisory committee meetings allow us, in exceptional circumstances, to give less than 15 days advance notice prior to an advisory committee meeting. It is necessary for us to publish this notice less than 15 days prior to the meeting so that the work of the committee can be made available for consideration at subsequent meetings of the regional subsistence advisory council and the Federal Subsistence Board. We were not aware sufficiently in advance of the need to more closely coordinate the scheduling of the meetings.

FOR FURTHER INFORMATION CONTACT: Superintendent, Julie Hopkins and Willie Goodwin at (907) 442–3890, Ken Adkisson at (800) 471–2352, or (907) 443–2522.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

Welcome—Introduction of commission members and guests.
1. Review and approve agenda.
2. Review and approve minutes from last meeting.
3. Review Commission purpose and status of membership.
4. Superintendent's Report—Status of Hunting Plan Recommendations.
5. Update—Review Federal Subsistence Board—Wildlife Issues.
6. Update—Review Federal Subsistence Board—Fisheries Issues.
7 .Public and agency comments.
8. SRC work session develop recommendations on issues.
9. Identify agenda topics, set time and place of next SRC meeting.
10. Adjournment.

Draft minutes will be available for public inspection approximately six weeks after the meeting from: Superintendent Western Arctic National Parklands, Alaska Region, P.O. Box 1029, Kotzebue, AK 99752.

Dated: March 3, 2004.

Marcia Blaszak,

Acting Regional Director, Alaska.

[FR Doc. 04–5933 Filed 3–16–04; 8:45 am]

BILLING CODE 4310–HK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Federal Advisory Commission is scheduled for Friday, April 16, 2004, at the Foundry Office Building, 1055 Thomas Jefferson Street, NW., Washington, DC. The meeting will begin at 10 a.m.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman;
Mr. Charles J. Weir;
Mr. Barry A. Passett;
Mr. Terry W. Hepburn;
Ms. Elise B. Heinz;
Ms. JoAnn M. Spevacek;
Mrs. Mary E. Woodward;
Mrs. Donna Printz;
Mrs. Ferial S. Bishop;
Ms. Nancy C. Long;
Mrs. Jo Reynolds;
Dr. James H. Gilford; and
Brother James Kirkpatrick.

Topics that will be presented during the meeting include:

1. Major planning initiatives, construction and development projects.
2. Park operational issues.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin D. Brandt, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Hagerstown, Maryland.

Dated: March 3, 2004.

Tina R. Orcutt,

Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 04–5937 Filed 3–16–04; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces one public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Thursday, May 1, 2004, at 7 p.m.

ADDRESSES: Bushkill Visitor Center, U.S. Route 209, Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission members including Commission committees such as Recruitment, Natural Resources, Inter-Governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: February 5, 2004.

John J. Donahue,

Superintendent.

[FR Doc. 04–5939 Filed 3–16–04; 8:45 am]

BILLING CODE 4310–MY–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Gates of the Arctic National Park Subsistence Resource Commission (SRC) Meeting

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gates of the Arctic National Park Subsistence Resource Commissions will be held at Fairbanks, Alaska. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting times are,

1. Tuesday, April 20, 2004, 9 a.m. to approximately 5 p.m.
2. Wednesday, April 21, 2004, 9 a.m. to approximately 5 p.m.

Location: The Commission plans to conduct the public meeting at Sophie's Station Hotel, telephone (907) 479–3650, in Fairbanks, Alaska.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. The agenda for the meeting is as follows:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Approve Agenda.
5. Review and adopt minutes from May 22–23, 2003, meeting.
6. Review Commission Purpose and Status of Membership.
7. Superintendent's Report.
8. SRC, Public and Agency Comments.
9. Durational Residency.
10. John River Water Quality Study.
11. Alatna River Archeological Study.
12. North Slope/Anaktuvuk Pass Fishery Study.
13. Cultural Resources Update.
14. Backcountry Planning Update.
15. Kobuk River Management Issues.
16. 2003 SRC Chairs Workshop Update.
17. Western Arctic Caribou Herd Working Group Update.
18. Federal Subsistence Board Wildlife Proposals.
19. Set time and place of next SRC meeting.
20. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from the Superintendent, Gates of the Arctic National Park and Preserve, 201 First Ave., Fairbanks, Alaska, 99701.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent, at (907) 457–5752 or Fred Andersen, Subsistence Manager, at (907) 455–0621.

Dated: February 19, 2004.

Marcia Blaszak,

Acting Regional Director, Alaska.

[FR Doc. 04–5934 Filed 3–16–04; 8:45 am]

BILLING CODE 4310–HK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, DOI.

ACTION: Announcement of meeting.

SUMMARY: Great Sand Dunes National Monument and Preserve announces a meeting of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Park and Preserve.

DATES: The meeting date is: 1. April 5–7, 2004, 9 a.m.–4:30 p.m., Alamosa, Colorado.

ADDRESSES: The meeting location is: 1. Alamosa, Colorado—Alamosa County Courthouse, 702 4th St., Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, 719–378–6300.

SUPPLEMENTARY INFORMATION: At this meeting, the Advisory Council will develop goals for the General Management Plan and draft alternative concepts to accomplish these goals. Public comment will be solicited on April 5 from 4:30–5:30 p.m.

Hal Grovert,

Acting Regional Director.

[FR Doc. 04–5936 Filed 3–16–04; 8:45 am]

BILLING CODE 4312–CL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Subsistence Resource Commission for Kobuk Valley National Park will be held at Kotzebue, Alaska. The purpose of the meeting will be to review Federal Subsistence Board wildlife proposals and continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATE: The meeting will be held from 8:30 a.m. to 5 p.m. on Friday April 2, 2004, at the U.S. Fish and Wildlife Service conference room in Kotzebue, Alaska.

GSA regulations (41 CFR 102–3.150) governing advisory committee meetings allow us, in exceptional circumstances, to give less than 15 days advance notice prior to an advisory committee meeting. It is necessary for us to publish this notice less than 15 days prior to the meeting so that the work of the committee can be made available for consideration at subsequent meetings of the regional subsistence advisory council and the Federal Subsistence Board. We were not aware sufficiently in advance of the need to more closely coordinate the scheduling of the meetings.

FOR FURTHER INFORMATION CONTACT: Superintendent, Julie Hopkins and Willie Goodwin at (907) 442–3890, Ken Adkisson at (800) 471–2352, or (907) 443–2522.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

Welcome—Introduction of commission members and guests.

1. Review and approve agenda.
2. Review and approve minutes from last meeting.
3. Review Commission purpose and status of membership.
4. Superintendent's Report—Status of Hunting Plan Recommendations.
5. Update—Review Federal Subsistence Board—Wildlife Issues.
6. Update—Review Federal Subsistence Board—Fisheries Issues.
7. Public and agency comments.
8. SRC work session develop recommendations on issues.
9. Identify agenda topics, set time and place of next SRC meeting.
10. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent Western Arctic National Parklands, Alaska Region, P.O. Box 1029, Kotzebue, AK 99752.

Kathryn Cook Collins,

Alaska Desk Officer.

[FR Doc. 04–5932 Filed 3–16–04; 8:45 am]

BILLING CODE 4312–HP–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board (the Board) will meet March 29, 2004, in Natchitoches, LA.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training (NCPTT), as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet at the Headquarters of NCPTT in Lee H. Nelson Hall, 645 College Avenue, Natchitoches, LA 71457. The meeting will start at 9:00 a.m. and end no later than 5:00 p.m. The Board meeting's agenda will include NCPTT operations, budget, and program development; NCPTT business and strategic plans; Preservation Technology and Training grants; the Heritage Education program; and PTT Board workgroup reports.

The Board meeting is open to the public. Facilities and space for accommodating members of the public are limited, however, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may contact Mr. de Teel Patterson Tiller, Deputy Associate Director, Cultural Resources, 1849 C Street NW–3128 MIB, Washington, DC 20240, telephone (202) 208–7625. Increased security in the Washington, DC, area may cause delays in the delivery of U.S. Mail to government offices. In addition to mail or commercial delivery, please fax a copy of the written submission to Mr. Tiller at (202) 273–3237.

Minutes of the meeting will be available for public inspection no later than 90 days after the meeting at the office of the Deputy Associate Director, Cultural Resources, 1849 C Street NW, Room 3128, Washington, DC.

Dated: February 6, 2004.

de Teel Patterson Tiller,

Deputy Associate Director, Cultural Resources.

[FR Doc. 04–5935 Filed 3–16–04; 8:45 am]

BILLING CODE 4310–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–474]

In the Matter of Certain Recordable Compact Discs and Rewritable Compact Discs; Notice of Commission Determination of No Violation of Section 337

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that the U.S. patents asserted by complainant U.S. Philips Corporation are unenforceable for patent misuse, and has therefore found that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the Commission's order, the public version of its opinion, the public version of the presiding administrative law judge's ("ALJ's") final initial determination ("ID"), and all other nonconfidential documents filed in connection with this

investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 26, 2002, based on a complaint filed by U.S. Philips Corporation of Tarrytown, NY ("Philips" or "complainant"). 67 FR 48948 (2002). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recordable compact discs and rewritable compact discs by reason of infringement of certain claims of six U.S. patents: claims 1, 5, and 6 of U.S. Patent No. 4,807,209; claim 11 of U.S. Patent No. 4,962,493; claims 1, 2, and 3 of U.S. Patent No. 4,972,401; claims 1, 3, and 4 of U.S. Patent No. 5,023,856; claims 1–5, and 6 of U.S. Patent No. 4,999,825; and claims 20, 23–33, and 34 of U.S. Patent No. 5,418,764. 67 FR 48948 (2002).

The notice of investigation named 19 respondents, including GigaStorage Corporation Taiwan of Hsinchu, Taiwan; GigaStorage Corporation USA of Livermore, California (collectively, "GigaStorage"); and Linberg Enterprise Inc. ("Linberg") of West Orange, New Jersey. 67 FR 48,948 (2002). On August 14, 2002, the ALJ issued an ID (Order No. 2) granting a motion to intervene as respondents by Princo Corporation of Hsinchu, Taiwan, and Princo America Corporation of Fremont, California (collectively, "Princo"). That ID was not reviewed by the Commission. GigaStorage, Linberg, and Princo ("respondents") are the only remaining active respondents in this investigation. *See* ALJ Order No. 6 (an unreviewed ID terminating eight respondents on the basis of a consent order); ALJ Order No. 17 (an unreviewed ID terminating each of three respondents on the basis of a consent order and settlement agreement); ALJ Order No. 18 (an unreviewed ID terminating one respondent on the basis of a consent order and settlement agreement); and ALJ Order No. 21 (an unreviewed ID finding four respondents in default).

On April 7, 2003, the ALJ issued an ID (ALJ Order No. 20) granting complainant's unopposed motion for summary determination that Linberg, GigaStorage, and Princo have each sold for importation, imported, and/or sold after importation products accused of infringing one or more of the asserted patent claims. That ID was not reviewed by the Commission.

A tutorial session was held on June 3, 2003, and an evidentiary hearing was held from June 10, 2003, through June 20, 2003.

On June 30, 2003, the ALJ issued an order (ALJ Order No. 32) granting a motion *in limine* filed by respondents to preclude complainant from asserting the doctrine of unclean hands with respect to respondents' affirmative defense of patent misuse.

The ALJ issued his final ID on October 24, 2003. Although he found that none of the asserted claims are invalid, that the accused products infringe the asserted claims, and that the domestic industry requirement of section 337 has been satisfied, he found no violation of section 337 because he concluded that all of the asserted patents are unenforceable by reason of patent misuse.

On November 5, 2003, complainant Philips petitioned for review of the portion of the final ID that found the asserted patents unenforceable due to patent misuse, and also appealed ALJ Order No. 32. On the same day, respondents filed a paper entitled "Statement of Respondents Princo Corp., Princo America Corp., Gigastorage Corp. Taiwan, Gigastorage Corp. USA, and Linberg Enterprises, Inc. Regarding the Initial Determination," in which respondents urged the Commission to adopt the ID in its entirety. Respondents and the IA filed responses to complainant's petition for review.

On December 8, 2003, the ALJ issued his recommended determination on remedy and bonding.

On December 10, 2003, the Commission determined to affirm ALJ Order No. 32, and to review all of the ID's findings of fact and conclusions of law concerning patent misuse. The Commission determined not to review the remainder of the ID.

In its review notice, the Commission invited the parties to file written submissions on the issues under review, and invited interested persons to file written submissions on the issues of remedy, the public interest, and bonding. The Commission also requested briefing from the parties on four questions. Initial submissions were filed on January 9, 2004, and replies were filed on January 16, 2004, and on January 20, 2004.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined to affirm the ALJ's conclusion that the asserted patents are unenforceable for patent misuse *per se*, but on the ground that complainant's practice of mandatory package licensing constitutes a tying arrangement between licenses to patents that are essential to manufacture CD–Rs or CD–RWs according to Orange Book standards and licenses to other patents that are not essential to that activity.[1] The Commission determined to adopt the ALJ's conclusion that the asserted patents are unenforceable for patent misuse under a rule of reason standard based on the ALJ's analysis of and findings as to the tying arrangement.[2] We affirm the ALJ's conclusion that the patent misuse has not been shown to have been purged.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's rules of practice and procedure (19 CFR 210.45).

By order of the Commission.
Issued: March 11, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E4–610 Filed 3–16–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Capital Punishment Report of Inmates Under Sentence of Death.

The Department of Justice (DOJ), Office of Justice Programs (OJP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with

[1] We take no position on the ALJ's conclusion that the asserted patents are unenforceable for patent misuse *per se* based on theories of price fixing and price discrimination.

[2] We take no position on the ALJ's conclusion that the royalty rate structure of the CD–R/RW patent pools is an unreasonable restraint of trade.

the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 17, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Thomas Bonczar, Statistician, at (202) 616–3615 or via facsimile at (202) 514–1757, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Capital Punishment Report of Inmates Under Sentence of Death.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NPS–8 Report of Inmates Under Sentence of Death; NPS–8A Update Report of Inmates Under Sentence of Death; NPS–8B Status of Death Penalty—No Statute in Force; and NPS–8C Status of Death Penalty—State in Force. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Departments of Corrections and Attorneys General. Others: the Federal Bureau of Prisons. Approximately 95 respondents responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody will be asked to provide information for the following categories: condemned inmates' demographic characteristic, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by other than by execution. The Bureau of Justice Statistics uses this information in published reports; and for the U.S. Congress, Executive Office of the President, State officials, international organizations, researchers, students, the media and others interested in criminal justice statistics.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated amount of time is as follows: 171 responses at 30 minutes each for the NPS–8; 3,577 responses at 30 minutes each for the NPS–8A; and 52 responses at 15 minutes each for the NPS–8B or NPS–8C.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1,888 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 11, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–5930 Filed 3–16–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,317]

Anacom Medtek, Anaheim, California; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 20, 2004 in response to a petition filed on behalf of workers at Anacom Medtek, Anaheim, California.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of February 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–6024 Filed 3–16–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Operations Under Water

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 17, 2004.

ADDRESSES: Send comments to Darrin King, Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2139, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *king.darrin@dol.gov*, along with an original printed copy. Mr. King can be

reached at (202) 693–9838 (voice), or (703) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting Statutory and Regulatory Information then Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*), or by contacting Darrin King, Records Management Branch, U.S. Department of Labor, Mine Safety and Health Administration, Room 2139, 1100 Wilson Boulevard, Arlington, VA 22203–1984. Mr. King can be reached at *king.darrin@dol.gov* (Internet E-mail, (703) 693–9838(voice), or (703)693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR 75.1716, 75.1716–1 and 75.1716–3 require operators of underground coal mines to notify MSHA of proposed mining under bodies of water and to obtain a permit to mine under a body of water if, in the judgment of the Secretary, it is sufficiently large to constitute a hazard to miners. This is a statutory provision contained in Section 317(r) of the Federal Mine Safety and Health Act of 1977. The regulation is necessary to prevent the inundation of underground coal mines with water, which has the potential of drowning miners. The coal mine operator submits an application for the permit to the District Manager in whose district the mine is located. Applications contain the name and address of the mine; projected mining and ground support plans; a mine map showing the location of the river, stream, lake or other body of water and its relation to the location of all working places; a profile map showing the type of strata and the distance in elevation between the coal bed and the water involved.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Operations Under Water. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Operations Under Water.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Operations Under Water.
OMB Number: 1219–0020.
Affected Public: Business or other for-profit (underground coal mines).
Number of Respondents: 36.
Annual Reponses: 36.
Average Response Time: 5 hours.
Total Annual Burden Hours: 180.
Total Burden Cost (operating/maintaining): $540.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of March, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–6019 Filed 3–16–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–043)]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, April 8, 2004, 1 p.m. to 3 p.m. eastern time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Room 6H45A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Erminger, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0914.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Quarterly Meeting. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be: Space Shuttle Program, International Space Station Program, and Cross-Program Areas. The Aerospace Safety Advisory Panel is composed of nine members and one *ex-officio* member.

The meeting will be open to the public up to the seating capacity of the room (45). Seating will be on a first-come basis. Please contact Ms. Susan Burch on (202) 358–0914 or via email at *Susan.Burch@nasa.gov* at least 24 hours in advance to reserve a seat. Visitors will be requested to sign a visitor's register and asked to comply with NASA security requirements, including the presentation of a valid picture ID before receiving an access badge. Foreign nationals attending this meeting will also be required to provide advance copies of their passports, green cards, or visas. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–6004 Filed 3–16–04; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Receipt of License Amendment Request From Sequoyah Fuels Corporation, Gore, Oklahoma, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of license amendment and opportunity to request a hearing.

DATES: A request for a hearing must be filed by May 17, 2004.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6629; fax: (301) 415–5955; and/or by e-mail: *mhf1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated January 7, 2004 (ML040150463), a request from Sequoyah Fuels Corporation (SFC) for approval of a license amendment to Materials License SUB–1010 to authorize a proposed raffinate dewatering project.

The SFC facility, located near Gore, Oklahoma, operated from 1970 to 1993, converting uranium oxide (yellowcake) to uranium hexafluoride, a step in the production of nuclear reactor fuel. From 1987 to 1993, the facility was also used to convert depleted uranium hexafluoride to uranium tetrafluoride. The facility is currently licensed only to possess radioactive material. Originally, the license only permitted possession of source material. However, in a Staff Requirements Memorandum to SECY–02–0095, dated July 25, 2002, the Commission concluded that some of the waste at the SFC site could properly be classified as byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954 as amended (AEA).

The SFC facility is an inactive uranium fuel cycle facility. SFC proposed, in a previous request to NRC, to clean up the site by constructing a disposal cell on the site and putting all the contaminated site material in the cell. Among the material that would be disposed of in the cell is raffinate sludge, which was produced as a waste product during operation of the facility. The raffinate sludge is currently stored onsite in three lined ponds, which contain about 1,000,000 cubic feet of sludge containing 15 to 20 percent solids. The sludge must be dewatered before it can be properly disposed of in the cell.

SFC has proposed to dewater the raffinate sludge using a pressurized filter press system, which will increase the solids content to approximately 45 to 50 percent and reduce the volume to approximately 485,000 cubic feet. The dewatered raffinate sludge will be put into polypropylene bags and stored onsite prior to disposal in the cell. Each bag will be approximately three feet by three feet by four feet and hold approximately 2000 pounds of dewatered sludge. Temporary storage cells will be built on an existing concrete pad. Each storage cell will be approximately 30 feet wide by 150 long and will hold an estimated 1460 bags of dewatered sludge. The cells will be lined and covered to prevent dispersal of any sludge that leaks from the bags.

The NRC staff will review SFC's request to authorize the raffinate dewatering project using NUREG–1620 Rev. 1, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978" and other applicable agency regulations and guidance. If the NRC approves SFC's request, the approval will be documented in an amendment to SFC's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and an Environmental Assessment.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment. In accordance with the general requirements in subpart C of 10 CFR part 2,[1] "Rules of General Applicability; Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma, Attention: Mr. John Ellis; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

[1] The references to 10 CFR part 2 in this notice refer to the amendments to the NRC rules of practice, 69 FR 2182 (January 14, 2004), codified at 10 CFR part 2.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by May 17, 2004.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requestor;

2. The nature of the requestor's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requestor's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the requestor/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requestor/petitioner shall file contentions based on the applicant's environmental report. The requestor/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. *Environmental*—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. *Emergency Planning*—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. *Physical Security*—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. *Miscellaneous*—does not fall into one of the categories outlined above.

If the requestor/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requestor/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requestor/petitioner asserts the contention belongs with a separate designation for that category.

Requestors/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requestor/petitioner that wishes to adopt a contention proposed by another requestor/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requestor/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," details with respect to this action, including the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. The relevant documents can be found in ADAMS at ML040150463. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 10th day of March, 2004.

For the Nuclear Regulatory Commission.

Myron Fliegel,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E4–608 Filed 3–16–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b)(1) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC home page.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene

shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION FOR A UTILIZATION FACILITY

Name of Applicant: Westinghouse Electric Company. Date of Application: February 25, 2004. Date Received: Febuary 26, 2004. Application Number: XR169 ..... Docket Number: 11005472.	Description of Facility: Major equipment, replacement parts and components for construction of four (4) utilization facilities (pressurized water reactors) of between 900 to 1500 MWe each.. Approximate Value: $2.5 Billion.	End Use: For electricity generation at the Ling Ao Site and San Men Site.	Country of Destination: People's Republic of China

For the Nuclear Regulatory Commission.

Dated this 10th day of March 2004 in Rockville, Maryland.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. E4–607 Filed 3–16–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 1.32, "Criteria for Power Systems for Nuclear Power Plants," provides guidance to licensees and applicants of nuclear power, research, and test reactors concerning methods acceptable to the NRC staff for complying with the NRC's regulations for the design, operation, and testing of electric power systems in nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Questions on the content of this guide may be directed to Mr. S.K. Aggarwal, (301) 415–6005; e-mail *ska,nrc.gov*.

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *Distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov/*. Regulatory guides are not copyrighted, the Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 4th day of March 2004.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 04–5973 Filed 3–16–04; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, March 25, 2004;
Thursday, April 8, 2004; and
Thursday, April 22, 2004.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the

matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: March 3, 2004.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 04–5999 Filed 3–16–04; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28730]

Application and Opportunity for Hearing: Covanta Energy Corporation

March 11, 2004.

The Securities and Exchange Commission gives notice that Covanta Energy Corporation has filed an application under Section 304(d) of the Trust Indenture Act of 1939. Covanta Energy asks the Commission to exempt from the certificate or opinion delivery requirements of Section 314(d) of the 1939 Act certain provisions of an indenture between Covanta Energy, certain guarantors and U.S. Bank National Association, as trustee. The indenture relates to 8.25% Senior Secured Notes due 2011.

Section 304(d) of the 1939 Act, in part, authorizes the Commission to exempt conditionally or unconditionally any indenture from one or more provisions of the 1939 Act. The Commission may provide an exemption under Section 304(d) if it finds that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the 1939 Act.

Section 314(d) requires the obligor to furnish to the indenture trustee certificates or opinions of fair value from an engineer, appraiser or other expert upon any release of collateral from the lien of the indenture. The engineer, appraiser or other expert must opine that the proposed release will not impair the security under the indenture in contravention of the provisions of the indenture. The application requests an exemption from Section 314(d) for specified dispositions of collateral that are made in Covanta Energy's and the guarantors' ordinary course of business.

In its application, Covanta Energy alleges that:

1. The indenture permits Covanta Energy and the guarantors to dispose of collateral in the ordinary course of their business;

2. Covanta Energy and the guarantors will deliver to the trustee annual consolidated financial statements audited by certified independent accounts; and

3. Covanta Energy and the guarantors will deliver to the trustee a semi-annual certificate stating that all dispositions of collateral during the relevant six-month period occurred in Covanta Energy's and the guarantors' ordinary course of business and that all of the proceeds were used as permitted by the indenture.

Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File Number 22–28730, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request, in writing, that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than April 12, 2004. Interested persons must include the following in their request for a hearing on this matter:

—The nature of that person's interest;
—The reasons for the request; and
—The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. At any time after April 12, 2004, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5987 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Drew Industries Incorporated To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–13646

March 11, 2004.

Drew Industries Incorporated, a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on November 13, 2003, to withdraw the Issuer's Security from listing on the Amex and to list the Security on New York Stock Exchange ("NYSE"). The Board states that it is taking such action to avoid the direct and indirect costs and the division of the market resulting from dual listing on Amex and NYSE. In addition, the Board states that it determined that it is in the best interest of the Issuer to list the Security on the NYSE.

The Issuer stated in its application that it has met the requirements of Amex Rule 8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and shall not affect its continued listing on the NYSE or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before April 5, 2004, submit by letter to

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–13646. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–5953 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of SCBT Financial Corporation To Withdraw Its Common Stock, $2.50 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–12669

March 11, 2004.

SCBT Financial Corporation, a South Carolina corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $2.50 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on February 20, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the Security on NASDAQ Stock Market. The Board states that the reasons for taking such action are the desire to participate in a multiple market system, the desire for more liquidity in the Security (which can be typical for securities trading on the NASDAQ), and the ability to use the symbol "SCBT", which will closely associate the stock symbol with the Issuer's name and the Issuer's subsidiary banks.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of South Carolina, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before April 5, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–12669. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–5952 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49396; File No. SR–Amex–2002–35]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, and 5 Thereto by the American Stock Exchange LLC To Amend Rules 128A, 1000, and 1000A With Respect to the Participation in Exchange Traded Fund Trades Executed on the Exchange by Registered Traders and Specialists and the Allocation of Those Trades to the Appropriate Party

March 11, 2004.

On April 22, 2002, the American Stock Exchange LLC ("Amex") 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 Amex Rules 128A, 1000, and 1000A regarding the participation in Exchange Traded Fund ("ETF") trades executed on the Exchange by registered traders and specialists and the allocation by the specialist of those trades to the appropriate party. On February 13, 2003, September 8, 2003, November 3, 2003, and December 10, 2003, respectively, the Amex filed Amendment Nos. 1, 2, 3, and 4 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 20, 2004.[4] The Commission received no comments on the proposal. On January 12, 2004, the Exchange filed Amendment No. 5 to the proposed rule change.[5]

After careful review, 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.[6] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the Amex's rules be designed to prevent fraudulent and manipulative acts and practices, 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.

The proposed rule change provides that when participation in ETF trades is being allocated, the specialist will receive a greater than equal share when on parity with registered traders. Under the proposed rule change, an ETF

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 12, 2003 ("Amendment No. 1"); September 5, 2003 ("Amendment No. 2"); October 30, 2003 ("Amendment No. 3"); and December 9, 2003 ("Amendment No. 4").

[4] *See* Securities Exchange Act Release No. 49058 (January 12, 2004), 69 FR 2754 ("Notice").

[5] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated January 9, 2004 ("Amendment No. 5"). Amendment No. 5 made technical corrections that were already included in the Notice and that the Exchange had committed to formally submit by filing an amendment.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

Trading Committee created by the Exchange will determine the percentage of the specialist's participation for each ETF on a case-by-case basis, depending on the liquidity of the product, the type of orders sent to the Exchange and its competitors, and the type of order flow the Exchange seeks to attract.[8] The Commission believes that the proposed rule change should provide for a reasonable participation allocation in ETFs between specialists and registered traders based on their respective responsibilities and obligations. The Commission notes that the proposed rule change sets forth a method to be used by the specialist in allocating shares to registered traders and provides an articulated sequence for allocating an ETF trade in a situation where a customer order is on parity with the specialist and registered traders. The Commission also notes that these methods are similar to the methods that the Commission has approved for the allocation of contracts among registered traders in options trading on the Exchange.[9]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change, as amended, (File No. SR–Amex–2002–35) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5986 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49388; File No. SR–CBOE–2003–51]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on Three Russell Indexes

March 10, 2004.

I. Introduction

On October 30, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with 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 certain CBOE rules to provide for the listing and trading on the Exchange of options on the Russell Top 200® Index, the Russell Top 200® Growth Index, and the Russell Top 200® Value Index (together, the "Russell Top 200 Indexes" or "Indexes").

On November 25, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] On January 6, 2004, the CBOE filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on January 28, 2004.[5] The Commission received one comment letter regarding the proposal.[6] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the Russell Top 200 Indexes. Each Russell Top 200 Index is a capitalization-weighted Index containing various groups of stocks drawn from the 200 largest companies in the Russell 1000 Index, which is drawn from the largest 3,000 companies incorporated in the U.S. and its territories. These 3,000 companies represent approximately 98% of the investable U.S. equity market. The Exchange represents that all of the components of the Russell Top 200 Indexes are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("AMEX"), or NASDAQ and are "reported securities" as defined in Rule 11Aa3–1 under the Act.[7] The CBOE has received Commission approval to trade options on the following Russell Indexes.[8]

Russell 2000® Index
Russell 2000® Growth Index
Russell 2000® Value Index
Russell 1000® Index
Russell 1000® Growth Index
Russell 1000® Value Index
Russell 3000® Index
Russell 3000® Growth Index
Russell 3000® Value Index
Russell MidCap® Index
Russell MidCap® Growth Index
Russell MidCap® Value Index

Index Design

According to the Exchange, each of the three Russell Top 200 Indexes is designed to be a comprehensive representation of the large cap sector of the U.S. equity market. The Russell Top 200 Indexes are capitalization-weighted and include only the common stocks of corporations domiciled in the United States and its territories and that are traded on the NYSE, NASDAQ or the AMEX. Component stocks are weighted by their "available" market capitalization, which is calculated by multiplying the primary market price by the "available" shares, *i.e.*, the total shares outstanding less corporate cross-owned shares, ESOP and LESOP-owned[9] shares comprising 10% or more of shares outstanding, unlisted share classes and shares held by an individual, a group of individuals acting together, or a corporation not in the Index that owns 10% or more of the shares outstanding. Below is a brief description of each Russell Top 200 Index:

Russell Top 200® Index: Measures the performance of the 200 largest companies in the Russell 1000 Index, which represents approximately 74% of the Index total market capitalization of the Russell 1000 Index.

Russell Top 200® Growth Index: Measures the performance of those Russell Top 200 companies with higher price-to-book ratios and higher forecasted growth values. The stocks are also members of the Russell 1000 Growth Index.

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[8] Under the proposal, the ETF Trading Committee will also determine the specialist participation in trades executed by the Exchange's automatic execution ("Auto-Ex") system, in lieu of the table of percentages set forth in the current rule.

[9] *See* Securities Exchange Act Release No. 47729 (April 24, 2003), 68 FR 23344 (May 1, 2003).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James M. Flynn, Attorney, Legal Division, CBOE, to Kelly Riley, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 21, 2003 ("Amendment No. 1"). In Amendment No. 1, CBOE expanded its Statement on Burden on Competition in response to Item 4 of Form 19b–4.

[4] *See* letter from James M. Flynn, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Special Counsel, Division, dated January 6, 2004 ("Amendment No. 2"). In Amendment No. 2, CBOE expanded its Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others in response to Item 5 of Form 19b–4.

[5] *See* Securities Exchange Act Release No. 49111 (January 21, 2004), 69 FR 4189.

[6] *See* letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE") to Jonathan G. Katz, Secretary, Commission, dated November 11, 2003 ("ISE Letter").

[7] 17 CFR 240.11Aa3–1.

[8] *See* Securities Exchange Act Release Nos. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (order approving SR–CBOE–92–02) (listing and trading of options on the Russell 2000 Index) and 48591 (October 2, 2003), 68 FR 58728 (order approving SR–CBOE–2003–17) (listing and trading of options on 11 Russell Indexes).

[9] ESOP and LESOP-owned shares represent, generally, those shares of a corporation that are owned through employee stock ownership plans.

Russell Top 200® Value Index:

Measures the performance of those Russell Top 200 companies with lower price-to-book ratios and lower forecasted growth values. The stocks are also members of the Russell 1000 Value Index.

All companies listed on the NYSE, AMEX or NASDAQ are considered for inclusion in the universe of stocks that comprise the Russell Top 200 Indexes with the following exceptions: (1) Stocks trading at less than $1.00 per share on May 31; (2) non-U.S. incorporated companies; and (3) preferred and convertible preferred stock, redeemable shares, participating preferred stock, warrants and rights, trust receipts, royalty trusts, limited liability companies, bulletin board stocks, pink sheet stocks, closed-end investment companies, limited partnerships, and foreign stocks.

The Russell Top 200 Growth Index and the Russell Top 200 Value Index are both subsets of the Russell Top 200 Index, which itself is a subset of the Russell 1000 and Russell 3000 Indexes. These Growth and Value versions of the Russell Top 200 Index may contain common components, but the capitalization of those components is apportioned so that the sum of the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes equals the total capitalization of the Russell Top 200 Index. The CBOE represents that as of September 30, 2003, the Russell Top 200 Growth Index and the Russell Top 200 Value Index have 129 and 140 components, respectively.

According to the CBOE, on September 30, 2003, the Russell Top 200 Index had a total capitalization of $7.2 trillion and the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes was $3.9 trillion and $3.3 trillion, respectively. As of September 30, 2003, the stocks comprising the Russell Top 200 Indexes had an average market capitalization of $35.7 billion, ranging from a high of $298 billion (General Electric Co.) to a low of $4.9 billion (FOX Entertainment Group, Inc.).[10] The number of available shares outstanding ranged from a high of 9.99 billion (General Electric Co.) to a low of 66.7 million (M & T Bank Corp.), and averaged 1.04 billion shares. The six-month average daily trading volume for Russell Top 200 Index components was 5.68 million shares per day, ranging from a high of 59.96 million shares per day (Intel Corp.) to a low of 314,000 shares per day (M & T Bank Corp.). The CBOE represents that as of September 30, 2003, all of the Russell Top 200 Index components were options eligible.

Calculation

The values of each Index currently are being calculated by Reuters on behalf of the Frank Russell Company and will be disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority ("OPRA").

The CBOE notes that the methodology used to calculate the value of each of the Russell Top 200 Indexes is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of each Index reflects the total market value of the component stocks relative to a particular base period and is computed by dividing the total market value of the companies in each Index by its respective Index divisor. The divisor is adjusted periodically to maintain consistent measurement of each Index. The following is a table of base dates and the respective Index levels as of September 30, 2003:

Index	Base date/base index value	9/30/03 index value
Russell Top 200® Index	3/16/00/400.00	249.51
Russell Top 200® Growth Index	3/16/00/400.00	191.94
Russell Top 200® Value Index	3/16/00/400.00	324.72

Index Option Trading

According to the CBOE, options on the Indexes will be A.M.-settled. In addition to regular Index options, the Exchange may provide for the listing of long-term Index option series ("LEAPS®") in accordance with CBOE Rule 24.9, "Term of Index Option Contracts."

For options on each Index, strike prices will be set to bracket the respective Index in 2.5-point increments for strikes below $200 and 5-point increments for strikes at or above $200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on all of the Indexes will be from 8:30 a.m. to 3:15 p.m. Chicago time.

Maintenance

The CBOE represents that the Russell Top 200 Indexes will be monitored and maintained by the Frank Russell Company. The Frank Russell Company will be responsible for making all necessary adjustments to the Indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, would require simple changes to the available shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances, would require a change in the divisor of an Index to effect adjustments.

The Exchange represents that the Russell Top 200 Indexes are re-constituted annually on June 30 and such reconstitution is based on prices and available shares outstanding as of the preceding May 31. New Index components are added only as part of the annual re-constitution and, after that, a stock removed from an Index for any reason will not be replaced until the next re-constitution.

Although the CBOE is not involved in the maintenance of the Russell Top 200 Indexes, the Exchange represents that it will monitor each Russell Top 200 Index on an annual basis and, will notify the Commission if: (1) The number of securities in any Index drops by 33% or more; (2) 10% or more of the weight of any Index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of any Index is represented by component securities that are options eligible; (4) 10% or more of the weight of any Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of any Index or the largest five components in the aggregate account for

[10] *See* Exhibit B to Form 19b–4.

more than 50% of the weight of any Index.[11]

Surveillance

The Exchange represents that the CBOE's surveillance procedures are adequate to monitor the trading in options and LEAPS on the Russell Top 200 Indexes. Further, the Exchange will have complete access to the information regarding the trading activity of the underlying securities.

Exercise and Settlement

The proposed options on each Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of each Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of each Index at option expiration will be calculated by Reuters on behalf of the Frank Russell Company based on the opening prices of the component securities on the last business day prior to expiration. If a component security fails to open for trading, the exercise settlement value will be determined in accordance with CBOE Rules 24.7(e) and 24.9(a)(4). When the last trading day is moved because of Exchange holidays (such as when the CBOE is closed on the Friday before expiration), the last trading day for expiring options on the Indexes will be Wednesday and the exercise settlement value of options on the Indexes at expiration will be determined at the opening of regular trading on Thursday.

Position Limits

The Exchange proposes to establish position limits for options on the Russell Top 200 Indexes at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are identical to the limits applicable to options on the Russell 2000 Index as specified in CBOE Rule 24.4(a).

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV of the CBOE's rules will govern the trading of options on the Russell Top 200 Indexes on the Exchange. Additionally, the CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of the Russell Top 200 Index options. The CBOE also has been informed that OPRA has the capacity to support such new series.[12]

III. Summary of Comments

The Commission received one comment letter regarding the proposal, which stated that the CBOE had entered into an exclusive licensing agreement to list and trade options on the Indexes.[13] The commenter expressed concern about the potential effect on competition of an exclusive licensing agreement and about the CBOE's failure to discuss the competitive implications of exclusive index licenses in its filing. Because the CBOE's proposal failed to discuss the competitive implications of the exclusive licenses, the commenter urged the Commission to reject the filing or to publish the proposal for comment before acting on it.

In response, the CBOE filed Amendment No. 1 to the proposal, which discussed the proposal's burden on competition. In Amendment No. 1, the CBOE stated, among other things, that the proposal would not impose a burden on competition because the ability to grant an exclusive license enhances the value of indexes to index providers, thereby providing index providers with an incentive to develop additional indexes for derivatives trading. The CBOE also noted that options on the Russell Top 200 Indexes would compete with other broad-based index options and derivative products traded on the CBOE and on other markets.

IV. Discussion

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, and, in particular, the requirements of Section 6(b)(5) of the Act.[14] Specifically, the Commission believes that the listing and trading of options on the Russell Top 200 Indexes will permit investors to participate in the price movements of the securities comprising each Index. The Commission also believes that the trading of options on the Russell Top 200 Indexes will allow investors holding positions in some or all of the securities underlying the Indexes to hedge the risks associated with their portfolios more efficiently and effectively. Accordingly, the Commission believes that the trading of options on the Russell Top 200 Indexes will provide investors with important trading and hedging mechanisms that should reflect accurately the overall movement of stocks in the large capitalization range of U.S. equity securities.[15] By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the Russell Top 200 Indexes will serve to protect investors, promote the public interest and contribute to the maintenance of fair and orderly markets.[16]

The trading of options on the Russell Top 200 Indexes, however, raises several issues related to the design and structure of the Indexes, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the CBOE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds it is appropriate and consistent with the Act to classify the Russell Top 200 Indexes as broad-based, and thus, to permit Exchange rules applicable to the trading of broad-based index options to apply to options on the Indexes. Specifically, the Commission believes that the Indexes are broad-based because they reflect a substantial segment of the U.S. equity market, in general, and the most highly capitalized U.S. securities, in particular. As of September 30, 2003, the Russell Top 200 Index had a total capitalization of $7.2 trillion and the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes was $3.9 trillion and $3.3 trillion, respectively. As of September 30, 2003, the stocks comprising the Indexes had an average market capitalization of $35.7 billion, ranging

[11] The CBOE clarified that it will notify the Commission if any of these changes occur in any of the Indexes. Telephone conversation between James Flynn, Attorney, Legal Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 3, 2004.

[12] *See* letter from Joe Corrigan, Executive Director, OPRA, to William Speth, Director of Research, CBOE, dated October 21, 2003 ("OPRA Letter").

[13] *See* ISE Letter, *supra* note 6.

[14] 15 U.S.C. 78f(b)(5).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of options on the Indexes will provide investors with hedging vehicles that should reflect the overall movement of stocks representing a substantial segment of the U.S. equity market.

[16] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

from a high of $298 billion to a low of $4.9 billion. In addition, as of September 30, 2003, the largest single component of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index represented 4.15%, 7.63%, and 7.47% of the weight of their respective Indexes, and the five largest component stocks represented 17.62%, 28.55%, and 23.39% of the weight of their respective Indexes. The component securities of the Indexes are diverse, actively traded, and represent a broad cross-section of highly capitalized securities in the U.S. equity market. The CBOE has also represented that all of the component securities of the Indexes are reported securities, and that as of September 30, 2003, all of the Russell Top 200 Index components are options eligible.[17] Accordingly, the Commission believes that it is appropriate for the Exchange to classify the Indexes as broad-based and apply its rules governing broad-based index options to options on the Indexes.

B. Potential for Manipulation

The Commission also believes that the general broad diversification, capitalizations, liquidity, and relative weightings of the component securities of the Indexes significantly minimize the potential for manipulation of the Indexes. First, as noted above, the Russell Top 200 Indexes represent a broad cross-section of highly capitalized U.S. companies and no single security dominates any of the Indexes. Second, as of September 30, 2003, the total market capitalizations of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index were $7.2 trillion, $3.9 trillion, and $3.3 trillion, respectively. Third, as of September 30, 2003, the six-month average daily trading volume of the component securities of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index was approximately 5.67 million shares, 6.5 million shares, and 3.98 million shares, respectively. Fourth, the CBOE has represented that it will notify the Commission when: (1) The number of securities in any Index drops by 33% or more; (2) 10% or more of the weight of any Index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of any Index is represented by component securities that are options eligible; (4) 10% or more of the weight of any Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of any Index or the largest five components in the aggregate account for more than 50% of the weight of any Index.[18] Accordingly, the Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulation of the prices of the Indexes' components would affect significantly the Indexes' values. Finally, the CBOE has proposed position and exercise limits for options on the Indexes that are identical to the position and exercise limits for options on other Russell Indexes traded on the CBOE.[19] Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulation and other trading abuses.

C. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the trading of options on the Russell Top 200 Indexes (including full-value and reduced value LEAPS on the Indexes), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the options on the Indexes, including LEAPS, will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Russell Top 200 Indexes.[20]

D. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the CBOE, the NYSE, the AMEX, and the NASD are all members of the ISG[21] and the ISG Agreement will apply to the trading of options on the Indexes. Further, the CBOE has represented that its surveillance procedures are adequate to monitor trading in options, including LEAPS, on the Indexes.

E. Market Impact

The Commission believes that the listing and trading of options on the Russell Top 200 Indexes on the Exchange will not adversely impact the underlying securities markets. First, as described above, the Russell 200 Indexes are broad-based and no one stock or industry group dominates any of the Indexes. Second, as noted above, the stocks contained in the Indexes have large capitalizations and are actively traded. Third, existing CBOE stock index options rules and surveillance procedures will apply to options on the Indexes. Fourth, the Exchange has established position and exercise limits for options on the Russell Top 200 Indexes that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because options on the Indexes will be issued and guaranteed by the Options Clearing Corporation like other standardized

[17] The CBOE's option listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7 million shares; (2) there must be a minimum of 2,000 holders of the underlying security; (3) trading volume must have been at least 2.4 million shares over the preceding twelve months; and (4) the market price per share must have been at least $7.50 for a majority of business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation and Policy.01.

[18] *See* note 11, *supra*. If the composition of any of the underlying securities of any Index were to change substantially, the Commission's decision regarding the appropriateness of the current maintenance standards for the Indexes would be reevaluated, and additional approval under Section 19(b) of the Act might be necessary to continue to trade options on the Indexes.

[19] *See* CBOE Rule 24.4, "Position Limits for Broad-Based Index Options."

[20] In addition, the CBOE has represented that the Exchange has the necessary systems capacity to support these new series of options that would result from the introduction of options on the Indexes. OPRA also has represented that it has the capacity to support the new series that would result from the introduction of options on the Indexes. *See* Opra Letter, *supra* note. 11.

[21] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and option markets. All of the registered national securities exchanges and the NASD are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

options traded in the U.S. Lastly, the Commission believes that settling options on the Russell Top 200 Indexes based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of positions in options on the Indexes upon expiration.

F. Exclusive Licensing Agreement

As noted above, the ISE raised concerns about the CBOE's exclusive licensing agreement with the Frank Russell Company to trade options on the Russell Top 200 Indexes. The Commission notes that the ISE has filed a petition for rulemaking to amend Rule 19c–5 under the Act [22] to prohibit options exchanges from entering into exclusive licensing agreements with respect to index option products.[23] The Commission believes that the issues raised by the ISE in its comment letter and in its petition for rulemaking regarding the exclusive licensing of index option products should be considered comprehensibly rather than on an *ad hoc* basis in the context of a particular index option product or products, such as the Russell Top 200 Indexes. In addition, the Commission believes that investors will benefit from the availability of trading options on the Russell Top 200 Indexes because, as described above, they will provide investors with additional hedging and trading vehicles. Accordingly, the Commission believes that it is appropriate in the public interest to approve the current proposal in order to make options on the Russell Top 200 Indexes available to investors while the Commission considers the issues presented by the exclusive licensing of index options products in the context of the ISE's petition for rulemaking.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–CBOE–2003–51), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

J. Lynn Taylor,

Assistant Secretary.

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[22] 17 CFR 240.19c–5.

[23] *See* Letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan Katz, Secretary, Commission, dated November 1, 2002.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49387; File No. SR–CHX–2003–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by The Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following an Exempted ITS Trade-Through

March 10, 2004.

On August 7, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to render voluntary a CHX specialist's obligation to fill limit orders for the Nasdaq-100 Index, the Dow Jones Industrial Average Index and the Standard & Poor's 500 Index (collectively "Exempt ETFs")[3] resting in the specialist's book when the primary market is trading at the limit price, or when the bid or offering at the limit price has been exhausted in the primary market. On January 20, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 3, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The CHX has represented that the proposed rule change is warranted because the Exchange believes that it is difficult, if not impossible, for a CHX specialist to obtain liquidity on behalf of his customers via the Intermarket Trading System in the case of Exempt ETFs given the dynamic and rapidly changing nature of the exchange-traded fund market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with the requirements of section 6(b) of the Act,[6] in general, and section 6(b)(5) of the Act,[7] in particular, which requires that the rules of an Exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the obligations on specialists to execute limit orders resting on the specialist book when the primary market is trading at the limit price, or when the bid or offer at the limit price has been exhausted in the primary market were obligations that the CHX assumed voluntarily in order to make its market more attractive to sources of order flow. The Commission believes that the business decision to potentially forego order flow by no longer requiring specialist to provide such protections to certain limit orders is a judgment the Act allows the CHX to make.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, (File No. SR–CHX–2003–27) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5948 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exchange has represented that to the extent the CHX Board of Governors designates subject issues other than or in addition to the Exempt ETFs identified in this proposed rule change, the Exchange will file those changes with the Commission as an interpretation of an existing rule pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder.

[4] *See* Securities Exchange Act Release No. 49130 (January 27, 2004), 69 FR 5227.

[5] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49393; File No. SR–ISE–2003–26]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendments No. 1, 2 and 3 Thereto by the International Securities Exchange, Inc. To Amend Its Rules Governing Limits on the Entry of Orders of Less Than Ten Contracts and Revise the Quotation Size Requirements for Market Makers

March 10, 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 October 14, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. On January 13, 2004, the ISE filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").[3] On January 30, 2004, the ISE filed Amendment No. 2 to the proposed rule change ("Amendment No. 2").[4] On March 8, 2004, the ISE filed Amendment No. 3 to the proposed rule change ("Amendment No. 3").[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

The Exchange proposes to modify ISE Rules 717, 803–805 and 1614 to repeal the limits on the entry of orders and revise the quotation requirements of market makers. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 717. Limitations on Orders

(c) *Reserved.* [Order Size.

(1) Electronic Access Members are prohibited from entering into the System, as principal or agent, multiple orders for a single trading interest if one or more orders is for fewer than ten (10) contracts.

(2) Non-Customer Orders for fewer than ten (10) contracts will be rejected or cancelled automatically if such orders would cause the size of the Exchange's best bid or offer to be fewer than ten (10) contracts.]

Rule 803. Obligations of Market Makers

(c) Primary Market Makers. In addition to the obligations contained in this Rule for market makers generally, for options classes to which a market maker is the appointed Primary Market Maker, it shall have the responsibility to:

(1) [Assure that each disseminated market quotation in each series of options is for a minimum of ten (10) contracts, or such other minimum number as the Exchange shall set from time to time. When the best bid (offer) on the Exchange represents one or more Public Customer Orders for less than a total of ten (10) contracts at that price, the Primary Market Maker is obligated to] *When the disseminated market quotation in a series of options is for less than ten (10) contracts,* buy (sell) at that price the number of contracts needed to make the disseminated quote firm for ten (10) contracts *to incoming Linkage orders as provided in Rule 1900(7) and (8).*

(2) Address Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange.

(3) Initiate trading in each series pursuant to Rule 701.

Rule 804. Market Maker Quotations

(b) Size Associated with Quotes. A market maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the market maker is willing to buy or sell upon receipt of an order or upon interaction with a quotation entered by another market maker on the Exchange. Unless the Exchange has declared a fast market pursuant to Rule 704, a market maker may not initially enter a bid or offer of less than ten (10) contracts. [Where the size associated with a market maker's bid or offer falls below ten (10) contracts due to executions at that price and consequently the size of the best bid or offer on the Exchange would be for less than ten (10) contracts, the market maker shall enter a new bid or offer for at least ten (10) contracts, either at the same or a different price.]

Rule 805. Market Maker Orders

(b) Options Classes Other Than Those to Which Appointed.

(1) A market maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, provided that:

(i) market maker orders are subject to the limitations contained in Rule 717[(c) and] (f) as [those] *that* paragraph[s apply] *applies* to principal orders entered by Electronic Access Members;

(ii) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Rule 803(b)(4); and

(iii) the market maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

Rule 1614. Imposition of Fines for Minor Rule Violations

(d) Violations Subject to Fines. The following is a list of the rule violations subject to, and the applicable sanctions that may be imposed by the Exchange pursuant to, this Rule:

(5) *Order Entry (Rule 717).* Violations of Rule 717(a), [(c)–(e)] *(d)–(f)* regarding limitations on orders entered into the System by Electronic Access Members, as well as violations of Rule 805(b)(1)(i) regarding [restrictions on] orders entered by market makers, will be subject to the fines listed below. Each paragraph of Rule 717 subject to this Rule shall be treated separately for purposes of determining the number of cumulative violations.

* * * * *

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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 12, 2004. In Amendment No. 1, the ISE made technical corrections to the text of the proposed rule change. In addition, in Amendment No. 1, the ISE corrected an omission in the original rule text, amending ISE Rule 1614(d)(5) to include ISE Rule 717(f) as a minor rule violation meriting the fines set forth in ISE Rule 1614(d)(5) (addressing violations of order-entry rules).

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 29, 2004. In Amendment No. 2, the ISE amended the text of the proposed rule change to clarify that Primary Market Makers must buy (sell) the number of contracts needed to maintain a firm quote for ten contracts when the disseminated ISE quotation is less than ten contracts for orders incoming from the Options Intermarket Linkage.

[5] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 5, 2004. In Amendment No. 3, the ISE amended the text of the proposed rule change to incorporate recently-approved changes to ISE Rule 804. *See* Securities Exchange Act Release No. 49278 (February 19, 2004), 69 FR 8716 (February 25, 2004) (SR–ISE–2003–34).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the ISE's restrictions on the entry of orders of less than 10 contracts, along with related market maker quotation requirements. Currently, ISE rules require that the Exchange's best bid and offer ("BBO") be at a size of at least 10 contracts at all times. To assure that the Exchange's BBO is at least 10 contracts, ISE rules contain several restrictions on orders of less than 10 contracts and certain market maker obligations.

First, ISE Rule 804 requires market makers to establish quotations of at least 10 contracts. That rule also provides that if there is partial execution against a quotation resulting in the size of the ISE BBO falling below 10 contracts, the market maker must refresh its quotation (either at the same or different price) so that it is firm for at least 10 contracts. Similarly, ISE Rule 717 prohibits Electronic Access Members ("EAMs") from submitting orders for non-customers of less than 10 contracts that would cause the ISE BBO to be for less than 10 contracts. If an EAM enters an order for a Public Customer at the BBO for less than 10 contracts, Rule 803 requires that the Primary Market Maker ("PMM") either trade that order or supplement the size of the order so that the displayed quotation is for at least 10 contracts. The Exchange refers to the supplemental quoting obligation as the need for the PMM to "derive" the additional size. Finally, to avoid manipulative practices related to the PMM's obligation to derive additional size, an EAM is prohibited under Rule 717 from entering multiple orders of less than 10 contracts for the same trading interest.[6]

This proposed rule change will not change the requirement that market makers enter all quotations with a size of at least 10 contracts. It will: (1) Remove the prohibition on EAMs entering non-customers orders that improve the ISE's BBO for less than 10 contracts, (2) repeal the obligation of the PMM either to "trade out" customer orders of less than 10 contracts or derive additional size to maintain a 10-contract displayed size, and (3) since there will no longer be an obligation for PMMs to derive additional size, remove the prohibition on EAMs entering multiple orders for the same trading interest if one or more orders are for less than 10 contracts. In addition, this proposed rule change will repeal the requirement that market makers refresh their quotations if there is a partial execution that results in the ISE's BBO size's falling below 10 contracts.[7] However, pending possible future changes to the rules governing trading in the Linkage, the Exchange does not propose to change the obligations in ISE Rule 1900 that the ISE quotation be firm for at least 10 contracts for Principal Orders and Principal Acting as Agent Orders received through the Linkage. The PMM will continue to provide "derived" size when necessary for such Linkage orders.

Lastly, the Exchange is proposing to amend ISE Rule 1614(d)(5) to include ISE Rule 717(f) as a minor rule violation subject to the fines applicable to violations of order-entry rules.[8] The Exchange proposes to include 717(f) as a minor rule violation harmonizes the treatment of EAMs and market makers pursuant to that rule.[9]

The Exchange believes that the proposed rule change will provide significant benefits. First, the Exchange believes that the proposed rule change will provide non-customers with more flexibility in the entry of orders by allowing them to enter orders of less than 10 contracts. It also will remove the burden on PMMs either to trade out small customer orders or derive size for such orders, which the Exchange believes will eliminate "small order baiting" manipulative conduct. At the same time, the Exchange will retain the obligation that market makers initially enter quotations for a size of at least 10 contracts. The Exchange believes that this is a necessary obligation for market makers to provide reasonable liquidity to the market place.

2. Statutory Basis

The ISE believes that the rule change is consistent with Section 6(b) of the Act in general[10] and Section 6(b)(5) of the Act in particular.[11] The Exchange believes that the proposed rule change is intended 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. Specifically, the Exchange believes that allowing EAMs to enter non-customer orders of less than 10 contracts will provide non-customers with greater flexibility to improve the ISE's BBO. Also, the Exchange believes that by allowing market makers to maintain quotations of less than 10 contracts, they can continue to provide investors with liquidity at their stated prices without having to refresh their quotations for 10 contracts at a potentially inferior price. Finally, the Exchange believes that eliminating the need for PMMs to "derive" quotations will eliminate opportunities for manipulative practices, such as "small order baiting."

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[6] The derived order obligation can lead to market manipulation called "small order baiting," where customers enter small orders seeking to induce a PMM to display greater size at that price, and then enter an order to execute against that derived size.

[7] The ISE represents, however, that their system makes it impossible for a market maker's quote ever to drop to zero, and that this proposed rule filing will not therefore change the obligation of a market maker to maintain a continuous quote for options in which they make a market. *See* ISE Rules 803(b) and 804(e). Telephone conversation between Katherine Simmons, Associate General Counsel, ISE, and John Roeser, Special Counsel and Elizabeth MacDonald, Attorney, Division, Commission, February 11, 2004.

[8] Telephone conversations between Joe Ferraro, Assistant General Counsel, ISE, and Elizabeth MacDonald, Attorney, Division, Commission, February 18, 2004, and February 19, 2004.

[9] *Id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–ISE–2003–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–26 and should be submitted by April 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5950 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49404; File No. SR–NASD–2003–159]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Permit Nasdaq to Append a New Modifier to Trade Reports of Pre-Open and After-Hours Trades Not Submitted to Nasdaq's Automated Confirmation Transaction Service, and Other Changes Regarding Trade Reporting

March 11, 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 October 16, 2003, 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. On February 5, 2004, Nasdaq amended the proposal.[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

Nasdaq proposes changes to permit it to append a new modifier to trade reports of pre-open and after-hours trades not submitted to Nasdaq's Automated Confirmation Transaction Service ("ACT") within 90 seconds after execution, and to require members to: (1) Include the time of execution on all reports submitted to ACT; (2) append the .W modifier to reports of "stop stock transactions;" (3) append the .W modifier, as appropriate, to reports submitted to ACT after 5:15 p.m.,[4] and (4) append the .PRP modifier to reports of transactions in listed securities that are executed at a price that is based on a prior point in time.

The proposal to implement a new trade report modifier for pre-open and after hours trades that are reported late must be approved by the respective members of the Consolidated Tape Association and the Nasdaq Unlisted Trading Privilege Plan. In addition, the proposal to require members to append the .PRP modifier, as appropriate, to reports of listed securities must be approved by the members of the Consolidated Tape Association.

The amendments contained in this filing will be implemented as soon as practical, should the Commission approve the filing, taking into consideration the system changes required to be made by members and vendors.[5] If the Commission approves the proposed rule change, Nasdaq will announce an implementation schedule soon after Commission approval, but in no case would the changes be implemented in less than 90 days after approval.

The text of the proposed rule change is available at Nasdaq 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, 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

Market participants make trading and investment decisions based, in part, on information disseminated by Nasdaq about trades executed in its market. Nasdaq is proposing several changes that are designed to improve the quality of the information disseminated. The proposed changes will permit Nasdaq to append a new modifier to trade reports of pre-open and after-hours trades not submitted to ACT within 90 seconds after execution, and to require members to: (1) Include the time of execution on all reports submitted to ACT; (2) append the .W modifier to reports of "stop stock transactions;" (3) append the .W modifier, as appropriate, to reports submitted after 5:15 p.m.; and (4) append the .PRP modifier to reports of transactions in listed securities that are executed at a price that is based on a prior point in time.

Late Pre-Open and After-Hours Trade Reports

To provide market participants with more accurate information about the prices at which a security is trading outside normal market hours, Nasdaq is proposing to create a new trade

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* February 4, 2004 letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[4] Nasdaq also is proposing to clarify that members must append the .W modifier to a trade report if a trade can be properly reported with both a .T modifier and a .W modifier. This clarification is necessary because ACT can accept only one modifier per trade report. *See infra* note 14.

[5] The NASD Small Firm Advisory Board ("SFAB") requested that the change to require the time of execution on all trade reports be implemented one year from the date of Commission approval so that small members would have sufficient time to make the necessary system modifications.

reporting modifier (the .ST modifier) to identify pre-open and after-hours trades that are reported late. Today, members generally are required to submit trade reports to ACT within 90 seconds of the time of execution. However, if during normal market hours a trade is not reported within 90 seconds, the member must include a modifier (the .SLD modifier) on the submission to ACT to indicate that the trade report is late. The modifier prevents the trade report from affecting the last sale calculation of the security and informs the market that the price is "stale" because it is associated with a trade executed at least a minute and a half earlier. In contrast, for trades executed and reported in the pre-open and after-hours sessions, there is no modifier equivalent to the .SLD modifier that can inform market participants that a price may be stale. Nasdaq is proposing to create the .ST modifier to identify stale prices in the pre-open and after-hours sessions.

Unlike the rules governing the .SLD modifier, members will not be required to append the .ST modifier to late reports of pre-open and after-hours trades. Members will continue to be required to append the .T modifier and include the time of execution on late reports of pre-open and after-hours trades; Nasdaq will convert the .T modifier to .ST, as appropriate, after comparing the time of execution to the time of submission to ACT.

Reporting Time of Execution

To improve the accuracy of the information disseminated to market participants and to enhance its automated surveillance, Nasdaq is proposing to require members to include the time of execution on all reports submitted to ACT.[6] For example, when a report contains the time of execution, Nasdaq's systems can determine whether the trade was submitted timely or late. If the trade is submitted late and does not include the late trade report modifier (the .SLD modifier), Nasdaq can automatically append the modifier. Automatically appending the .SLD modifier improves the accuracy of the information disseminated, because when a trade is reported late without the modifier it appears on the tape as a current trade, which can cause confusion if the price of the late reported trade is different from the current prices at which the security is trading. Appending the .SLD modifier eliminates the opportunity for this confusion.

Including the time of execution on a report also assists the NASD in enforcing certain NASD rules, including determining whether a trade is consistent with a member's duty of best execution. When NASD possesses the execution time of a trade they can compare the trade price to, among other things, the bids and offers for the security at and around the time the trade was executed to determine whether the price is consistent with those prices. Again, without the time of execution, NASD's ability to perform this surveillance is complicated.

Today, approximately 99% of trade reports submitted to ACT contain the time of execution, which means NASD can conduct its automated surveillance and Nasdaq can append the modifiers automatically, for nearly all of the trades submitted to ACT. However, Nasdaq can improve both the quality of information it disseminates and the surveillance of its market if all reports submitted to ACT contain the time of execution. With this current proposal, Nasdaq will eliminate the few instances in which late trades are inappropriately disseminated as current trades and the full benefits of the NASD's automated surveillance systems can be achieved.

Reporting Stop Stock Transactions

Nasdaq is proposing that members use the .W modifier to report the trade execution scenario known as "stop stock" transactions.[7] Using the .W modifier to identify stop stock transactions will ensure that the "stop stock prices" are not disseminated to market participants as trades reflective of the current market for the security.[8]

Members and customers today often have an understanding or explicitly agree as to how a customer's order will be executed, especially if the order is for a large number of shares. For example, upon receiving a market order from a customer, the member and the customer agree that the member will execute the order in pieces throughout the day, with the expectation that this "working" of the order will result in a price to the customer that is superior to the price at which the stock is trading at the time the member receives the order. However, the member also may promise to "stop" the customer at or near the current market price to ensure that the customer does not receive an inferior price if the market moves against the customer's interest (*e.g.*, the price of the stock rises throughout the day when the member is seeking to buy the security). In such situations, when the customer's order is executed, the trade must be reported at whichever price the member used to fill the order, either the "stop stock price" or the better price.

Currently, if the member fills the customer's order at a price that is the average of several different execution prices, the trade must be reported with the .W modifier, which informs market participants that the price is not based on current trading.[9] However, today

[6] Because of the SFAB's comments concerning the proposal to require the time of execution on all reports submitted to ACT, Nasdaq will delay implementation of this requirement for a year after Commission approval. To provide members with notice of the effective date of the requirement, Nasdaq is proposing to add Interpretive Materials to the trade reporting rules stating the exact date when the obligation becomes effective. Until such time, members will remain obligated to provide the time of execution only in those circumstances articulated in the NASD's rules. To prevent confusion, the rule language modifications in this filing do not contain the changes required to mandate the time of execution on all reports submitted to ACT. These language changes will be made at a time closer to the effective date of the requirement.

[7] Presently, the .W modifier must be appended to reports of trades whose prices are determined based upon an average price or other special pricing formulae.

Members have been given guidance that the .W modifier is appropriate to report the equity trade component of an "exchange for physical" transaction. An exchange for physical transaction involves two parties simultaneously executing a futures contract transaction and an equity transaction (for the securities covered by the futures contract), typically involving baskets (or exchange traded funds "ETFs) that replicate common indices. For example, party A will sell a basket of stocks (or ETF) to party B, and party B simultaneously will sell to party A a futures contract covering the basket (or ETF).

Members also have been told that the equity leg of an exchange for physical transaction can be reported on an "as of" basis on the day following the date of execution. Either approach is acceptable because both ensure that the equity leg trades do not get disseminated as normal trades, and thus do not affect the high, low, and last sale calculations. Excluding the equity leg trades from these calculations is important because the equity leg transaction prices often include factors and adjustments that are not based on contemporaneous trading in the securities.

Nasdaq will be seeking a proposed rule change in the future to provide specific, standard guidance as to the appropriate method for reporting exchange for physical transactions. At this time, Nasdaq has not determined the manner that will be prescribed, but until such time, members can continue to report these trades on an "as of" basis on the day following execution, or on the same day using the .W modifier.

[8] Until such time that the .W modifier is approved and implemented for stop stock transactions, Nasdaq believes it is appropriate for members to use the .SLD modifier. Using the .SLD modifier in these circumstances is not desirable as a permanent solution, however, because the modifier can be used only during normal market hours. In contrast, the .W modifier can be used between 9:30 a.m. and 5:15 p.m., and Nasdaq is proposing to extend the use of the .W modifier until 6:30 p.m. Appending the .SLD modifier for stop stock situations is satisfactory as a temporary solution because it will prevent these trades from being included in the last sale calculation and market participants will be informed that the price in [sic] not current.

[9] In some instances, however, a trade may not be required to be reported to Nasdaq if that the trade qualifies as the riskless leg of a riskless principal transaction. *See e.g.*, NASD Rule 4632(d)(3)(B). *See*

there is no modifier designated to identify a trade executed at a stop stock price. As a result, trades executed at stop stock prices appear as current market trades, when in fact the price may be based on the market several hours earlier. For example, a member fills a customer's order at the end of the day (which it received in the morning) at a stop stock price of $50, when the current market is trading at $52. When reported without a modifier, there is nothing to distinguish the trade at $50 from other trades occurring at that time at $52. Therefore, market participants can be led to believe that the market is falling, especially if the stop stock transaction is for a large number of shares. Requiring members to use the .W modifier to identify these trades will improve the information disseminated about the prices at which stocks are trading on Nasdaq.

To prevent confusion with the terms "stop order"[10] and "stop-limit order,"[11] and to provide guidance as to the exact circumstances in which use of the .W modifier will be required, Nasdaq will define the terms "Stop Stock Price" and "Stop Stock Transaction" in its rules. Nasdaq is proposing to define the term "Stop Stock Price" as the specified price at which a member and another party agree a Stop Stock Transaction will be executed, and which price is based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.

Nasdaq is proposing to define a "Stop Stock Transaction" as any transaction that is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better, and the order is executed at the Stop Stock Price. An order that is not executed at the Stop Stock Price does not comply with the definition of a Stop Stock Transaction, but nevertheless may need to be reported with the .W modifier if the price is based on average weighting or some other special pricing formula.[12]

To enable the NASD to conduct surveillance for proper use of the .W modifier for Stop Stock Transactions, members will be required to record the time at which the member and the other party agreed to the Stop Stock Price.[13] Specifically, members must populate the time of execution field on the ACT report with the time the member and the other party agreed to the Stop Stock Price; members will not be required to include on the ACT report the actual time the trade was executed.

Nasdaq also is seeking to extend the hours during which the .W modifier can be submitted to ACT. Presently, the .W modifier is accepted from 9:30 a.m. until 5:15 p.m., while ACT remains open until 6:30 p.m. Eastern Time. Nasdaq is proposing to modify ACT to accept the .W modifier from 5:15 p.m. until 6:30 p.m. With this change, members will be required to use the .W modifier, as appropriate, for trades executed between 9:30 a.m. and 6:30 p.m.[14] However, for Stop Stock Transactions, the .W modifier is not required if the trade is executed and reported within 90 seconds of the time the member and the party agreed to the Stop Stock Price.[15]

Prior Reference Price Trades—Listed Securities

Presently, members are required to append the .PRP modifier to reports of transactions in Nasdaq securities when the price of a trade is based on prior point in time.[16] For example, a member is required to append the .PRP modifier to a market on open order for a Nasdaq-listed stock executed more than 90 seconds after the market opens. The .PRP modifier, however, is not required when reporting such transactions in listed securities.[17] Requiring members to append the .PRP modifier to a trade whose price is based on a prior point in time improves the quality of information disseminated because market participants are informed that the price is not based on current market trading. Therefore, to improve the quality of information disseminated concerning trading in listed securities, Nasdaq is proposing to require members to append the .PRP modifier, as appropriate, to reports of transaction in listed securities.[18]

Members will be required to use the .PRP modifier in the same manner as required today for Nasdaq securities. Specifically, the price must be based on prior point in time and the member must include that prior time on the report to ACT. That is, the price must have existed at the time identified on the ACT report. In addition, the .PRP modifier is not required if the trade is executed and reported within 90 seconds from the prior reference time.[19]

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also, Nasdaq General News—Riskless Principal Negative Consent Letters and .W Modifier (January 31, 2001), which is available at *http://www.nasdaqtrader.com/Trader/News/2001/generalnews/01312001.stm.*

[10] *Barron's Dictionary of Finance and Investment Terms* (4th ed. 1995) defines the term "stop order" as an "order to a securities broker to buy or sell at the market price once the security has traded at a specified price called the *stop price.*"

[11] *Barron's Dictionary of Finance and Investment Terms* (4th ed. 1995) defines the term "stop-limit order" as an "order to a securities broker with instructions to buy or sell at a specified price or better (called the *stop-limit price*) but only after a given *stop price* has been reached or passed."

[12] Because members will be required to include the .W modifier and the time of execution on reports of Stop Stock Transactions, ACT is being programmed to reject any report submitted with the .W modifier that does not include the time of execution. However, the time of execution is not presently required when reporting .W trades based on average weighting or any other special pricing formula, unless the trade is reported late. Because ACT will not be able to distinguish between Stop Stock Transactions and other trades being reported with the .W, Nasdaq is proposing to require members to include the time of execution on all trades reported with the .W modifier, including those based on average weighting or other special pricing formulae.

[13] In contrast, members will be required to include the actual time a trade is executed when using the .W modifier to identify a trade whose price is based on average weighting or some other special pricing formulae.

[14] ACT can accept only one modifier per trade report. In some instances, however, a trade can be executed in a manner in which the .T modifier and the .W modifier would be appropriate. For example, an average price trade that is executed between 4 p.m. and 6:30 p.m. Because the trade is executed and reported outside normal market hours, the .T modifier is appropriate. However, the .W modifier also would be appropriate because the trade price is based on an average price. Whenever a trade is executed in a manner that implicates both the .T modifier and the .W modifier, Nasdaq is proposing that members must utilize the .W modifier. Using the .W modifier in these situations will ensure that market participants are informed that the price is not based on current trading of the security.

[15] Because members have 90 seconds to report a trade, the presumption is that any prices reported in that time period are informative to the market as an indication of current trading. Therefore, when a Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agreed to the Stop Stock Price, the Stop Stock Price is presumed to be informative to market participants because it is based on current market prices within the last 90 seconds.

[16] The .PRP modifier also is required when reporting transactions in OTC Bulletin Board and OTC Equity Securities.

[17] For example, securities listed on the NYSE and reported to Nasdaq pursuant to Rule 6420.

[18] Until such time that the .PRP modifier is approved and implemented, Nasdaq believes it is appropriate for members to use the .SLD modifier in circumstances in which the .PRP modifier would be appropriate. Using the .SLD modifier in these circumstances is not desirable as a permanent solution, however, because the .SLD modifier identifies trades that are *executed timely*, but the report of the trade is late. Whereas the .PRP modifier identifies *trades that are executed late*, when measured against the reference time, but that are reported within 90 seconds of the time the trade is actually executed. Appending the .SLD modifier in the ".PRP" circumstances is satisfactory as a temporary solution because it will prevent the trade from being included in the last sale calculation and market participants will be informed that the price in [sic] not current.

[19] For example, a member is not required to append the .PRP modifier to a market on open order executed and reported prior to 9:31:30 a.m. Eastern Time. Members have up to 90 seconds from time of execution to report a trade. As such, reports received within the 90-second period are considered current. In this example, the market on

Continued

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[20] in general, and section 15A(b)(6) of the Act,[21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. Nasdaq believes the proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market and will improve the regulation of the Nasdaq market by increasing the number of trades monitored using the NASD's automated surveillance systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–159. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–159 and should be submitted by April 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5980 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

open order was executed and reported within 90 seconds from the time that the market opened at 9:30 a.m. Therefore, the price would be considered current and does not need to be identified with a modifier.

[20] 15 U.S.C. 78o–3.

[21] 15 U.S.C. 78o–3(b)(6).

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Initial Maintenance Inspection (IMI) Test for Turbine Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: The Federal Aviation Administration (FAA) announces the issuance of Advisory Circular (AC) Number 33.90–1, Initial Maintenance Inspection (IMI) Test for Turbine Engines. This AC sets forth acceptable methods of compliance with the test requirements of § 33.90 of title 14 of the Code of Federal Regulations, Initial maintenance inspection. The information provided in this AC replaces the guidance in paragraph 61, § 33.90 IMI of AC 33–2B, Aircraft Engine Type Certification Handbook.

DATES: The Engine and Propeller Directorate, Aircraft Certification Service, issued AC 33.90–1 on March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7120; fax (781) 238–7199; e-mail: *Marc.Bouthillier@faa.gov*.

We have filed in the docket all comments we received, as well as a report summarizing each substantive public contact with FAA personnel concerning this advisory circular. If you wish to review the docket in person, go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

How to Obtain Copies: A paper copy of AC 33.90–1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at "*http://www.faa.gov/*", select "Regulations and Policies" and the link title "Advisory Circulars".

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on June 4, 2003 (68 FR 33563) to announce the availability of the proposed AC and invite interested parties to comment.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on March 5, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–6046 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Washington, DC

AGENCIES: Federal Highway Administration, District of Columbia Division; District of Columbia, Department of Transportation.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Federal Highway Administration (FHWA) in coordination with the District of Columbia Department of Transportation (DDOT) in Washington, DC is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential effects of the proposed action to reopen Klingle Road, NW., to vehicular access in Washington, DC. To ensure that all significant issues related to the proposed action are identified, DDOT will conduct a public scoping meeting.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1990 K Street, NW., Suite 510, Washington, DC 20006–1103, (202) 219–3536; or Maurice Keys, District of Columbia, Department of Transportation, (202) 671–2740.

SUPPLEMENTARY INFORMATION: Klingle Road is located in northwest Washington, DC and runs northeast to west from Beach Drive in Rock Creek Park to the Washington National Cathedral. The segment of Klingle Road between Porter Street, NW. and Cortland Place, NW. (approximate designations) was closed to traffic in 1991 due to deterioration of the roadway related to drainage failure. The Council of the District of Columbia never officially closed this segment of Klingle Road through a legislative action, however [this portion of the road remains closed to traffic. Failure of the drainage system has resulted in severe deterioration of the roadway, headwalls, and underlying stormwater system. At a minimum the no-action alternative would include repairing the retaining walls to better manage stormwater run-off in the study area. The purpose of the proposed action is to provide an east-west connection through Rock Creek Park in the District of Columbia by reopening Klingle Road to vehicular access. The Klingle Road Restoration Act of 2003, Bill #B15–0061, was introduced by the Council of the District of Columbia in January 2003 and was enacted in March 2003. Section 3 of the bill specifically states "The portion of Klingle Road, NW., between Porter Street, NW., on the east to Cortland Place, NW., on the west, shall be repaired and re-opened to the public for vehicular traffic and recreational uses." The directive to repair Klingle Road was codified in to law as part of the Fiscal Year 2004 Budget Support Act of 2003, effective November 13, 2003 (D.C. Law 15–39; D.C. Official Code § 9–115.11). According to this Act: The portion of Klingle Road, NW., between Porter Street, NW., on the east to Cortland Place, NW., on the west shall be re-opened to the public for motor vehicle traffic, with the repair and reconstruction of Klingle Road, which shall include the establishment of a District Department of Transportation storm water management plan, to commence no later than 180 days following November 13, 2003.'

The environmental review of the vehicular use alternatives will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, *et seq.*), Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), FHWA Code of Federal Regulations (CFR 23 part 771.101–771.137 *et seq.*), and all applicable Federal, state, and local government laws, regulations, and policies.

Public Scoping Meeting: DDOT will solicit public comments for consideration and possible incorporation in the Draft EIS through public scoping, including a scoping meeting, on the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified early in the process, comments and suggestions are invited from all interested and/or potentially affected parties. These individuals or groups are invited to attend the public scoping. The meeting location and time will be publicized in local newspapers and elsewhere. Written comments will be accepted throughout this process and can be forwarded to 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 program).

Issued on: March 12, 2004.

Gary L. Henderson,

Division Administrator, District of Columbia Division, Federal Highway Administration.

[FR Doc. 04–6027 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Forsyth County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a draft environmental impact statement will be prepared for the consolidated Winston-Salem Northern Beltway proposed highway projects in Forsyth County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Lawton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare a draft environmental impact statement (EIS) on the consolidated Northern Beltway proposed highway projects (Western Section, Eastern Section, and Eastern Section Extension) of Winston-Salem in Forsyth County. The proposed action would be the construction of a multi-lane divided, controlled access highway on new location from US 158 southwest of Winston-Salem to US 311 southeast of Winston-Salem. A Final Environmental Impact Statement on the Western Section, the portion from US 158 southwest of Winston-Salem to US 52 northwest of Winston-Salem (FHWA–NC–EIS–92–06–F), was approved by FHWA on 14 March 1996. The Western Section will improve north-south connectivity in western Forsyth County, provide improved direct regional connections to other major highways, and relieve congestion on roadways in western Forsyth County. A Draft Environmental Impact Statement on the Eastern Section, the portion of the facility from US 52 northwest of Winston-Salem to US 421 east of Winston-Salem (FHWA–NC–EIS–95–04–D), was approved by FHWA on 14 September 1995. The Eastern Section together with the Eastern Section Extension will serve regional traffic by improving system linkage and continuity, relieving congestion on major highways including US 52 and US 421, and by providing the route for future I–74. The proposed action is a part of the 1987 Winston-Salem/Forsyth County Thoroughfare Plan. In addition, the projects together will provide a northern loop highway in accordance with the 1989 North Carolina Highway Trust Fund Act.

Alternatives under consideration include: (1) The "no-build", (2) improving existing facilities, (3) transportation demand management and transportation system management alternatives; (4) mass transit alternatives; and (5) a controlled access highway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A public meeting and meetings with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The supplemental draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 3, 2004.

Emily Lawton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 04–5964 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Watauga and Caldwell Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescindment of notice of intent.

SUMMARY: The FHWA rescinds its notice of intent to prepare an environmental impact statement for the proposed US 321 Improvements project at Blowing Rock.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Lawton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), prepared a Draft Environmental Impact Statement (FHWA–NC–EIS–02–D) for the US 321 Improvements project at Blowing Rock in Caldwell and Watauga Counties, North Carolina. The FHWA does not intend to prepare a Final Environmental Impact Statement on this action.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on March 3, 2004.

Emily Lawton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 04–5965 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA announces its denial of 43 applications from individuals who requested an exemption from the Federal vision standards applicable to interstate truck drivers and the reasons for the denials. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions does not provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle drivers.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (MC–PSD), (202) 366–2987, Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the Federal vision standards for a renewable 2-year period if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption (49 CFR 391.41(b)(10)).

Accordingly, FMCSA evaluated 43 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria established to demonstrate that granting an exemption is likely to achieve an equal or greater level of safety than exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

The following 20 applicants lacked sufficient recent driving experience over three years:

Allen, Percy B.
Bacon, Nick D.
Clifton, Jr., Raymond E.
Coleman, Jerry D.
Hallwachs, Jerry
Hansen, Michael P.
Hardee, Richard G.
Henson, Richard M.
Hillman, Robert
Hoefner, Patrick L.
King, William J.
Levine, Martin L.
McEntyre, William C.
Meyer, Fred G.
Osuna, Jorge L.
Pierce, Jr., Charles E.
Reynolds, Glennis R.
Sharp, Ronald L.
Weeks, David N.
Whitlow, Jr., Bernard R.

Two applicants, Mr. David W. Shrimplin and Mr. Timothy D. Leggett, do not have experience operating a commercial motor vehicle (CMV) and therefore presented no evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

The following 9 applicants do not have 3 years of experience driving a CMV on public highways with the vision deficiency:

Burnworth, Randy L.
Huelster, Randy
McFalls, Carol W.
Miller, Larry
Rich, Ross C.
Roberts, Michael J.
Schwab, Charles F.
Steinmetz, Daniel L.
Willhoyt, Richard P.

Four applicants do not have 3 years of recent experience driving a CMV with the vision deficiency:

Crane, James R.
Gruszecki, Ronald J.
Holland, Billie E.
Powell, Richard G.

Three applicants, Mr. Danny Netherland, Mr. Edward J. Perfetto and

Mr. James J. Schaaf were issued citations in conjunction with a CMV crash, a disqualifying offense.

Two applicants, Mr. Daniel Hollins and Mr. Thomas J. Long, III, had more than two CMV moving violations during the 3-year period or while their applications were pending. Applicants are only allowed two moving violations.

One applicant's, Mr. Billy R. Fox', III, license was suspended during the 3-year period because of a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period.

One applicant, Mr. Terry L. Larkey, had two serious CMV violations within the 3-year period. Each applicant is allowed a total of two moving citations, of which only one can be serious.

One applicant, Mr. Tracy R. Heathcock, contributed to a crash while operating a CMV, which is a disqualifying offense.

Issued on: March 11, 2004.

Rose A. McMurray,

Associate Administrator for Policy and Program Development.

[FR Doc. 04–6031 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972; Formerly FRA Docket No. 87–2; Notice No. 16]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to Order of Particular Applicability requiring ACSES between New Haven, Connecticut, and Boston, Massachusetts—modification of temporary speed restriction requirements.

SUMMARY: In 1998, FRA issued an Order of Particular Applicability (Order) requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut, and Boston, Massachusetts (NEC-North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). In August of 2001, the National Railroad Passenger Corporation (Amtrak) requested that FRA temporarily suspend the Order's requirement to enforce temporary speed restrictions (TSRs) through the use of temporary transponders on the NEC-North End between Mill River Interlocking at mile post (MP) 73.6 and High Street Interlocking at MP 142.9. After reviewing data that Amtrak provided in August 2003 on its current transponder attrition rate, FRA has decided to grant the requested relief until April 1, 2005.

DATES: The amendments to the Order are effective March 17, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (202) 493–6258); or Patricia V. Sun. Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (202) 493–6038).

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: The Order, as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by Amtrak on the NEC-North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. FRA has subsequently amended the Order eight times to reset the implementation schedule and make technical changes. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; 66 FR 57771, November 16, 2001; 67 FR 6753, February 12, 2002; 67 FR 14769, March 22, 2002; and 67 FR 47884, July 22, 2002.

The ninth amendment to this Order is effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the amendment to this Order is necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendment to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest.

Modification of Temporary Speed Restriction Requirements

As stated above, in an August 28, 2001 letter, Amtrak requested that FRA suspend the Order's requirement to enforce temporary speed restrictions with temporary transponders until Amtrak completed full implementation of data radio enforcement. In its October 2001 response, FRA asked Amtrak to provide more documentation to justify this request.

On August 13, 2003, Amtrak enclosed data supporting its assertion that unanticipated technical difficulties such as multiple changes to the original data base, problems with high speed trains sets, and an unusually high transponder attrition rate, had prevented it from adhering to the Order's implementation schedule. Amtrak stated that it had discovered the cause of the high transponder attrition rate and was correcting it by replacing current transponders with updated ones. As this replacement process would, however, result in further delays in ACSES implementation, Amtrak repeated its request that FRA grant it temporary relief from the Order's requirement to enforce TSRs through the use of temporary transponders on the NEC-North End between Mill River Interlocking at MP 73.6 and High Street Interlocking at MP 142.9. This would be a temporary measure to allow Amtrak to reap the significant safety benefits of positive 4 train separation and permanent civil speed restrictions as it continued to update transponders and implement the data radio infrastructure needed to support ACSES' positive train stop override feature as well as direct transfer of TSR data from the dispatching system to the onboard computer. Amtrak anticipated full implementation of ACSES by the end of the first quarter of 2005.

FRA agrees that partial implementation of ACSES would provide significant safety benefits as work continues towards full implementation of the system. FRA is therefore amending the Order as follows:

(1) Effective March 17, 2004, until no later than April 1, 2005, the requirement to achieve positive enforcement of TSRs through temporary transponders is suspended on the mainline track between Mill River Interlocking (MP 73.6) and High Street Interlocking (MP 142.9) to allow Amtrak to achieve direct loading of TSR data from its computer-

aided dispatching center to the on-board computers of all trains operating through this territory.

(2) Amtrak must provide for TSR compliance through the use of Northeast Operating Rules Advisory Committee (NORAC) Form D or temporary speed restriction bulletin forms, advance speed signs, speed signs and resume signs. Compliance will continue to be monitored through efficiency tests.

(3) Amtrak must enforce the current speed limit of 110 miles per hour on the affected territory until ACSES is fully implemented and all features of the system, including positive enforcement of TSRs, are fully functional.

(4) Amtrak must provide a minimum of ten days notice to any carriers affected by ACSES expansion prior to its activation of the ACSES system to allow the affected carriers sufficient opportunity to operate test trains within the territory. The Regional Administrator for Region 1 shall be provided all associated safety and testing documentation to determine that appropriate preparations have been made to support expansions of ACSES.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. *Paragraph 13 is added as follows:*

13. *Amtrak Temporary Operating Protocols*

Effective upon March 17, 2004, until no later than April 1, 2005:

a. The requirement that Amtrak achieve positive enforcement of temporary speed restrictions (TSRs) through temporary transponders is suspended on the mainline track between Mill River Interlocking (MP 73.6) and High Street Interlocking (MP 142.9) on the NEC-North End to allow Amtrak to achieve direct loading of TSR data from its computer-aided dispatching center to the on-board computers of all trains operating through this territory.

b. Amtrak shall provide for TSR compliance and roadway worker protection through the use of Northeast Operating Rules Advisory Committee (NORAC) Form D or temporary speed restriction bulletin forms, advance speed signs, speed signs and resume signs. Compliance will continue to be monitored through efficiency tests.

c. Amtrak shall enforce the current speed limit of 110 miles per hour on the affected territory until ACSES is fully implemented and all features of the system, including positive enforcement of TSRs, are fully functional.

d. Amtrak must provide a minimum of ten days notice to any carriers affected by ACSES expansion prior to its activation of the ACSES system to allow the affected carriers sufficient opportunity to operate test trains within the territory. The Regional Administrator for Region 1 shall be provided all associated safety and testing documentation to determine that appropriate preparations have been made to support expansions of ACSES.

Issued in Washington, DC, on March 11, 2004.

Allan Rutter,

Administrator.

[FR Doc. 04–6035 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 12, 2003. No comments were received.

DATES: Comments must be submitted on or before April 16, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Ann Thomas, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: (202) 366–2646; FAX: (202) 493–2180, or e-mail: *patricia.thomas@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Merchant Marine Medals and Awards.

OMB Control Number: 2133–0506.

Type of Request: Extension of currently approved collection.

Affected Public: Masters, officers and crew members of U.S. ships.

Forms: None.

Abstract: This information collection provides a method of awarding merchant marine medals and decorations to masters, officers, and crew members of U.S. ships in recognition of their service in areas of danger during the operations by the Armed Forces of the United States in World War II, Korea, Vietnam, and Operation Desert Storm.

Annual Estimated Burden Hours: 1200 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: March 12, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–5993 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; General Motors Corporation

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

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: On June 16, 1986, this agency granted in full General Motors Corporation's (GM) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Chevrolet Corvette vehicle line. This notice grants in full GM's petition for modification of the previously approved antitheft device for that line. NHTSA is granting GM's

petition for modification because it has determined, based on substantial evidence, that the modified antitheft device described in GM's petition to be placed on the vehicle line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter dated February 11, 2004, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

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 telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: On June 16, 1986, NHTSA published in the **Federal Register** a notice granting a petition from GM for an exemption from the parts-marking requirements of the vehicle theft prevention standard for the Chevrolet Corvette vehicle line beginning with the 1987 model year (See 51 FR 21823). On November 18, 2003, GM submitted a petition for modification of its existing MY 1987 antitheft device. GM's submission is a complete petition, as required by 49 CFR 543.9(d), in that it meets the general requirements contained in 49 CFR 543.5 and the specific content requirements of 49 CFR 543.6. GM's petition provides a detailed description of the identity, design and location of the components of the antitheft system proposed for installation beginning with the 2005 model year. On January 26 and February 13, 2004, the agency contacted GM by telephone to obtain additional information on the proposed modifications.

GM explained that the MY 1987 antitheft device consisted of two basic parts: An alarm system and an engine interrupt system (identified as the Vehicle Antitheft System (VATS)). The engine interrupt system's name, "VATS", was changed to "PASS-Key" beginning with the 1989 model year. The MY 1987 "VATS" is identical to the "PASS-Key" system. The VATS/PASS-Key is activated by removing the key from the ignition and locking the driver's door. The alarm system is triggered by attempted unauthorized entry through the doors, rear hatch, or roof panel openings. The sounding of the horn indicates unauthorized entry. The VATS/PASS-Key part of the device provides a starter interrupt. The VATS/PASS-Key consists of the ignition key, ignition lock cylinder and a VATS/PASS-Key decoder module and is fully functional when the ignition is turned off and the key is removed from the ignition. Before the vehicle can be operated, a key whose shank contains the correct electrical resistance of the key must be inserted in the ignition and recognized by the VATS/PASS-Key decoder module. If a key with the incorrect electrical resistance is inserted, the VATS/PASS-Key decoder module will shut down for a period of two to four minutes. Any attempt to make further resistance comparisons during the module shut down period will only cause the timer to recycle to zero and start again.

In its petition for modification, GM stated that for MY 2005, the Corvette vehicle line will be upgraded to use its new theft deterrent system. The modified antitheft device (MY 2005) will continue to provide protection against unauthorized starting and fueling of the vehicle engine. Components of the modified antitheft device include an electronically coded ignition key, body control module and engine control module. GM stated that the antitheft device is designed to be active at all times without direct intervention by the vehicle operator. No intentionally specific or discrete security system action is necessary to achieve protection. The system is fully functional (armed) immediately after the vehicle has been turned off.

GM stated that its modified antitheft device does not provide any visible or audible indication of unauthorized entry by means of flashing vehicle lights or sounding of the horn. To substantiate its belief that an alarm system is not a necessary feature to effectively deter the theft of a vehicle, GM compared the reduction in theft rates of Chevrolet Corvettes using a passive theft deterrent system ("VATS/PASS-Key") along with an audible/visible alarm system to the reduction in theft rates for Chevrolet Camaro and Pontiac Firebird vehicles equipped with a passive theft-deterrent system ("PASS-Key") without an alarm. GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as the modified antitheft device system. Based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the absence of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

In order to ensure the reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test. The tests conducted included high and low temperature storage, thermal shock, humidity frost, salt fog, flammability, altitude, drop, shock, random vibration, dust, potential contaminants, connector retention/strain relief, terminal retention, connector insertion, crush, ice, immersion and tumbling.

GM compared the MY 2005 device with devices which NHTSA has already determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. To substantiate its beliefs as to the effectiveness of the new device, GM compared the MY 2005 modified device to its "PASS-Key"-like systems. GM indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center, are lower for GM models equipped with the "PASS-Key"-like systems which have exemptions from the parts-marking requirements of 49 CFR Part 541, than the theft rates for earlier models with similar appearance and construction which were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III systems on other GM models, and the advanced technology utilized by the modification, GM believes that the MY 2005 modified antitheft device will be more effective in deterring theft than the parts-marking requirements of 49 CFR Part 541.

On the basis of this comparison, GM believes that the antitheft system for model years 2005 and later will provide essentially the same functions and features as found on its MY 1987–2004 system and therefore, its modified system will provide at least the same level of theft prevention as parts-marking. GM believes that the antitheft system proposed for installation on its MY 2005 Chevrolet Corvette line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of Part 541.

The agency has evaluated GM's MY 2005 petition for modification of the exemption for the Chevrolet Corvette vehicle line from the parts-marking requirements of 49 CFR Part 541, and has decided to grant it. It has

determined that the system is likely to be as effective as parts-marking in preventing and deterring theft of these vehicles, and therefore qualifies for an exemption under 49 CFR part 543. The agency believes that the modified device will continue to provide four of the five types of performance listed in § 543.6(b)(3): Promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

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: March 12, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–6038 Filed 3–16–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Odyssey Reinsurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 9 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Odyssey Reinsurance Corporation, a Connecticut corporation, has formally changed its name to Clearwater Insurance Company, effective December 4, 2003. The Company was last listed as an acceptable surety on Federal bonds at 68 FR 39228, July 1, 2003.

A Certificate of Authority as an acceptable surety on Federal bonds, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Clearwater Insurance Corporation, Stamford, CT. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $48,712,000.00 established for the Company as of July 1, 2003, remains unchanged until June 30, 2004.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, at pages 39195 and 39228 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–40671–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Divsion, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: March 5, 2004.

Jennifer Fitzmaurice,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–5929 Filed 3–16–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, April 16, 2004 from 11 a.m. EDT to 12:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, April 16, 2004, from 11 a.m. EDT to 12:30 p.m. EDT via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: March 11, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–6025 Filed 3–16–04; 8:45 am]

BILLING CODE 4820–01–M

Federal Register

Wednesday,
March 17, 2004

Part II

Department of Agriculture

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing; Notice

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 2004 (FY 2004). This action is taken to comply with 42 U.S.C. 1490p, which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

EFFECTIVE DATE: March 17, 2004.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice contact Lou Paulson, Management Analyst, Single Family Housing Direct Loan Division, telephone (202) 720–1478, for single family housing (SFH) issues and Tammy S. Daniels, Loan Specialist, Multi-Family Housing Processing Division, telephone (202) 720–0021, for multi-family housing (MFH) issues, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC, 20250. (The telephone numbers listed are not toll free numbers). For information on applying for assistance, visit our Internet Web site at *http://offices.usda.gov* and select your State or check the blue pages in your local telephone directory under "Rural Development" for the office serving your area. Near the end of this Notice is a listing of Rural Development State Directors, State Office addresses, and phone numbers.

SUPPLEMENTARY INFORMATION:

Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

Part 1940, subpart L of 7 CFR contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." To apply for assistance under these programs or for more information, contact the Rural Development Office for your area.

Multi-Family Housing (MFH)

I. General

A. This provides guidance on MFH funding for the Rural Rental Housing program (RRH) for FY 2004 (it does not include carryover funds). Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 2004, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) Section 504 Rural Housing Grants and Section 533 Housing Preservation Grant (HPG) programs.

B. MFH loan and grant levels for FY 2004 are as follows:

MFH Loan Programs Credit Sales—*$1,491,149
Section 514 Farm Labor Housing (LH) loans—*$42,574,374
Section 515 Rural Rental Housing (RRH) loans—*$115,857,375
Section 521 Rental Assistance (RA) and 502(c)(5)(C) Advance—*$574,689,210
Section 516 LH grants—*$17,900,759
Sections 525 Technical and Supervisory Assistance grants (TSA) and 509 Housing Application Packaging grants—$1,024,754
(HAPG) (Shared between single and multi-family housing)—(includes carryover)
Section 533 Housing Preservation grants (HPG)—*$8,882,000
Section 538 Guaranteed Rural Rental Housing program—*$99,410,000
Processing Worker Housing Grants—$4,970,500

* Does not include disaster or regular program carryover

II. Funds Not Allocated to States

A. *Credit Sales Authority.* For FY 2004, $1,491,149 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State.

B. *Section 538 Guaranteed Rural Rental Housing Program.* Guaranteed loan funds will be made available under a Notice of Funding Availability (NOFA) being published in this Federal Register. Additional guidance is provided in the NOFA.

III. Farm Labor Housing (LH) Loans and Grants

The Administrator has the authority to transfer the allocation of budget authority between the two programs. Upon NOFA closing, the Administrator will evaluate the responses and determine proper distribution of funds between loans and grants.

A. *Section 514 Farm LH Loans.*

1. These loans are funded in accordance with 7 CFR 1940.579(a).

FY 2004 Appropriation—$42,574,374
Available for Off-Farm Loans—$35,774,000
Available for On-Farm Loans—$2,000,000
National Office Reserve—$4,800,374

2. Off-farm loan funds will be made available under a NOFA being published in this Federal Register. Additional guidance is provided in the NOFA.

B. *Section 516 Farm LH Grants.*

1. Grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.

FY 2004 Appropriation—$17,900,759
Available for LH Grants for Off-Farm—$13,400,759
Available for Technical Assistance Grants—$1,500,000
National Office Reserve—$3,000,000

2. Labor Housing grant funds for Off-Farm will be made available under a NOFA being published in this **Federal Register**. Additional guidance is provided in the NOFA.

C. Labor Housing Rental Assistance (RA) will be held in the National Office for use with LH loan and grant applications. RA is only available with a LH loan of at least 5 percent of the total development cost. Projects without a LH loan cannot receive RA.

IV. Section 515 RRH Loan Funds

FY 2004 Section 515 Rural Rental Housing allocation (Total)—$115,857,375
New Construction funds and set-asides—$30,057,375
- New construction loans—$7,837,344
- Set-aside for nonprofits—$10,427,163
- Set-aside for underserved counties and colonias—$5,792,868
- Earmark for EZ, EC, or REAP Zones—$5,000,000
- State RA designated reserve—$1,000,000

Rehab and repair funds and equity—$60,800,000
- Rehab and repair loans—$55,800,000
- Designated equity loan reserve—$5,000,000

General Reserve—$25,000,000

A. *New construction loan funds.* New construction loan funds will be made available using a national NOFA being published in this **Federal Register.** Additional guidance is provided in the NOFA.

B. *National Office New Construction Set-asides.* The following legislatively mandated set-asides of funds are part of the National office set-aside:

1. *Nonprofit Set-aside.* An amount of $10,427,163 has been set aside for

nonprofit applicants. All Nonprofit loan proposals must be located in designated places as defined in 7 CFR 1944–E.

2. *Underserved Counties and Colonias Set-Aside.* An amount of $5,792,868 has been set aside for loan requests to develop units in the underserved 100 most needy counties or colonias as defined in section 509(f) of the Housing Act of 1949 as amended. Priority will be given to proposals to develop units in colonias or tribal lands.

3. *EZ, EC or REAP Zone Earmark.* An amount of $5,000,000 has been earmarked for loan requests to develop units in EZ or EC communities or REAP Zones until June 30, 2004.

C. *Rental Assistance (RA).* Limited new construction RA will be held in the National office for use with Section 515 Rural Rental Housing loans.

D. *Designated Reserves for State RA.* An amount of $1 million of Section 515 loan funds has been set aside for matching with projects in which an active State sponsored RA program is available. The State RA program must be comparable to the RHS RA program.

E. *Repair and Rehabilitation Loans.* Tenant health and safety continues to be the top priority. Repair and rehabilitation funds must be first targeted to RRH facilities that have physical conditions that affect the health and safety of tenants and subsequently made available to facilities that have deferred maintenance. All funds will be held in the National office and will be distributed based upon indicated rehabilitation needs in the MFH survey conducted in November 2003.

F. *Designated Reserve for Equity Loans.* An amount of $5 million has been designated for the equity loan preservation incentive described in 7 CFR 1965–E. The $5 million will be further divided into $4 million for equity loan requests currently on the pending funding list and $1 million to facilitate the transfer of properties from for-profit owners to nonprofit corporations and public bodies. Funds for such transfers would be authorized only for for-profit owners who are currently on the pending funding list who agree to transfer to nonprofit corporations or public bodies rather than to remain on the pending list. If insufficient transfer requests are generated to utilize the full $1 million set aside for nonprofit and public body transfers, the balance will revert to the existing pending equity loan funding list.

G. *General Reserve.* There is one general reserve fund of $25,000,000. Some examples of immediate allowable uses include, but are not limited to, hardships and emergencies, RH cooperatives or group homes, or RRH preservation.

V. Section 533 Housing Preservation Grants (HPG)

Total Available—$8,882,000
Less General Reserve—$888,200
Less Earmark for EZ, EC or REAP Zones—$894,690
Total Available for Distribution—$7,099,110

Amount available for allocation. See end of this Notice for HPG State allocations. Fund availability will be announced in a NOFA being published in the **Federal Register**.

The amount of $894,690 is earmarked for EZ, EC or REAP Zones until June 30, 2004.

Single Family Housing (SFH)

I. *General.* All SFH programs are administered through field offices. For more information or to make application, please contact the Rural Development office servicing your area. To locate these offices, contact the appropriate State Office from the attached State Office listing, visit our web site at *http://offices.usda.gov* or check the blue pages in your local telephone directory under "Rural Development" for the office serving your area.

A. This notice provides SFH allocations for FY 2004. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568. Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation are located on a chart at the end of this notice.

B. The SFH levels authorized for FY 2004 are as follows:

Section 502 Guaranteed Rural Housing (RH) loans
Nonsubsidized Guarantees—Purchase—**$2,531,712,184
Nonsubsidized Guarantees—Refinance—**$ 236,646,482
Section 502 Direct RH loans
Very low-income subsidized loans—*$594,614,642
Low-income subsidized loans—*$756,782,272
Credit sales (Nonprogram)—$10,000,000
Section 504 housing repair loans—*$34,797,119
Section 504 housing repair grants—*/**$30,275,770
Section 509 compensation for construction defects—**$282,177
Section 523 mutual and self-help housing grants—*/**$42,365,092
Section 523 Self-Help Site Loans—$2,420,714
Section 524 RH site loans—$5,045,000
Section 306C Water and waste disposal grants—**$1,297,122
Section 525 Supervisory and Technical Assistance and Section 509 Housing Application Packaging Grants Total Available for single And multi-family—**$2,000,000
Natural disaster funds (Section 502 loans—**$2,353,166 *
Natural disaster funds (Section 504 loans)—**$14,966,367
Natural disaster funds (Section 504 grants)—**$3,670,079

*Includes funds for EZ/EC and REAP communities until June 30, 2004.
** Carryover funds are included in the balance.

C. *SFH Funding Not Allocated to States.* The following funding is not allocated to States by formula. Funds are made available to each state on a case-by-case basis.

1. *Credit sale authority.* Credit sale funds in the amount of $10,000,000 are available only for nonprogram sales of Real Estate Owned (REO) property.

2. *Section 509 Compensation for Construction Defects.* $282,177 is available for compensation for construction defects.

3. *Section 523 Mutual and Self-Help Technical Assistance Grants.* $42,365,092 is available for Section 523 Mutual and Self-Help Technical Assistance Grants. Of these funds, $994,100 is earmarked for EZ, EC or REAP Zones until June 30, 2004. A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) contractor on all predevelopment, new, and existing (refunding) grant applications.

4. *Section 523 Mutual and Self-Help Site Loans and Section 524 RH Site Loans.* $2,420,714 and $5,045,000 are available for Section 523 Mutual Self-Help and Section 524 RH Site loans, respectively.

5. *Section 306C WWD Grants to Individuals in Colonias.* The objective of the Section 306C WWD individual grant program is to facilitate the use of community water or waste disposal systems for the residents of the colonias along the U.S.-Mexico border.

The total amount available to Arizona, California, New Mexico, and Texas will be $1,297,122 for FY 2004. This amount includes the carryover unobligated balance of $297,122 and the transferred amount of $1 million from the Rural Utilities Service (RUS) to RHS for processing individual grant applications.

6. *Section 525 Technical and Supervisory Assistance (TSA) and Section 509 Housing Application Packaging Grants (HAPG).* $2,000,000 is available for the TSA and HAPG programs. Funds are available on a limited basis for TSA grants. In

accordance with the provisions of 7 CFR 1944.525, funding will be targeted nationally and then on an individual basis to States/areas with the highest degree of substandard housing and persons in poverty eligible to receive Agency housing assistance. States should submit proposals from potential applicants to the National Office for review and concurrence prior to authorizing an application.

Requests should be submitted to the National Office for HAPG based on projected usage of these funds for the quarter or as needed. HAPG requests should be submitted by e-mail to Gloria Denson, Senior Loan Specialist, SFH Direct Loan Division, (202) 720–1487. Reserve funds will be held at the National Office and requests from eligible States will be considered on a first-come, first-served basis. Additional guidance is provided in the NOFA.

7. *Natural Disaster Funds.* Funds are available until exhausted to those States with active Presidential Declarations.

8. *Deferred Mortgage Payment Demonstration.* There is no FY 2004 funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

II. *State allocations.*

A. *Section 502 Nonsubsidized Guaranteed RH (GRH) Loans.*

1. *Purchase—Amount Available for Allocation.*

Total Available—Purchase—$2,531,712,184
Less National Office General Reserve—$907,520,729
Less Special Outreach Area Reserve—$388,937,455
Basic Formula—Administrative Allocation—$1,235,254,000

a. *National Office General Reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

b. *Special Outreach Areas.* FY 2004 GRH funding is allocated to States in two funding streams. Seventy percent of GRH funds may be used in any eligible area. Thirty percent of GRH funds are to be used in special outreach areas. Special outreach areas for the GRH program are defined as those areas within a State that are not located within a metropolitan statistical area (MSA).

c. *National Office Special Area Outreach Reserve.* A special outreach area reserve fund has been established at the National office. Funds from this reserve may only be used in special outreach areas.

2. Refinance—Amount available for allocation.

Total Available—Refinance—$236,646,482
Less National office general reserve—$236,646,482
Basic formula "Administrative Allocation—$0

a. *Refinance Funds.* Refinance loan funds will be distributed from the National Office on a case-by-case basis.

b. *National office general reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

B. *Section 502 Direct RH loans.*

1. *Amount Available for Allocation.*

Total Available—$1,351,396,914
Less Required Set Aside for Underserved Counties and Colonias—$67,569,850
EZ, EC and REAP Earmark—$48,793,635
Less General Reserve—$168,999,915
Administrator's Reserve—$9,999,915
Hardships & Homelessness—$2,000,000
Rural Housing Demonstration Program—$2,000,000
Homeownership Partnership—$130,000,000
Program funds for the sale of REO properties—$25,000,000
Less Designated Reserve for Self-Help—$150,000,000
Basic Formula Administrative Allocation—$916,033,515

2. *Reserves.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship and homeless applicants including the direct Section 502 loan and Section 504 loan and grant programs.

(ii) Rural Home Loan Partnerships (RHLP) and Community Development Financial Institutions (CDFI) loans.

(iii) Subsequent loans for essential improvements or repairs and transfers with assumptions.

(iv) States will leverage with funding from other sources.

(v) Areas targeted by the State according to its strategic plan.

b. *National Office Reserves.*

(i) General Reserve. The National office has a general reserve of $168,999,915 million. Of this amount, the Administrator's reserve is $9,999,915 million. One of the purposes of the Administrator's reserve will be for loans in Indian Country. Indian Country is defined as land inside the boundaries of Indian reservations, communities made up mainly of Native Americans, Indian trust and restricted land, and tribal allotted lands.

(ii) Hardship and Homelessness Reserve. $2 million has been set aside for hardships and homeless.

(iii) Rural Housing Demonstration Program. $2 million dollars has been set aside for innovative demonstration initiatives.

(iv) Program Credit Sales. $25 million dollars has been set aside for program sales of REO property.

c. *Homeownership Partnership.* $130 million dollars has been set aside for Homeownership Partnerships. These funds will be used to expand existing partnerships and create new partnerships, such as the following:

(i) Department of Treasury, Community Development Financial Institutions (CDFI). Funds will be available to fund leveraged loans made in partnership with the Department of Treasury CDFI participants.

(ii) Partnership initiatives established to carry out the objectives of the rural home loan partnership (RHLP).

d. *Designated Reserve for Self-Help.* $150 million dollars has been set aside to assist participating Self-Help applicants. The National office will contribute 100 percent from the National office reserve. States are not required to contribute from their allocated Section 502 RH funds.

e. *Underserved Counties and Colonias.* An amount of $67,569,850 has been set aside for the 100 underserved counties and colonias.

f. *Empowerment Zone (EZ) and Enterprise Community (EC) or Rural Economic Area Partnership (REAP) earmark.* An amount of $48,793,635 has been earmarked until June 30, 2004, for loans in EZ, EC or REAP Zones.

g. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.)

h. *Suballocation by the State Director.* The State Director may suballocate to each area office using the methodology and formulas required by 7 CFR part 1940, subpart L. If suballocated to the area level, the Rural Development Manager will make funds available on a first-come, first-served basis to all offices at the field or area level. No field office will have its access to funds restricted without the prior written approval of the Administrator.

C. *Section 504 Housing Loans and Grants.* Section 504 grant funds are included in the Rural Housing Assistance Grant program (RHAG) in the FY 2004 appropriation.

1. *Amount available for allocation.*

Section 504 Loans
Total Available—$34,797,119
Less 5% for 100 Underserved Counties and Colonias—$1,739,856
EZ, EC or REAP Zone Earmark—$1,400,000
Less General Reserve—$1,500,113
Basic Formula—Administrative Allocation—$30,157,150

Section 504 Grants
Total Available—$30,275,770
Less 5% for 100 Underserved Counties and Colonias—$1,513,789

Less EZ, EC or REAP Earmark—$894,690
Less General Reserve—$1,599,982
Basic Formula-Administrative Allocation—$26,267,309

2. *Reserves and Set-asides.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to handle all anticipated hardship applicants based upon historical data and projected demand.

b. *Underserved Counties and Colonias.* Approximately $1,739,856 and $1,513,789 have been set aside for the 100 underserved counties and colonias until June 30, 2004, for the Section 504 loan and grant programs, respectively.

c. *Empowerment Zone (EZ) and Enterprise Community (EC) or Rural Economic Area Partnership (REAP) Earmark (Loan Funds Only).* $1,400,000 and $894,690 have been earmarked through June 30, 2004, for EZ, EC or REAPs for the Section 504 loan and grant programs, respectively.

d. *General Reserve.* $1.5 million for Section 504 loan hardships and $1.6 million for Section 504 grant extreme hardships have been set-aside in the general reserve. For Section 504 grants, an extreme hardship case is one requiring a significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant.

INFORMATION ON BASIC FORMULA CRITERIA, DATA SOURCE AND WEIGHT, ADMINISTRATIVE ALLOCATION, POOLING OF FUNDS, AND AVAILABILITY OF THE ALLOCATION

Number	Description	Section 502 nonsubsidized guaranteed RH loans	Section 502 direct RH loans	Section 504 loans and grants
1	Basic formula criteria, data source, and weight.	See 7 CFR 1940.563(b)	See 7 CFR 1940.565(b)	See 7 CFR 1940.566(b) and 1940.567(b).
2	Administrative Allocation:			
	Western Pacific Area	$1,000,000	$1,000,000	$1,000,000 loan. $500,000 grant.
3	Pooling of funds:			
	a. Mid-year pooling	If necessary	If necessary	If necessary.
	b. Year-end pooling	August 13, 2004	August 13, 2004	August 13, 2004.
	c. Underserved counties & colonias	N/A	June 30, 2004	June 30, 2004.
	d. EZ, EC or REAP	N/A	June 30, 2004	June 30, 2004.
	e. Credit sales	N/A	June 30, 2004	N/A
4	Availability of the allocation:.			
	a. first quarter	40 percent	50 percent	50 percent.
	b. second quarter	70 percent	70 percent	70 percent.
	c. third quarter	90 percent	90 percent	90 percent.
	d. fourth quarter	100 percent	100 percent	100 percent.

1. Data derived from the 2000 U.S. Census is available on the web at *http://199.159.140.1/census.*

2. Due to the absence of Census data.

3. All dates are tentative and are for the close of business (COB). Pooled funds will be placed in the National office reserve and made available administratively. The Administrator reserves the right to redistribute funds based upon program performance.

4. Funds will be distributed cumulatively through each quarter listed until the National office year-end pooling date.

Dated: March 9, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

BILLING CODE 3410-XV-P

RURAL HOUSING SERVICE
FISCAL YEAR 2004
STATE DIRECTORS LISTING

Rural Housing Service — State Office Locations

ALABAMA	GEORGIA	LOUISIANA
Steve Peiham Sterling Centre 4121 Carmichael Road, Suite 601 Montgomery, AL 36106-3683 (334) 279-3400	F. Stone Workman Stephens Federal Building 355 E Hancock Avenue Athens, GA 30601-2768 (706) 546-2162	Michael B. Taylor 3727 Government Street Alexandria, LA 71302 (318) 473-7920
ALASKA	**HAWAII**	**MAINE**
Bill Allen Suite 201 800 W Evergreen Palmer, AK 99645-6539 (907) 761-7705	Lorraine Shin Room 311, Federal Building 154 Waianuenue Avenue Hilo, HI 96720 (808) 933-8309	Michael W. Aube PO Box 405 967 Illinois Avenue, Suite 4 Bangor, ME 04402-0405 (207) 990-9106
ARIZONA	**IDAHO**	**MASSACHUSETTS, CONN, R. ISL.**
Eddie Browning Phoenix Corporate Center 3003 N Central Avenue, Suite 900 Phoenix, AZ 85012-2906 (602) 280-8755	Michael A. Field Suite A1 9173 W Barnes Dr Boise, ID 83709 (208) 378-5600	David H. Tuttle 451 West Street Amherst, MA 01002 (413) 253-4300
ARKANSAS	**ILLINOIS**	**MICHIGAN**
John M. Allen Room 3416 700 W Capitol Little Rock, AR 72201-3225 (501) 301-3200	Douglas Wilson 2118 W Park Court Suite A Champaign, IL 61821 (217) 403-6222	Dale Sherwin Suite 200 3001 Coolidge Road East Lansing, MI 48823 (517) 324-5100
CALIFORNIA	**INDIANA**	**MINNESOTA**
C. Paul Venosdel Agency 4169 430 G Street Davis, CA 95616-4169 (530) 792-5800	Robert White 5975 Lakeside Boulevard Indianapolis, IN 46278 (317) 290-3100	Stephen G. Wenzel 410 AgriBank Bldg 375 Jackson Street St. Paul, MN 55101-1853 (651) 602-7835
COLORADO	**IOWA**	**MISSISSIPPI**
Ginette "GiGi" Dennis Room E100 655 Parfet Street Lakewood, CO 80215 (720) 544-2903	Daniel W. Brown, PhD 873 Federal Bldg 210 Walnut Street Des Moines, IA 50309 (515) 284-4663	Nick Walters Federal Bldg, Suite 831 100 W Capitol Street Jackson, MS 39269 (601) 965-4316
DELAWARE & MARYLAND	**KANSAS**	**MISSOURI**
Marlene B. Elliott PO Box 400 5201 S DuPont Highway Camden, DE 19934-9998 (302) 697-4300	Charles (Chuck) R. Banks 1303 SW First American Place Suite 100 Topeka, KS 66604-4040 (785) 271-2700	Gregory Branum Parkade Center, Suite 235 601 Business Loop 70 West Columbia, MO 65203 (573) 876-0976
FLORIDA & VIRGIN ISLANDS	**KENTUCKY**	**MONTANA**
Charles W. Clemons, Sr. PO Box 147010 4440 NW 25th Place Gainesville, FL 32614-7010 (352) 338-3435	Kenneth Slone Suite 200 771 Corporate Drive Lexington, KY 40503 (859) 224-7300	W. T. (Tim) Ryan Suite B 900 Technology Boulevard Bozeman, MT 59715 (406) 585-2580

RURAL HOUSING SERVICE
FISCAL YEAR 2004
STATE DIRECTORS LISTING

NEBRASKA	OKLAHOMA	UTAH
M. James Barr Federal Bldg, Room 152 100 Centennial Mall N Lincoln, NE 68508 (402) 437-5551	Brent J. Kisling Suite 108 100 USDA Stillwater, OK 74074-2654 (405) 742-1000	John R. Cox Wallace F Bennett Federal Bldg 125 S State Street, Room 4311 Salt Lake City, UT 84147 (801) 524-4320
NEVADA	**OREGON**	**VERMONT & NEW HAMPSHIRE**
Larry J. Smith 1390 South Curry Street Carson City, NV 89703 (775) 887-1795	Lynn Schoessler Suite 1410 101 SW Main Portland, OR 97204-3222 (503) 414-3300	Jolinda H. LaClair City Center, 3rd Floor 89 Main Street Montpelier, VT 05602 (802) 828-6000
NEW JERSEY	**PENNSYLVANIA**	**VIRGINIA**
Andrew M. G. Law 5th Floor N, Suite 500 8000 Midlantic Drive Mt. Laurel, NJ 08054 (856) 787-7700	Byron E. Ross Suite 330 One Credit Union Place Harrisburg, PA 17110-2996 (717) 237-2299	Joseph W. Newbill Culpeper Bldg, Suite 238 1606 Santa Rosa Road Richmond, VA 23229 (804) 287-1598
NEW MEXICO	**PUERTO RICO**	**WASHINGTON**
Jeff Condrey Room 255 6200 Jefferson Street, NE Albuquerque, NM 87109 (505) 761-4950	Jose A. Otero IBM Building Suite 601 Hato Rey, PR 00918-5481 (787) 766-5095	Jackie J. Gleason Suite B 1835 Black Lake Blvd, SW Olympia, WA 98512-5715 (360) 704-7740
NEW YORK	**SOUTH CAROLINA**	**WEST VIRGINIA**
Patrick H. Brennan The Galleries of Syracuse 441 S Salina Street, Suite 357 Syracuse, NY 13202-2541 (315) 477-6416	Charles Sparks Strom Thurmond Federal Bldg 1835 Assembly Street, Room 1007 Columbia, SC 29201 (803) 765-5163	Jenny N. Phillips Federal Bldg, Room 320 75 High Street Morgantown, WV 26505-7500 (304) 284-4860
NORTH CAROLINA	**SOUTH DAKOTA**	**WISCONSIN**
John Cooper Suite 260 4405 Bland Road Raleigh, NC 27609 (919) 873-2000	Lynn Jensen Federal Bldg, Room 210 200 Fourth Street, SW Huron, SD 57360 (605) 352-1100	Frank Frassetto 4949 Kirschling Court Stevens Point, WI 54481 (715) 345-7600
NORTH DAKOTA	**TENNESSEE**	**WYOMING**
Clare Carlson Federal Bldg, Room 208 220 East Rooser, PO Box 1737 Bismarck, ND 58502-1737 (701) 530-2061	Mary (Ruth) Tackett Suite 300 3322 W End Avenue Nashville, TN 37203-1084 (615) 783-1300	John E. Cochran Federal Building, Room 1005 100 East B, PO Box 820 Casper, WY 82602 (307) 261-6300
OHIO	**TEXAS**	
Randall Hunt Federal Bldg, Room 507 200 N High Street Columbus, OH 43215-2477 (614) 255-2500	R. Bryan Daniel Federal Bldg, Suite 102 101 S Main Temple, TX 76501 (254) 742-9700	

RURAL HOUSING SERVICE FY 2004
SECTION 533
HOUSING PRESERVATION GRANT
ALLOCATION IN ACTUAL DOLLARS

STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2004 ALLOCATION (with Transition factor applied)
Alabama	0.03467543	$241,000
Alaska	0.01339634	$48,000
Arizona	0.01703029	$128,947
Arkansas	0.04102074	$189,000
California	0.02685927	$293,691
Colorado	0.00712098	$54,365
Connecticut	0.00374424	$28,769
Delaware	0.01210345	$16,000
Florida	0.03245759	$236,000
Georgia	0.03114455	$247,715
Hawaii	0.00659829	$51,118
Idaho	0.01050962	$61,000
Illinois	0.01732713	$144,187
Indiana	0.01917349	$145,174
Iowa	0.01808961	$109,000
Kansas	0.01683925	$92,000
Kentucky	0.02873967	$223,579
Louisiana	0.01934335	$200,139
Maine	0.00898950	$68,064
Maryland	0.01471258	$72,000
Massachusetts	0.01073247	$65,000
Michigan	0.03431690	$243,000
Minnesota	0.02096046	$137,000
Mississippi	0.02405590	$203,366
Missouri	0.02228754	$168,753
Montana	0.00681998	$51,000
Nebraska	0.00662118	$50,132
Nevada	0.00256751	$19,440
New Hampshire	0.01237856	$41,000
New Jersey	0.01062123	$54,000
New Mexico	0.02266828	$117,000
New York	0.02487949	$188,377
North Carolina	0.04421880	$334,807
North Dakota	0.01008636	$34,000
Ohio	0.03073947	$232,747
Oklahoma	0.02290990	$157,000
Oregon	0.00777309	$89,673
Pennsylvania	0.03622490	$274,281
Puerto Rico	0.01020258	$301,821
Rhode Island	0.00843258	$8,000
South Carolina	0.05640381	$220,000
South Dakota	0.00699085	$49,000
Tennessee	0.02554273	$193,400
Texas	0.05070894	$484,959
Utah	0.01133305	$35,000
Vermont	0.00726972	$33,000
Virgin Islands	0.00624874	$22,000
Virginia	0.02152985	$171,173
Washington	0.01616550	$122,399
West Pac	0.00524388	$41,478
West Virginia	0.01697923	$128,559
Wisconsin	0.02261542	$153,000
Wyoming	0.00359571	$25,000
STATE DISTRIBUTION:		$7,099,112
NATIONAL OFFICE RESERVE:		$888,198
EZ/EC/RECAP:		$894,690
TOTAL		$8,882,000

RURAL HOUSING SERVICE
ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

	STATE	STATE BASIC FACTOR	FORMULA	TOTAL FY 2004 ALLOCATION
1	ALABAMA	0.02893348		$24,153
2	ARIZONA	0.01551438		$14,806
3	ARKANSAS	0.02202430		$19,340
4	CALIFORNIA	0.04281159		$33,819
5	COLORADO	0.01225178		$11,320
6	CONNECTICUT	0.00445853		$8,008
7	DELAWARE	0.00293815		$5,964
9	FLORIDA	0.02769317		$23,289
10	GEORGIA	0.03803061		$30,489
12	IDAHO	0.00847438		$9,903
13	ILLINOIS	0.02627571		$22,302
15	INDIANA	0.02616726		$22,226
16	IOWA	0.01764334		$16,289
18	KANSAS	0.01336777		$13,311
20	KENTUCKY	0.02807301		$23,553
22	LOUISIANA	0.02361424		$20,448
23	MAINE	0.01109070		$11,725
24	MARYLAND	0.01010209		$11,036
25	MASSACHUSETTS	0.00622585		$10,600
26	MICHIGAN	0.03579346		$28,931
27	MINNESOTA	0.02361828		$19,915
28	MISSISSIPPI	0.02636473		$22,364
29	MISSOURI	0.02809053		$23,566
31	MONTANA	0.00738806		$9,093
32	NEBRASKA	0.00953784		$10,643
33	NEVADA	0.00339314		$6,285
34	NEW HAMPSHIRE	0.00666198		$8,640
35	NEW JERSY	0.00551402		$9,877
36	NEW MEXICO	0.01296637		$12,821
37	NEW YORK	0.03378933		$27,535
38	NORTH CAROLINA	0.05148079		$39,857
40	NORTH DAKOTA	0.00469453		$7,270
41	OHIO	0.03725173		$29,947
42	OKLAHOMA	0.02019475		$17,916
43	OREGON	0.01654303		$15,523
44	PENNSYLVANIA	0.04269918		$33,741
45	RHODE ISLAND	0.00090026		$4,934
46	SOUTH CAROLINA	0.02669849		$22,596
47	SOUTH DAKOTA	0.00705037		$8,911
48	TENNESSEE	0.03062418		$25,330
49	TEXAS	0.07365688		$55,304
52	UTAH	0.00500465		$7,245
53	VERMONT	0.00579860		$8,039
54	VIRGINIA	0.02711459		$22,886
56	WASHINGTON	0.01939199		$17,507
57	WEST VIRGINIA	0.01591004		$15,082
58	WISCONSIN	0.02634031		$22,347
59	WYOMING	0.00393497		$6,741
60	ALASKA	0.00623983		$8,346
61	HAWAII	0.00623301		$8,341
62	W PAC ISLANDS	0.00239453		$2,000
63	PUERTO RICO	0.00884495		$18,405
64	VIRGIN ISLANDS	0.00217552		$5,515
	STATE TOTALS			$916,034
	100 UNDERSERVED COUNTIES/COLONIAS			$67,569
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK			$48,794
	GENERAL RESERVE			$169,000
	SELF HELP			$150,000
	TOTAL			$1,351,397

RURAL HOUSING SERVICE
FISCAL YEAR 2004
ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

	STATE	TOTAL FY 2004 ALLOCATION	VERY LOW INCOME ALLOCATION 44 PERCENT	LOW INCOME ALLOCATION 56 PERCENT
1	ALABAMA	$24,153	$10,627	$13,526
2	ARIZONA	$14,806	$6,515	$8,291
3	ARKANSAS	$19,340	$8,510	$10,830
4	CALIFORNIA	$33,819	$14,880	$18,939
5	COLORADO	$11,320	$4,981	$6,339
6	CONNECTICUT	$8,008	$3,524	$4,484
7	DELAWARE	$5,964	$2,624	$3,340
9	FLORIDA	$23,289	$10,247	$13,042
10	GEORGIA	$30,489	$13,415	$17,074
12	IDAHO	$9,903	$4,357	$5,546
13	ILLINOIS	$22,302	$9,813	$12,489
15	INDIANA	$22,226	$9,779	$12,447
16	IOWA	$16,289	$7,167	$9,122
18	KANSAS	$13,311	$5,857	$7,454
20	KENTUCKY	$23,553	$10,363	$13,190
22	LOUISIANA	$20,448	$8,997	$11,451
23	MAINE	$11,725	$5,159	$6,566
24	MARYLAND	$11,036	$4,856	$6,180
25	MASSACHUSETTS	$10,600	$4,664	$5,936
26	MICHIGAN	$28,931	$12,730	$16,201
27	MINNESOTA	$19,915	$8,763	$11,152
28	MISSISSIPPI	$22,364	$9,840	$12,524
29	MISSOURI	$23,566	$10,369	$13,197
31	MONTANA	$9,093	$4,001	$5,092
32	NEBRASKA	$10,643	$4,683	$5,960
33	NEVADA	$6,285	$2,765	$3,520
34	NEW HAMPSHIRE	$8,640	$3,802	$4,838
35	NEW JERSY	$9,877	$4,346	$5,531
36	NEW MEXICO	$12,821	$5,641	$7,180
37	NEW YORK	$27,535	$12,115	$15,420
38	NORTH CAROLINA	$39,857	$17,537	$22,320
40	NORTH DAKOTA	$7,270	$3,199	$4,071
41	OHIO	$29,947	$13,177	$16,770
42	OKLAHOMA	$17,916	$7,883	$10,033
43	OREGON	$15,523	$6,830	$8,693
44	PENNSYLVANIA	$33,741	$14,846	$18,895
45	RHODE ISLAND	$4,934	$2,171	$2,763
46	SOUTH CAROLINA	$22,596	$9,942	$12,654
47	SOUTH DAKOTA	$8,911	$3,921	$4,990
48	TENNESSEE	$25,330	$11,145	$14,185
49	TEXAS	$55,304	$24,334	$30,970
52	UTAH	$7,245	$3,188	$4,057
53	VERMONT	$8,039	$3,537	$4,502
54	VIRGINIA	$22,886	$10,070	$12,816
56	WASHINGTON	$17,507	$7,703	$9,804
57	WEST VIRGINIA	$15,082	$6,636	$8,446
58	WISCONSIN	$22,347	$9,833	$12,514
59	WYOMING	$6,741	$2,966	$3,775
60	ALASKA	$8,346	$3,672	$4,674
61	HAWAII	$8,341	$3,670	$4,671
62	W PAC ISLANDS	$2,000	$880	$1,120
63	PUERTO RICO	$18,405	$8,098	$10,307
64	VIRGIN ISLANDS	$5,515	$2,427	$3,088
	STATE TOTALS	$916,034	$403,055	$512,979
	100 UNDERSERVED COUNTIES/COLONIAS	$67,569	$29,730	$37,839
	EZ/EC/REAP RESERVE	$48,794	$21,469	$27,325
	GENERAL RESERVE	$169,000	$74,360	$94,640
	SELF HELP	$150,000	$66,000	$84,000
	TOTAL	$1,351,397	$594,615	$756,782

RURAL HOUSING SERVICE
FISCAL YEAR 2004
ALLOCATION IN ACTUAL DOLLARS
SECTION 502 GUARANTEED PURCHASE LOANS (NONSUBSIDIZED)

STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2004 ALLOCATION (with Transition factor applied)
Alabama	0.02664608	$32,271,473
Alaska	0.00726118	$8,570,794
Arizona	0.01648835	$19,969,002
Arkansas	0.02288418	$27,715,220
California	0.05050036	$61,162,159
Colorado	0.01361321	$13,984,894
Connecticut	0.00409614	$6,877,000
Delaware	0.00276743	$3,348,277
Florida	0.02658740	$32,271,000
Georgia	0.03803934	$46,070,066
Hawaii	0.00799772	$9,685,963
Idaho	0.00891464	$10,796,501
Illinois	0.02596263	$31,444,234
Indiana	0.02366971	$28,666,403
Iowa	0.01677978	$20,322,134
Kansas	0.01336611	$16,187,869
Kentucky	0.02674219	$32,387,538
Louisiana	0.02314282	$28,029,012
Maine	0.01156692	$14,009,096
Maryland	0.00946652	$11,465,389
Massachusetts	0.00621808	$12,294,000
Michigan	0.03325609	$40,277,378
Minnesota	0.02271168	$25,700,693
Mississippi	0.02659376	$32,208,526
Missouri	0.02837103	$34,360,740
Montana	0.00780684	$9,349,807
Nebraska	0.00965758	$11,588,542
Nevada	0.00374296	$4,134,634
New Hampshire	0.00698021	$8,453,451
New Jersey	0.00490281	$9,610,000
New Mexico	0.01355782	$16,322,009
New York	0.03647356	$44,173,593
North Carolina	0.05089592	$61,641,194
North Dakota	0.00441062	$5,342,191
Ohio	0.03525814	$42,702,066
Oklahoma	0.02014158	$24,393,443
Oregon	0.01914946	$23,149,420
Pennsylvania	0.04096781	$49,617,100
Puerto Rico	0.00925322	$26,262,000
Rhode Island	0.00075765	$1,802,000
South Carolina	0.02533573	$30,684,857
South Dakota	0.00752993	$9,113,382
Tennessee	0.02908900	$35,230,284
Texas	0.07303918	$88,459,333
Utah	0.00512266	$5,540,854
Vermont	0.00664813	$8,004,138
Virgin Islands	0.00308037	$3,730,976
Virginia	0.02560364	$31,009,463
Washington	0.02212238	$26,792,559
West Pac	N/A	$4,000,000
West Virginia	0.01505701	$18,235,822
Wisconsin	0.02581048	$31,037,298
Wyoming	0.00396194	$4,798,225
STATE TOTALS		$1,235,254,000
GENERAL RESERVE		$907,520,729
SPECIAL OUTREACH AREAS RESERVE		$388,937,455
TOTAL		$2,531,712,184

RURAL HOUSING SERVICE
FISCAL YEAR 2004
ALLOCATION IN ACTUAL DOLLARS
SECTION 502 GUARANTEED REFINANCE LOANS (NONSUBSIDIZED)

STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2004 ALLOCATION
Alabama	N/A	$0
Alaska	N/A	$0
Arizona	N/A	$0
Arkansas	N/A	$0
California	N/A	$0
Colorado	N/A	$0
Connecticut	N/A	$0
Delaware	N/A	$0
Florida	N/A	$0
Georgia	N/A	$0
Hawaii	N/A	$0
Idaho	N/A	$0
Illinois	N/A	$0
Indiana	N/A	$0
Iowa	N/A	$0
Kansas	N/A	$0
Kentucky	N/A	$0
Louisiana	N/A	$0
Maine	N/A	$0
Maryland	N/A	$0
Massachusetts	N/A	$0
Michigan	N/A	$0
Minnesota	N/A	$0
Mississippi	N/A	$0
Missouri	N/A	$0
Montana	N/A	$0
Nebraska	N/A	$0
Nevada	N/A	$0
New Hampshire	N/A	$0
New Jersey	N/A	$0
New Mexico	N/A	$0
New York	N/A	$0
North Carolina	N/A	$0
North Dakota	N/A	$0
Ohio	N/A	$0
Oklahoma	N/A	$0
Oregon	N/A	$0
Pennsylvania	N/A	$0
Puerto Rico	N/A	$0
Rhode Island	N/A	$0
South Carolina	N/A	$0
South Dakota	N/A	$0
Tennessee	N/A	$0
Texas	N/A	$0
Utah	N/A	$0
Vermont	N/A	$0
Virgin Islands	N/A	$0
Virginia	N/A	$0
Washington	N/A	$0
West Pac	N/A	$0
West Virginia	N/A	$0
Wisconsin	N/A	$0
Wyoming	N/A	$0
STATE TOTALS		$0
NATIONAL OFFICE RESERVE		$236,646,482
TOTAL		$236,646,482

RURAL HOUSING SERVICE
ALLOCATION IN THOUSANDS
SECTION 504 DIRECT RURAL HOUSING LOANS

	STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2004 ALLOCATION
1	ALABAMA	0.02914691	$840
2	ARIZONA	0.02165916	$624
3	ARKANSAS	0.02301181	$663
4	CALIFORNIA	0.05356026	$1,544
5	COLORADO	0.01244796	$280
6	CONNECTICUT	0.00301503	$100
7	DELAWARE	0.00260858	$100
9	FLORIDA	0.02862195	$825
10	GEORGIA	0.03870552	$1,116
12	IDAHO	0.00926157	$248
13	ILLINOIS	0.02289193	$660
15	INDIANA	0.02163577	$624
16	IOWA	0.01497537	$430
18	KANSAS	0.01252499	$361
20	KENTUCKY	0.02699175	$793
22	LOUISIANA	0.02658801	$766
23	MAINE	0.01004646	$290
24	MARYLAND	0.00809012	$236
25	MASSACHUSETTS	0.00467784	$198
26	MICHIGAN	0.03036170	$875
27	MINNESOTA	0.02241926	$577
28	MISSISSIPPI	0.02944306	$849
29	MISSOURI	0.02649320	$764
31	MONTANA	0.00748030	$198
32	NEBRASKA	0.00889870	$231
33	NEVADA	0.00389431	$112
34	NEW HAMPSHIRE	0.00533998	$154
35	NEW JERSY	0.00402807	$174
36	NEW MEXICO	0.01723147	$496
37	NEW YORK	0.02829025	$816
38	NORTH CAROLINA	0.04993409	$1,439
40	NORTH DAKOTA	0.00445144	$128
41	OHIO	0.03025666	$872
42	OKLAHOMA	0.02084848	$578
43	OREGON	0.01749746	$496
44	PENNSYLVANIA	0.03508076	$1,011
45	RHODE ISLAND	0.00061002	$100
46	SOUTH CAROLINA	0.02721728	$785
47	SOUTH DAKOTA	0.00727218	$198
48	TENNESSEE	0.02874616	$829
49	TEXAS	0.08626859	$2,487
52	UTAH	0.00539086	$132
53	VERMONT	0.00496554	$143
54	VIRGINIA	0.02455868	$731
56	WASHINGTON	0.02114040	$609
57	WEST VIRGINIA	0.01464971	$446
58	WISCONSIN	0.02300364	$644
59	WYOMING	0.00397110	$114
60	ALASKA	0.00945161	$264
61	HAWAII	0.00914234	$264
62	W PAC ISLANDS	0.00407807	$1,000
63	PUERTO RICO	0.01361295	$843
64	VIRGIN ISLANDS	0.00348170	$100
	STATE TOTALS		$30,157
	100 UNDERSERVED COUNTIES/COLONIAS		$1,740
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK		$1,400
	GENERAL RESERVE		$1,500
	TOTAL		$34,797

RURAL HOUSING SERVICE
ALLOCATION IN THOUSANDS
SECTION 504 DIRECT RURAL HOUSING GRANTS

	STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2004 ALLOCATION
1	ALABAMA	0.02895129	$723
2	ARIZONA	0.01822198	$455
3	ARKANSAS	0.02307817	$573
4	CALIFORNIA	0.04712512	$1,176
5	COLORADO	0.01159403	$226
6	CONNECTICUT	0.00371268	$114
7	DELAWARE	0.00293163	$100
9	FLORIDA	0.03041312	$759
10	GEORGIA	0.03661908	$914
12	IDAHO	0.00852842	$202
13	ILLINOIS	0.02641754	$659
15	INDIANA	0.02405959	$601
16	IOWA	0.01786210	$446
18	KANSAS	0.01364909	$341
20	KENTUCKY	0.02688977	$671
22	LOUISIANA	0.02413924	$603
23	MAINE	0.01074827	$268
24	MARYLAND	0.00927164	$231
25	MASSACHUSETTS	0.00548024	$208
26	MICHIGAN	0.03302491	$824
27	MINNESOTA	0.02348925	$540
28	MISSISSIPPI	0.02699213	$674
29	MISSOURI	0.02801252	$699
31	MONTANA	0.00736568	$165
32	NEBRASKA	0.00983363	$238
33	NEVADA	0.00359134	$100
34	NEW HAMPSHIRE	0.00589663	$147
35	NEW JERSY	0.00461712	$178
36	NEW MEXICO	0.01420178	$339
37	NEW YORK	0.03156987	$788
38	NORTH CAROLINA	0.05019393	$1,253
40	NORTH DAKOTA	0.00470192	$117
41	OHIO	0.03422496	$854
42	OKLAHOMA	0.02108316	$505
43	OREGON	0.01770850	$431
44	PENNSYLVANIA	0.04090487	$1,021
45	RHODE ISLAND	0.00074832	$100
46	SOUTH CAROLINA	0.02591134	$647
47	SOUTH DAKOTA	0.00723669	$174
48	TENNESSEE	0.02972644	$742
49	TEXAS	0.07876808	$1,966
52	UTAH	0.00493463	$110
53	VERMONT	0.00527848	$128
54	VIRGINIA	0.02623675	$655
56	WASHINGTON	0.01980392	$494
57	WEST VIRGINIA	0.01559911	$389
58	WISCONSIN	0.02514997	$616
59	WYOMING	0.00385395	$96
60	ALASKA	0.00683910	$156
61	HAWAII	0.00731435	$183
62	W PAC ISLANDS	0.00280568	$1,000
63	PUERTO RICO	0.01023070	$564
64	VIRGIN ISLANDS	0.00243791	$100
	STATE TOTALS		$26,266
	100 UNDERSERVED COUNTIES/COLONIAS		$1,514
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK		$895
	GENERAL RESERVE		$1,600
	TOTAL		$30,275

Dated: March 9, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–5959 Filed 3–16–04; 8:45 am]

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Federal Register

Wednesday,
March 17, 2004

Part III

Securities Exchange Commission

17 CFR Parts 239, 249, 270 and 274
Disclosure Regarding Portfolio Managers of Registered Management Investment Companies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 249, 270 and 274

[Release Nos. 33–8396; 34–49398; IC–26383; File No. S7–12–04]

RIN 3235–AJ16

Disclosure Regarding Portfolio Managers of Registered Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to its forms under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to improve the disclosure provided by registered management investment companies regarding their portfolio managers. The proposals would extend the existing requirement that a registered management investment company provide basic information in its prospectus regarding its portfolio managers to include the members of management teams. The proposals would also require a registered management investment company to disclose additional information about its portfolio managers, including other accounts they manage, compensation structure, and ownership of securities in accounts they manage.

DATES: Comments should be submitted on or before May 21, 2004.

ADDRESSES: Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) electronic form on the SEC Web site (*http://www.sec.gov*) or (2) e-mail to *rule-comments@sec.gov*. Mail 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. S7–12–04; this file number should be included on the subject line if e-mail is used. To help us 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*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Sanjay Lamba, Attorney, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Form N–1A,[1] Form N–2,[2] and Form N–3,[3] registration forms used by management investment companies to register under the Investment Company Act of 1940 ("Investment Company Act") and to offer their securities under the Securities Act of 1933 ("Securities Act"); and amendments to Form N–CSR[4] under the Investment Company Act and the Securities Exchange Act of 1934 ("Exchange Act"), the form used by registered management investment companies to file certified shareholder reports with the Commission.

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I. Background

Registered management investment companies ("funds")[5] typically are externally managed by an investment adviser, to which they pay an advisory fee from fund assets. The investment adviser in turn employs and compensates the individuals who act as portfolio managers for the fund. Our rules require funds to disclose in their prospectuses certain information concerning their portfolio managers. Fund prospectuses are required to include the name, title, length of service, and business experience of the individuals who are primarily responsible for the day-to-day management of the fund.[6] If a committee, team, or other group is jointly and primarily responsible for management of the fund, the fund must provide disclosure to the effect that the fund's investments are managed by that group, but need not provide the names of the members of the group.[7]

Recently, several areas of concern have been identified with respect to the disclosure that funds provide about their portfolio managers. First, concerns have been raised regarding the lack of disclosure about the individual members of portfolio management teams.[8] Some have argued that disclosure that a fund uses a team management approach, without identification of team members, can be a convenient way to avoid disclosing who runs the fund and how long or briefly they have been in place. Further, the use of a management team potentially permits a fund to change managers frequently, without appearing prone to manager turnover.

Second, concerns have been raised about potential conflicts of interest between the interests of shareholders in a fund that a portfolio manager oversees, and the interests of other clients and investment vehicles, such as hedge funds and pension funds, that a portfolio manager may also oversee.[9] For example, it has been argued that

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[1] 17 CFR 239.15A and 274.11A.

[2] 17 CFR 239.14 and 274.11a–1.

[3] 17 CFR 239.17a and 274.11b.

[4] 17 CFR 249.331 and 274.128.

[5] Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4–5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. *See* Section 5 of the Investment Company Act [15 U.S.C. 80a–5]. Open-end companies generally offer and sell new shares to the public on a continuous basis. Closed-end companies generally engage in traditional underwritten offerings of a fixed number of shares and, in most cases, do not offer their shares to the public on a continuous basis.

[6] Item 5(a)(2) of Form N–1A; Item 9.1.c of Form N–2.

[7] Instruction 2 to Item 5(a)(2) of Form N–1A; Instruction 2 to Item 9.1.c. of Form N–2.

[8] *See, e.g.*, Ian McDonald, *Ghost Rider: Who's Running Your Fund*, TheStreet.com, Jan. 28, 2002; Tom Lauricella, *Should Mutual-Fund Managers Be Named?—Firms List Teams, Saying Move Keeps Shareholder Costs Down; Others Utilize Web Sites, Filings* The Wall Street Journal, May 17, 2002, at C1.

[9] *See, e.g.*, Stephen Schurr, *Two Masters Are One Too Many for Fund Firms*, TheStreet.com, Nov. 26, 2003.

because hedge fund performance fees typically are much higher than mutual fund fees, a portfolio manager who manages a mutual fund and a hedge fund may have an incentive to give preferential treatment to hedge fund investors in allocating new investment opportunities. Other conflict of interest issues raised by managing mutual fund and hedge fund businesses may include trading-execution priorities, and the potential for the hedge fund to take advantage of material inside information regarding the mutual fund's portfolio holdings. Concerns regarding these types of conflicts of interest were noted in the Commission's recent staff report on the hedge fund industry.[10]

Third, some have suggested that information regarding the compensation of portfolio managers should be disclosed.[11] Advocates of this disclosure argue that a portfolio manager's compensation structure can influence how the manager runs the fund. For example, a portfolio manager's bonuses may be linked to the amount of fund assets under management, which may provide an incentive for the manager to focus more on bringing assets into the fund than on meeting the fund's investment objective. Concerns have also been raised regarding compensation bonuses based on short-term performance, which may create incentives for a fund manager to take greater risks than usual in an effort to meet short-term performance goals.

Finally, some have argued that it would be useful to fund investors to require disclosure of the securities holdings of portfolio managers, similar to the disclosure currently required regarding directors' holdings of fund shares.[12] They have suggested that disclosure of a portfolio manager's holdings in a fund would provide a strong signal of his or her alignment with the interest of fund shareholders.[13] They argue, for example, that portfolio managers may have a greater incentive to keep management fees low and to consider the tax consequences of their trading activity if they themselves are invested in the fund they manage. These advocates also claim that disclosure of fund ownership could provide investors with insight into the level of confidence that a manager has in the investment strategy of the fund.

The Commission is mindful of these concerns, and we have concluded that increased transparency of information about fund portfolio managers, including their identity, incentives, and potential conflicts of interest, may assist investors in evaluating fund management and making investment decisions. In order to address these concerns, we are proposing amendments that would require improved disclosure regarding portfolio managers. Our proposals would:

- Require a fund to identify in its prospectus each member of a committee, team, or other group of persons that is jointly and primarily responsible for the day-to-day management of the fund's portfolio;
- Require a fund to provide information in its Statement of Additional Information ("SAI")[14] regarding other accounts managed by any of its portfolio managers, including a description of conflicts of interest that may arise in connection with simultaneously managing the fund and the other accounts;
- Require a fund to disclose in its SAI the structure of, and the method used to determine, the compensation of each portfolio manager;
- Require a fund to disclose in its SAI each portfolio manager's ownership of securities in the fund and other accounts, including investment companies, managed by the portfolio manager, the fund's investment adviser, or any person controlling, controlled by, or under common control with an investment adviser or principal underwriter of the fund; and
- Require a closed-end fund to provide disclosure regarding its portfolio managers in its reports on Form N–CSR.

These proposed amendments are intended to provide greater transparency regarding portfolio managers, their incentives in managing a fund, and the potential conflicts of interest that may arise when they or the advisers that employ them also manage other investment vehicles.[15]

II. Discussion

A. Identification of Portfolio Management Team Members

We are proposing amendments to Forms N–1A and N–2, the registration forms for mutual funds and closed-end funds, that would require those funds to identify in their prospectuses each member of a committee, team, or other group of persons associated with the fund's investment adviser that is jointly and primarily responsible for the day-to-day management of the fund's portfolio.[16] Currently, if a committee, team, or other group is jointly and primarily responsible for management of a fund, Forms N–1A and N–2 require the fund to provide disclosure that the fund's investments are managed by a group, but the fund need not provide the names of the members of the group.[17] The proposed amendments would require funds to state the name, title, length of service, and business experience of each member of a portfolio management team. The proposals would also require the fund to provide a brief description of each member's role on the management team (*e.g.*, lead member).[18] We believe that this enhanced disclosure regarding management team members could help investors better evaluate the identity, background, and experience of fund management in cases where the fund is managed using a team approach.

We are also proposing to amend Form N–3, the registration form for insurance company managed separate accounts

[10] Implications of the Growth of Hedge Funds, Staff Report to the U.S. Securities and Exchange Commission, at 83–85 (Sept. 2003).

[11] *See, e.g.*, Statement of John C. Bogle, *Oversight Hearing on the Mutual Fund and Investment Advisory Industry Before the U.S. Senate Governmental Affairs Committee, Subcommittee on Financial Management*, 108th Cong., 1st. Sess. (Nov. 3, 2003); Jason Zweig, The Great Fund Rip-Off, Money, Oct. 1, 2003, at 51; Jason Burton, *Ten Things Mutual Funds Aren't Telling You*, CBS Marketwatch.com, Aug. 1, 2003.

[12] *See, e.g.*, Michael Maiello, *Is Your Fund Manager Any Good? What the Ads Won't Tell You*, FORBES, Feb. 2, 2004, at 100; Karen Damato, *With Mutual Funds, Is the Investor No. 1—A Few Touchstones Can Assist In Judging Whose Interests Carry The Most Weight With Managers*, The Wall Street Journal, Sept. 5, 2003, at C1. *See also* Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)]; Item 22(b)(5) of Schedule 14A; Item 12(b)(4) of Form N–1A; Item 18.7 of Form N–2; Item 20(f) of Form N–3 (requiring disclosure of dollar range of each director's ownership in each fund that he or she oversees).

[13] *See, e.g.*, Martha Graybow, *Fund Watchers Want Managers to 'Eat Own Cooking'*, Reuters News Service, July 18, 2003.

[14] The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System.

[15] A fund is currently required to provide portfolio manager disclosure regardless of whether the portfolio manager is employed by the investment adviser or a sub-adviser. This would continue under the proposed rules. *See* Section 2(a)(20)(B) of the Investment Company Act [15 U.S.C. 80a–2(a)(20)(B)] ("investment adviser" includes any person who provides investment advice to an investment company under a contract with an investment adviser to the company).

[16] Proposed Item 5(a)(2) and Instruction 2 to Item 5(a)(2) of Form N–1A; proposed Item 9.1.c and Instruction to Item 9.1.c of Form N–2.

[17] Instruction 2 to Item 5(a)(2) of Form N–1A; Instruction 2 to Item 9.1.c of Form N–2.

[18] Proposed Instruction 2 to Item 5(a)(2) of Form N–1A; proposed Instruction to Item 9.1.c of Form N–2. The proposed amendments would also delete current Instructions 3 and 4 to Item 5(a)(2) of Form N–1A, which provide additional guidance as to the disclosure obligations of funds for which day-to-day management responsibilities are shared between a portfolio management team and an individual.

that issue variable annuity contracts, to require disclosure regarding portfolio managers. The required disclosure would be similar to the disclosure that would be required by Forms N–1A and N–2, including disclosure regarding the members of portfolio management teams.[19] Currently, Form N–3 does not require disclosure about portfolio managers.

We request comment generally on the proposed disclosure requirements regarding members of portfolio management teams and the proposed amendments to Form N–3 and specifically on the following issues:

- Should we require identification and disclosure with respect to all of the members of a portfolio management team or only certain members, *e.g.*, the lead member?
- Are the proposed disclosure requirements regarding members of portfolio management teams appropriate? Should all of the proposed disclosure requirements be required with respect to every member of a portfolio management team? Is "jointly and primarily responsible" the appropriate standard to use in connection with portfolio management teams or should we use a different standard?
- Should we require any additional information to be disclosed concerning portfolio management teams and their members, such as information about the team's structure and decision-making process?
- Is the fund prospectus the appropriate location for the proposed disclosure regarding members of portfolio management teams, or should this disclosure be provided in other locations, *e.g.*, SAI, shareholder reports, or Form N–CSR?
- Is the proposal to require managed separate accounts issuing variable annuities to provide prospectus disclosure regarding their portfolio managers appropriate?

B. Disclosure Regarding Other Accounts Managed, Potential Conflicts of Interest, and Policies and Procedures To Address Conflicts

We are proposing to require a fund to provide disclosure in its SAI regarding other accounts for which the fund's portfolio manager is primarily responsible for the day-to-day portfolio management.[20] This disclosure is designed to enable investors to assess the conflicts of interest to which a portfolio manager may be subject as a result of managing the fund and other portfolios, such as hedge funds and other registered investment companies. If a committee, team, or other group that includes the portfolio manager is jointly and primarily responsible for the day-to-day management of an account, the fund would be required to include that account in responding to the proposed disclosure requirement.[21]

We are proposing to require that this disclosure, and the other new disclosure that we are proposing with respect to portfolio managers, be located in the SAI. If the information were included in the prospectus, it might tend to obscure other, more basic information that is key to an investment decision, such as investment objectives and strategies, risks, and fees and charges. However, disclosure in the SAI will be readily accessible to investors who desire this information, because funds are required to provide an SAI promptly to any investor who requests one. [22] We note that we are also proposing amendments to encourage funds to provide greater access to this information in the SAI.[23]

The proposals would require a fund to disclose the number of other accounts managed by a portfolio manager, and the total assets in the accounts, within each of the following categories: registered investment companies; other investment companies; other pooled investment vehicles; and other accounts.[24] For each such category, the fund would also be required to disclose the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on account performance.[25]

The proposals would also require the fund to describe any conflicts of interest that may arise in connection with the portfolio manager's management of the fund's investments, on the one hand, and the investments of the other accounts, on the other.[26] This description would include, for example, conflicts between the investment strategy of the fund and the investment strategy of the other accounts managed by the portfolio manager and conflicts in allocation of investment opportunities between the fund and such other accounts. In addition, the fund would be required to include a description of the policies and procedures used by the fund or the fund's adviser to address any such conflicts. In this regard, we note that we recently adopted new rules that require investment advisers to implement policies and procedures that address conflicts arising from management of multiple funds and accounts, such as the allocation of investment opportunities and the allocation of aggregated trades.[27] In order to mitigate the burden for a fund of preparing descriptions of its policies and procedures, the proposals would permit a fund to include a copy of the policies and procedures used to address conflicts of interest, rather than a description of the policies and procedures.[28]

We request comment generally on the proposals regarding other accounts managed by a fund's portfolio manager, and in particular on the following issues:

- Are our proposed disclosure requirements with respect to other accounts managed by a portfolio manager appropriate? Is there any additional information about these other accounts that we should require to be disclosed? For example, should we require funds to identify some or all of the other accounts managed by their portfolio managers?
- Are our proposed disclosure requirements with respect to conflicts of interest that may arise in connection with managing a fund and managing other accounts appropriate? Is there any additional information that we should require with respect to these potential conflicts of interest? Should we require disclosure with respect to actual conflicts of interest that occurred as a result of managing a fund and other accounts? If so, where?
- In the case of a fund with a portfolio management team, should we require the proposed disclosure regarding other accounts managed by a portfolio manager with respect to every

[19] Proposed Item 6(e) of Form N–3.

[20] Proposed Item 15(a) of Form N–1A; proposed Item 21.1 of Form N–2; proposed Item 22(a) of Form N–3.

[21] Proposed Instruction 2 to Item 15(a) of Form N–1A; proposed Instruction 2 to Item 21.1 of Form N–2; proposed Instruction 2 to Item 22(a) of Form N–3.

[22] Instruction 3 to Item 1(b)(1) of Form N–1A; General Instructions to "Part B: Statement of Additional Information" and Item 33.6 of Form N–2; Item 37(d) of Form N–3.

[23] *See* Section II.F. "Disclosure of Availability of Information," *infra*.

[24] Proposed Item 15(a)(2) of Form N–1A; proposed Item 21.1.b of Form N–2; proposed Item 22(a)(ii) of Form N–3.

[25] Proposed Item 15(a)(3) of Form N–1A; proposed Item 21.1.c of Form N–2; proposed Item 22(a)(iii) of Form N–3.

[26] Proposed Item 15(a)(4) of Form N–1A; proposed Item 21.1.d of Form N–2; proposed Item 22(a)(iv) of Form N–3.

[27] *See* Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714, 74716 (Dec. 24, 2003)] (adopting rule 206(4)–7 under the Investment Advisers Act of 1940 and rule 38a–1 under the Investment Company Act).

[28] Proposed Instruction 3 to Item 15(a) of Form N–1A; proposed Instruction 3 to Item 21.1 of Form N–2; proposed Instruction 3 to Item 22(a) of Form N–3.

member of the team or only certain team members, *e.g.*, the lead member?

- Is the SAI the appropriate location for the proposed disclosure regarding other accounts managed by a portfolio manager, or should this disclosure be provided in other locations, *e.g.*, prospectus, shareholder reports, or Form N–CSR?
- Is disclosure of the potential conflicts in this area sufficient or should the Commission prohibit portfolio managers of registered management investment companies from managing certain types of accounts?

C. Disclosure of Portfolio Manager Compensation Structure

We are proposing to require a fund to provide disclosure in its SAI regarding the structure of, and the method used to determine, the compensation of its portfolio managers.[29] This disclosure may help investors better understand a portfolio manager's incentives in running a fund and may also shed light on possible conflicts of interest that could arise when a portfolio manager manages other accounts.

The proposals would require a description of the structure of, and the method used to determine, the compensation received by a fund's portfolio manager from the fund, its investment adviser, or any other source with respect to management of the fund and any other account included by the fund in response to the proposed disclosure requirement described above regarding other accounts managed by the portfolio manager.[30] For purposes of this disclosure, compensation would include, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash.[31] For each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), the fund would be required to include a description of the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether compensation is based on fund pre-or after-tax performance over a certain time period, and whether compensation is based on the value of assets held in the fund's portfolio.[32] This description would be required to clearly disclose any differences between the method used to determine the portfolio manager's compensation with respect to the fund and other accounts, *e.g.*, if the portfolio manager receives part of an advisory fee that is based on performance with respect to some accounts but not the fund, this would be required to be disclosed.[33]

We are not proposing to require disclosure of the value of compensation paid to a portfolio manager.[34] Some have suggested that the amount of compensation received by portfolio managers should be disclosed, just as operating companies are required to disclose executive compensation.[35] However, the most direct mutual fund analogue to the compensation of an operating company's executive officers is the compensation of the investment adviser. The advisory fee, which is the amount paid by fund shareholders for portfolio management services, is currently required to be fully disclosed, including as part of the fee table of the fund's prospectus.[36] Individual portfolio managers typically are employees of a fund's investment adviser and are compensated by the adviser. For that reason, information about the compensation of a fund's portfolio managers would be useful to investors primarily because it would help them to assess the managers' incentives and whether their interests are aligned with shareholders, not because it would help them better understand the amount being paid from fund assets for management services.

We request comment generally on the proposed requirement to disclose the structure of, and the method used to determine, the compensation of portfolio managers, and in particular on the following issues:

- Is our proposed requirement that a fund disclose the structure of, and the method used to determine, the compensation of each portfolio manager appropriate? Is there any additional information about portfolio manager compensation that we should require to be disclosed? Should we require disclosure of the actual amount of compensation paid to a portfolio manager?
- In the case of a fund with a portfolio management team, should we require the proposed disclosure regarding portfolio manager compensation with respect to every member of the team or only certain team members, *e.g.*, the lead member?
- Is the SAI the appropriate location for the proposed disclosure regarding portfolio manager compensation, or should this disclosure be provided in other locations, *e.g.*, prospectus, shareholder reports, or Form N–CSR?

D. Disclosure of Securities Ownership of Portfolio Managers

We are proposing to require a fund to disclose in its SAI the ownership of securities of each of its portfolio managers in the fund and in other accounts, including investment companies, managed by the fund's investment adviser or the portfolio manager.[37] This disclosure could help investors to assess the extent to which the portfolio manager's interests are aligned with theirs, as well as the level of confidence that a manager has in the investment strategy of the fund. In addition, this disclosure could assist fund investors in assessing potential conflicts of interest between their interests and the interests of other clients or investment vehicles in which the manager has an interest.

The proposed disclosure requirement would apply to securities owned beneficially or of record in: (i) the fund; (ii) other accounts that the fund included in response to the proposed disclosure requirement described above regarding other accounts managed by the portfolio manager; [38] and (iii) any

[29] Proposed Item 15(b) of Form N–1A; proposed Item 21.2 of Form N–2; proposed Item 22(b) of Form N–3.

[30] *See* Section II.B, "Disclosure Regarding Other Accounts Managed," *supra* (describing proposal to require disclosure regarding other accounts for which the fund's portfolio manager is primarily responsible for day-to-day portfolio management); proposed Instruction 3 to Item 15(b) of Form N–1A; proposed Instruction 3 to Item 21.2 of Form N–2; proposed Instruction 3 to Item 22(b) of Form N–3.

[31] Proposed Instruction 2 to Item 15(b) of Form N–1A; proposed Instruction 2 to Item 21.2 of Form N–2; proposed Instruction 2 to Item 22(b) of Form N–3.

[32] Proposed Item 15(b) of Form N–1A; proposed Item 21.2 of Form N–2; proposed Item 22(b) of Form N–3.

[33] Proposed Instruction 3 to Item 15(b) of Form N–1A; proposed Instruction 3 to Item 21.2 of Form N–2; proposed Instruction 3 to Item 22(b) of Form N–3.

[34] *Id.*

[35] *See, e.g.*, Russel Kinnel, *Fund Investors Should Demand Equality*, Morningstar.com, Aug. 6, 2001. *Cf.* Item 402 of Regulation S–K [17 CFR 229.402] (requiring disclosure of all compensation paid to certain named executive officers, including the registrant's chief executive officer and the most highly compensated officers other than the chief executive officer).

[36] *See* Item 3 and Instruction 3(a) to Item 3 of Form N–1A, Item 3.1 and Instruction 7.a to Item 3.1 of Form N–2, and Item 3(a) and Instruction 13 to Item 3(a) of Form N–3 (disclosure of amount of advisory fee); Item 5(a)(1)(ii) of Form N–1A and Item 9.1.b.(3) of Form N–2 (requiring description of investment adviser's compensation); Item 14(a)(3) of Form N–1A, Item 20.1.c of Form N–2, and Item 21(a)(iii) of Form N–3 (requiring disclosure in fund's SAI regarding method of calculating the advisory fee payable to the fund).

[37] Proposed Item 15(c) of Form N–1A; proposed Item 21.3 of Form N–2; proposed Item 22(c) of Form N–3. *Cf.* Item 12(b)(4) of Form N–1A; Item 18.7 of Form N–2; Item 20(f) of Form N–3 (requiring disclosure of director's beneficial ownership of equity securities in funds overseen by director in a fund complex).

[38] *See* Section II.B, "Disclosure Regarding Other Accounts Managed," *supra*.

other account, including an investment company, managed by an investment adviser of the fund, or by any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the fund.[39] With respect to managed separate accounts issuing variable annuity contracts, securities subject to disclosure would also include securities in any investment company or account managed or sponsored by the sponsoring insurance company, or by any person directly or indirectly controlling, controlled by, or under common control with the sponsoring insurance company.[40] This disclosure would apply to securities owned by each portfolio manager and his immediate family members. For purposes of this disclosure, "immediate family member" would mean a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code.[41] The proposals would deem a person to be a "beneficial owner" of a security if he or she is a "beneficial owner" under either rule 13d–3 under the Exchange Act, which focuses on a person's voting and investment power, or rule 16–1(a)(2) under the Exchange Act, which focuses on a person's economic interests in a security.[42]

Our proposals would require the fund to provide the securities ownership information in a tabular format, including: (1) The name of the portfolio manager; (2) the account in which the portfolio manager or immediate family member owns securities; (3) the title of the class of securities owned; and (4) the dollar range of securities owned. The information in the table would be required to be provided on an aggregate basis for each portfolio manager and his immediate family members.[43]

We are proposing to require disclosure of the dollar range of securities owned by portfolio managers, similar to the disclosure required for fund directors' ownership of equity securities in the funds they oversee.[44] Under our proposals, funds would be required to disclose portfolio managers' ownership of securities using the following dollar ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, $100,001–$500,000, $500,001–$1,000,000, or over $1,000,000.[45] Disclosure of the dollar range of securities owned by a portfolio manager, rather than precise dollar holdings, could provide shareholders with significant information to use in evaluating whether a manager's interests are aligned with their own, while protecting managers' legitimate privacy interests.[46] The maximum range proposed (over $1,000,000) is intended to reflect a level of investment that would be significant. It is also intended to be high enough to permit investors to compare the relative stakes of the manager in different accounts. If, for example, we used a maximum range of over $100,000, an investment of $100,001 and an investment of $5,000,000 would be reflected as the same level of investment.[47] This might not provide sufficient information for an investor to compare a portfolio manager's stakes in the fund managed and other accounts managed, such as hedge funds.

Under our proposals, the required information about a portfolio manager's ownership of securities, as well as the information regarding other accounts managed and compensation structure, would be required to be provided as of the end of the fund's most recently completed fiscal year.[48] However, in the case of an initial registration statement or an update to a fund's registration statement that discloses a new portfolio manager, information with respect to any newly identified portfolio manager would be required to be provided as of the most recent practicable date.[49] The date as of which the information is provided would be required to be disclosed. In effect, this would mean that a fund would be required to disclose changes to this information with respect to a previously identified portfolio manager once a year, as part of its post-effective amendment that is an annual update to its registration statement.[50] A fund would not be required to update its SAI during the year for each change in any of the required information regarding a previously identified portfolio manager, such as changes in the securities that a portfolio manager or his or her immediate family members own. The costs of requiring a fund to update its SAI under these circumstances could outweigh the benefits to investors.

We request comment generally on the proposed requirement to disclose the ownership of securities of portfolio managers and in particular on the following issues:

- Is our proposed requirement that a fund disclose the ownership of securities of each portfolio manager with respect to each account managed by the portfolio manager as well as his ownership in other accounts managed by the investment adviser (or any person controlling, controlled by, or under common control with an investment adviser or principal underwriter of the fund) appropriate? Is the group of accounts that are covered appropriate, too broad, or too narrow? Is there any additional information about the ownership of securities of portfolio managers that should be required to be disclosed?
- Should we require disclosure of the dollar range of securities owned by the portfolio manager or would disclosure of the actual value be more appropriate? If a dollar range is appropriate, what should the required ranges be? Are the proposed ranges appropriate? Would a higher maximum range better differentiate between interests in different accounts (*e.g.*, a $1,000,001 interest versus a much larger interest, *e.g.*, $25,000,000)? Or would it be

[39] Proposed Item 15(c) of Form N–1A; proposed Item 21.3 of Form N–2; proposed Item 22(c) of Form N–3.

Where a portfolio manager owns shares in one or more series of a mutual fund that issues two or more series of preferred or special stock each of which is preferred over all other series in respect of assets specifically allocated to that series, the portfolio manager's securities ownership would be disclosed by series and not in the aggregate for the mutual fund.

[40] Proposed Item 22(c)(iii) of Form N–3.

[41] Proposed Instruction 4 to Item 15(c) of Form N–1A; proposed Instruction 4 to Item 21.3 of Form N–2; proposed Instruction 4 to Item 22(c) of Form N–3.

[42] Proposed Instruction 2 to Item 15(c) of Form N–1A; proposed Instruction 2 to Item 21.3 of Form N–2; proposed Instruction 2 to Item 22(c) of Form N–3; 17 CFR 240.13d–3; 17 CFR 240.16a–1(a)(2).

[43] Proposed Instruction 3 to Item 15(c) of Form N–1A; proposed Instruction 3 to Item 21.3 of Form N–2; proposed Instruction 3 to Item 22(c) of Form N–3.

[44] *See* Item 12(b)(4) of Form N–1A; Item 18.7 of Form N–2; Item 20(f) of Form N–3.

[45] Proposed Instruction 5 to Item 15(c) of Form N–1A; proposed Instruction 5 to Item 21.3 of Form N–2; proposed Instruction 5 to Item 22(c) of Form N–3.

[46] *Cf.* Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734, 3741 (Jan. 16, 2001)] (explaining reasons for requiring disclosure of a director's holdings of securities using dollar ranges rather than an exact dollar amount).

[47] *Cf.* Instruction 4 to Item 12(b)(4) of Form N–1A; Instruction 4 to Item 18.7 of Form N–2; Instruction 4 to Item 20(f) of Form N–3 (requiring disclosure of directors' equity securities ownership using the following dollar ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000).

[48] Proposed Instruction 1 to each of Items 15(a), (b) and (c) of Form N–1A; proposed Instruction 1 to each of Items 21.1, 21.2, and 21.3 of Form N–2; proposed Instruction 1 to each of Items 22(a), (b), and (c) of Form N–3.

[49] This would include an update to a mutual fund's registration statement that adds a new series to the fund.

[50] In the case of a change in portfolio manager, however, a fund would be required to update its registration statement to disclose the change and provide information about the new manager as necessary to comply with its obligations under the Securities Act.

sufficient for the highest maximum range to begin at a lower level (*e.g.*, over $100,000)?

• Should we also or instead require a fund to disclose the percentage of a portfolio manager's net worth that is invested in securities of the fund or other accounts? If so, what should be included in the calculation of a portfolio manager's net worth (*e.g.*, net worth of immediate family members)?

• What is the most effective means for disclosing the relative magnitudes of a portfolio manager's interest in each of the accounts in which he owns securities? For example, should we require a fund to disclose, for each account listed in the table, the percentage that the value of the manager's interest in the account represents of the aggregate value of the manager's interest in all accounts listed in the table?

• Should we require that the disclosure of securities owned differentiate between securities that a portfolio manager is required to own as a condition of employment and securities that are owned voluntarily?

• Are there any types of securities to which the proposed disclosure requirement should not apply, *e.g.*, should we limit the disclosure to equity securities?

• Should disclosure be required with respect to securities beneficially owned under either the definition in rule 13d–3 under the Exchange Act or the definition in rule 16a–1(a)(2) under the Exchange Act, or is one definition more appropriate for purposes of this disclosure requirement? Should the disclosure requirement apply to record ownership of securities?

• Should we require disclosure with respect to securities owned by immediate family members of portfolio managers? If so, should we broaden the definition of "immediate family member" to include, for example, the portfolio's manager's parents, siblings, in-laws, and children not residing with the manager? Should we limit the definition to, for example, the portfolio manager's spouse?

• In the case of a fund with a portfolio management team, should we require the proposed disclosure regarding ownership of securities of portfolio managers with respect to every member of the team or only certain team members?

• Is the SAI the appropriate location for the proposed disclosure regarding securities ownership of portfolio managers, or should this disclosure be provided in other locations, *e.g.*, prospectus, shareholder reports, or Form N–CSR?

• Should we require this securities ownership information, as well as information regarding other accounts managed and compensation structure discussed above, to be provided as of the end of the fund's most recently completed fiscal year, or should this information be required as of another date, *e.g.*, most recent calendar year end or most recent practicable date prior to filing a new registration statement or an update to an existing registration statement? Is updating this information once a year for previously identified managers, as proposed, sufficient or should it be updated more frequently? If more frequent updates should be required, how frequent should they be? In the case of an initial registration statement, or an update to a fund's registration statement that discloses a new portfolio manager, should we require information with respect to any newly identified portfolio manager to be provided as of the most recent practicable date or some other date, *e.g.*, most recent calendar-or fiscal year-end?

E. Removal of Exclusion for Index Funds

We are proposing to remove the current provision in Form N–1A that excludes a fund that has as its investment objective replication of the performance of an index from the requirement to identify and provide disclosure regarding its portfolio managers.[51] Portfolio manager disclosure was originally intended to permit investors to assess the background and experience of portfolio managers, and to evaluate the extent of a manager's responsibility for the previous investment success (or lack thereof) of the fund before making an investment decision.[52] Index funds were excluded from the requirement because the portfolio management of such funds is, to some extent, mechanical.[53]

Our current proposals, however, require disclosure regarding portfolio managers not in order to help investors assess the portfolio manager's contribution to the fund's investment success, but rather to shed light on the manager's alignment with investors' interests and on potential conflicts of interest. Concerns about the alignment of portfolio managers and their conflicts of interest are important to investors in index funds, as they are for fund investors generally. Conflicts of interest may arise, for example, in determining trading execution priorities when a portfolio manager for an index fund also manages an actively-managed fund that invests in some of the same securities as the index fund. In addition, it can be difficult to determine whether a fund tracks a designated index sufficiently closely to qualify for the exclusion. As a result, we are proposing to remove the exclusion of index funds from portfolio manager disclosure.

We request comment on the proposed removal of the exclusion for index funds from providing portfolio manager disclosure and specifically on the following issues:

• Should we remove the exclusion for index funds? Should portfolio managers of index funds be subject to all of the proposed disclosure requirements regarding portfolio managers or only some of the proposed requirements?

• Is the fund prospectus the appropriate location for the disclosure regarding the name, title, length of service, and business experience of a portfolio manager of index funds? Should this disclosure be provided in other locations, *e.g.*, SAI or Form N–CSR?

• Should we also remove the provision excluding money market funds from the requirement to identify and provide disclosure regarding their portfolio managers?

F. Disclosure of Availability of Information

In order to assist investors in finding the additional information about portfolio managers that would be required in the SAI under our proposals, we are proposing to require a fund to state in its prospectus that the SAI provides additional information about portfolio managers' compensation, other accounts managed by the portfolio managers, and the portfolio managers' ownership of securities in the fund and other accounts managed by the investment adviser or the portfolio managers.[54] This disclosure would be required to appear adjacent to the disclosure identifying the portfolio managers.

We are also proposing to require that the back cover page of a mutual fund's

[51] Instruction 1 to Item 5(a)(2) of Form N–1A.

[52] *See* Investment Company Act Release No. 17294 (Jan. 8, 1990) [55 FR 1460, 1467 (Jan. 16, 1990)] (proposing requirement in Form N–1A for portfolio manager disclosure).

[53] *See* Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050, 19052 (Apr. 15, 1993)] (adopting requirement in Form N–1A for portfolio manager disclosure).

[54] Proposed Item 5(a)(2) of Form N–1A; proposed Item 9.1.c of Form N–2; proposed Item 6(e) of Form N–3. With respect to managed separate accounts registered on Form N–3, registrants would also be required to disclose that the SAI provides additional information about portfolio managers' securities ownership in other accounts managed or sponsored by the sponsoring insurance company.

prospectus state whether the fund makes available its SAI and annual and semi-annual reports, free of charge, on or through its Web site at a specified Internet address.[55] If a mutual fund does not make its SAI and shareholder reports available in this manner, the fund would be required to disclose the reasons why it does not do so (including, where applicable, that the fund does not have an Internet Web site). We are also proposing amendments to Forms N–2 and N–3 that would require similar disclosure on the front cover page of the prospectus for closed-end funds and insurance company managed separate accounts that issue variable annuity contracts.[56] In addition, the proposed amendments to Forms N–2 and N–3 would require that the front cover page of the prospectus include a statement explaining how to obtain the fund's shareholder reports, and a toll-free (or collect) telephone number for investors to call to request the fund's SAI, annual and semi-annual reports, and other information, and to make shareholder inquiries. They would also change from optional to mandatory disclosure of the Commission's Internet Web site address. These requirements are similar to existing requirements of Form N–1A.[57]

These proposals are intended to encourage funds to provide greater access for investors to the SAI, including the additional disclosure regarding portfolio managers that we are proposing, and also to fund shareholder reports. Modernizing the disclosure system under the Federal securities laws involves recognizing the importance of the Internet in fostering prompt and more widespread dissemination of information.[58] We believe that mutual fund disclosure should be more readily available to investors in a variety of locations to facilitate investor access to that information. We also believe that it is important for funds to make investors aware of the different sources that provide access to information about a fund.

We request comment on the proposed requirements regarding availability of information.

[55] Proposed Item 1(b)(1) of Form N–1A.

[56] Proposed Item 1.1.d of Form N–2; proposed Item 1(a)(vi) of Form N–3.

[57] *See* Items 1(b)(1) and 1(b)(3) of Form N–1A.

[58] *See* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480 (Sept. 16, 2002)] (adopting requirement for an operating company to disclose in its annual report on Form 10–K whether it makes available free of charge on or through its Web site its annual reports on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and amendments).

G. Amendment of Form N–CSR

Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933,[59] we are proposing to require closed-end funds to provide disclosure regarding their portfolio managers in their annual reports on Form N–CSR.[60] This would include the basic information (name, title, length of service, and business experience), as well as the disclosure that we are proposing regarding other accounts managed by a portfolio manager, compensation structure, and ownership of securities.[61] A closed-end fund would be required to disclose any change in its portfolio managers, and to provide all of the required portfolio manager disclosure for any newly identified portfolio manager, in its semi-annual reports on Form N–CSR.[62]

The disclosure in Form N–CSR with respect to the name, title, length of service, and business experience of a portfolio manager would be required to be current as of the date of filing of the report, and the disclosure regarding other accounts managed, compensation structure, and securities ownership generally would be required to be current as of the end of the fund's most recently completed fiscal year.[63] In the case of a newly identified portfolio manager in an annual or semi-annual report, however, this disclosure would be required to be current as of the most recent practicable date.[64] This would result in basic information about a closed-end fund's portfolio manager in Form N–CSR that is current on the date of filing, and would make the date with respect to which other disclosure about a portfolio manager is provided consistent with the requirements for the SAI in Forms N–1A, N–2, and N–3.

We request comment on the proposed amendments to Form N–CSR regarding portfolio managers and specifically on the following issues:

[59] Pursuant to rule 8b–16(b) under the Investment Company Act [17 CFR 270.8b–16(b)], closed-end funds are not required to file amendments to their registration statements (including their SAIs) in order to comply with their Investment Company Act registration obligations, provided that they include specified information in their annual reports to shareholders.

[60] Proposed Item 8 of Form N–CSR.

[61] Proposed Item 8(a) of Form N–CSR.

[62] Proposed Item 8(b) of Form N–CSR.

[63] Proposed Instruction 1 to Item 8(a)(1), proposed Instruction 1 to Item 8(a)(2), proposed Instruction 1 to Item 8(a)(3), and proposed Instruction 1 to Item 8(a)(4) of Form N–CSR.

[64] Proposed Instruction 1 to Item 8(a)(1), proposed Instruction 1 to Item 8(a)(2), proposed Instruction 1 to Item 8(a)(3), proposed Instruction 1 to Item 8(a)(4), and proposed Item 8(b) of Form N–CSR.

- Is the proposal to require closed-end funds to provide disclosure regarding their portfolio managers in reports on Form N–CSR appropriate? Should a closed-end fund be required to disclose changes in its portfolio managers in its semi-annual reports on Form N–CSR? Should disclosure of changes in a closed-end fund's portfolio managers be required on a more frequent basis? If so, where?
- Should we require a closed-end fund to provide the basic information about a portfolio manager in its annual reports on Form N–CSR as of the date of filing of the report or some other date, *e.g.*, most recent practicable date or most recent fiscal year end? Should disclosure in the annual report regarding other accounts managed, compensation structure, and securities ownership be required as of the end of the fund's most recently completed fiscal year, or should this information be required as of another date, *e.g.*, most recent practicable date or most recent calendar year end? Should this disclosure with respect to any newly identified portfolio manager in an annual report on Form N–CSR be required as of the most recent practicable date, or as of another date, *e.g.*, most recent fiscal year end?
- Should a closed-end fund be required to provide all of the required portfolio manager disclosure for any newly identified portfolio manager in its semi-annual reports on Form N–CSR? Should the basic information about a portfolio manager in semi-annual reports on Form N–CSR be required as of the date of filing of the report, or some other date, *e.g.*, most recent practicable date or end of the most recent fiscal half-year? Should other disclosure regarding portfolio managers in semi-annual reports on Form N–CSR be required as of the most recent practicable date, or as of another date, *e.g.*, most recently completed fiscal half-year or most recent calendar year end? Should a closed-end fund be required to update semi-annually the information about each of its portfolio managers in its annual report on Form N–CSR?

H. Compliance Date

If we adopt the proposed disclosure requirements, we expect to require all new registration statements and annual reports on Form N–CSR, and all post-effective amendments that are annual updates to effective registration statements, filed on or after the effective date of the amendments to comply with the proposed amendments. We would also expect to require post-effective amendments that add a new series, filed on or after the effective date, to comply

with the proposals with respect to the new series. The Commission requests comment on these proposed compliance dates.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], and the Commission is submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies"; (2) "Form N–2 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Closed-End Management Investment Companies"; (3) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies"; and (4) "Form N–CSR—Certified Shareholder Report of Registered Management Investment Companies." 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.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)] and Section 5 of the Securities Act [15 U.S.C. 77e]. Form N–CSR (OMB Control No. 3235–0570) was adopted pursuant to Section 30 of the Investment Company Act [15 U.S.C. 80a–29] and Sections 13 and 15(d) of the Exchange Act [15 U.S.C. 78m and 78o(d)].

We are proposing amendments to Forms N–1A, N–2, and N–3 to require funds to provide improved disclosure regarding their portfolio managers in fund prospectuses and SAIs. The proposals also would amend Form N–CSR to require similar disclosure for closed-end funds in reports on Form N–CSR.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial registration statement on Form N–1A is 812.5 hours per portfolio, and the current annual hour burden for preparing post-effective amendments on Form N–1A is 104.5 hours per portfolio. The Commission estimates that, on an annual basis, registrants file initial registration statements on Form N–1A covering 483 portfolios, and file post-effective amendments on Form N–1A covering 6,542 portfolios. An additional burden of 35,218 hours is expected to result from the Commission's recent proposed rules relating to frequent purchases and redemptions of fund shares and selective disclosure of portfolio holdings, disclosure of sales load breakpoints, and disclosure of sales loads and revenue sharing in connection with proposed mutual fund confirmation requirements and point of sale disclosure.[65] Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–1A would be 1,111,298 hours.[66]

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 4 hours. Thus, the incremental hour burden resulting from the proposed amendments relating to portfolio manager disclosure would be 30,998 hours ((10 hours × 483 portfolios) + (4 hours × 6,542 portfolios). If the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A would be 1,142,296 hours (30,998 hours + 1,111,298 hours).

Form N–2

Form N–2, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial registration statement on Form N–2 is 548.2 hours per fund, and the current annual hour burden for preparing post-effective amendments on Form N–2 is 107.2 hours per fund. The Commission estimates that, on an annual basis, 234 closed-end funds file initial registration statements on Form N–2, and 38 closed-end funds file post-effective amendments on Form N–2. Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–2 is 132,352 hours.[67]

We estimate that the proposed amendments would increase the hour burden per filing of an initial registration statement on Form N–2 by 10 hours and would increase the hour burden per filing of a post-effective amendment to a registration statement on Form N–2 by 4 hours. Thus, the incremental hour burden resulting from the proposed amendments relating to portfolio manager disclosure would be 2,492 hours ((10 hours × 234 funds) + (4 hours × 38 funds)). If the proposed amendments to Form N–2 are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–2 would be 134,844 hours (2,492 hours + 132,352 hours).

Form N–3

Form N–3, including the proposed amendments, contains collection of information requirements. The likely

[65] *See* Investment Company Act Release No. 26287 (Dec. 11, 2003) [68 FR 70402 (Dec. 17, 2003)] (disclosure of frequent purchases and redemptions of fund shares and selective disclosure of portfolio holdings); Investment Company Act Release No. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)] (disclosure of sales load breakpoints); Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)] (disclosure of sales loads and revenue sharing).

[66] This estimate is based on the following calculation: (812.5 hours × 483 portfolios) + (104.5 hours × 6,542 portfolios) = 1,076,080 hours. Additional annual hour burdens of 30,998 hours resulting from the proposed rules relating to frequent purchases and redemptions and selective disclosure, 2,252 hours resulting from the proposed rules relating to sales load breakpoint disclosure, and 1,968 hours resulting from the proposed rules relating to disclosure of sales loads and revenue sharing in connection with the proposals for new mutual fund confirmation and point of sale disclosure, result in a total annual hour burden of 1,111,298 hours (1,076,080 hours + 30,998 hours + 2,252 hours + 1,968 hours).

[67] This estimate is based on the following calculation: (548.2 hours × 234 funds) + (107.2 hours × 38 funds) = 132,352 hours.

respondents to this information collection are separate accounts, organized as management investment companies offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current total annual hour burden for preparing registration statements on Form N–3 is 33,934 hours. An additional burden of 728 hours is expected to result from the Commission's recent proposed rules relating to frequent purchases and redemptions of fund shares and selective disclosure of portfolio holdings.[68] Thus, we estimate that the current total annual hour burden for the preparation and filing of Form N–3 is 34,662 hours (33,934 hours + 728 hours).

The Commission estimates that, on an annual basis, initial registration statements covering 3 portfolios are filed on Form N–3 and post-effective amendments covering 35 portfolios are filed on Form N–3. We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement on Form N–3 by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement on Form N–3 by 4 hours. Thus, the incremental hour burden resulting from the proposed amendments relating to portfolio manager disclosure would be 170 hours ((10 hours × 3 portfolios) + (4 hours × 35 portfolios). If the proposed amendments to Form N–3 are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–3 would be 34,832 hours (170 hours + 34,662 hours).

Form N–CSR

Form N–CSR, including the amendments, contains collection of information requirements. The respondents to this information collection would be closed-end funds subject to rule 30e–1 under the Investment Company Act registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–CSR is mandatory. Responses to the disclosure requirements are not confidential.

The current total annual hour burden for preparing reports on Form N–CSR is 142,498 hours. A net increase of 121 hours is expected to result from the Commission's final rule relating to disclosure regarding nominating committee functions and communications between security holders and boards of directors.[69] Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–CSR would be 142,619 hours.

We estimate that 733 closed-end funds registered on Form N–2 file reports on Form N–CSR.[70] We estimate that the hour burden associated with the requirements of this proposal would increase the burden of filing Form N–CSR for closed-end funds by 4 hours per annual report on Form N–CSR, and by 2 hours per semi-annual report on Form N–CSR. Thus, the incremental hour burden resulting from the proposed amendments relating to portfolio manager disclosure would be 4,398 hours ((4 hours × 733 closed-end funds) + (2 hours × 733 closed-end funds)). If the proposed amendments to Form N–CSR are adopted, the total annual hour burden for all funds for preparation and filing of reports on Form N–CSR would be 147,017 hours (4,398 hours + 142,619 hours).

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) 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; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–12–04. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–12–04, and be submitted to the Securities and Exchange Commission, Office of Filing and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0609. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposals would require mutual funds to provide enhanced disclosure about their portfolio managers. Specifically, the proposals would:

- Require a fund to identify in its prospectus each member of a committee, team, or other group of persons that is jointly and primarily responsible for the day-to-day management of the fund's portfolio;
- Require a fund to provide information in its SAI regarding other accounts managed by any of its portfolio managers, including a description of conflicts of interest that may arise in connection with simultaneously managing the fund and the other accounts;
- Require a fund to disclose in its SAI the structure of, and the method used to determine, the compensation of each portfolio manager;
- Require a fund to disclose in its SAI each portfolio manager's ownership of securities in the fund and other accounts, including investment companies, managed by the portfolio manager, the fund's investment adviser, or any person controlling, controlled by, or under common control with an investment adviser or principal underwriter of the fund; and
- Require a closed-end fund to provide parallel disclosure regarding its portfolio managers in its reports on Form N–CSR.

These proposed amendments are intended to provide greater

[68] *See* Investment Company Act Release No. 26287 (Dec. 11, 2003) [68 FR 70402 (Dec. 17, 2003)] (disclosure of frequent purchases and redemptions of fund shares and selective disclosure of portfolio holdings).

[69] *See* Investment Company Act Release No. 26262 (Nov. 24, 2003) [68 FR 66992 (Nov. 28, 2003)] (disclosure regarding nominating committee functions and communications between security holders and boards of directors).

[70] The estimate of the number of closed-end funds registered on Form N–2 is based on the Commission staff's analysis of reports filed on Form N–SAR in 2003.

transparency regarding portfolio managers, their incentives in managing a fund, and the potential conflicts of interest that may arise when they or the adviser that employs them also manages other investment vehicles.

A. Benefits

The enhanced disclosure regarding portfolio managers that would be required under our proposals would benefit investors in several ways. First, enhanced disclosure regarding portfolio managers who are members of management teams would help investors better evaluate the identity, background, and experience of fund management in cases where the fund is managed using a team approach. Second, requiring a fund to provide disclosure regarding other accounts for which its portfolio managers are primarily responsible for day-to-day portfolio management would enable investors to assess the conflicts of interest to which a portfolio manager may be subject as a result of managing the fund and other portfolios, such as hedge funds. Third, requiring a fund to provide disclosure regarding the structure of, and method used to determine, the compensation of its portfolio managers will help investors better understand a portfolio manager's incentives in running a fund, and would also shed light on possible conflicts of interest that may arise when a portfolio manager manages other accounts. Fourth, requiring a fund to disclose the ownership of securities of each of its portfolio managers in the fund and in other accounts, including investment companies, managed by the fund's investment adviser or the portfolio manager should help investors to assess the extent to which the portfolio manager's interests are aligned with theirs, as well as the level of confidence that a manager has in the investment strategy of the fund. In addition, we believe that requiring this disclosure would assist fund investors in assessing potential conflicts of interest between their interests, and the interests of other clients or investment vehicles in which the manager has an interest. Finally, requiring a fund to state in its prospectus that the SAI provides additional information about portfolio managers, and whether the SAI is available on or through the fund's Web site, would assist investors in accessing the additional information about portfolio managers that would be required in the SAI under our proposals.

We seek comment on the benefits of the proposed amendments (and any alternatives suggested by commenters) as well as any data quantifying those benefits.

B. Costs

The proposals would impose new requirements on funds to provide enhanced disclosure regarding their portfolio managers. We estimate that complying with these proposed new disclosure requirements would entail a relatively small financial burden. The information that would be required regarding a fund's portfolio managers should be readily available to a fund's investment adviser. We note that our recently proposed code of ethics rules for investment advisers would require portfolio managers to report to the investment adviser information on their securities holdings and transactions on a quarterly basis, including information about shares of investment companies managed by the adviser and certain of its affiliates.[71] Therefore, we expect that the cost of compiling and reporting this information should be limited.

These costs may include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure). For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would add 38,058 hours to the burden of completing Forms N–1A, N–2, N–3 and N–CSR.[72] We estimate that this additional burden would equal total internal costs of $2,986,792 annually, or approximately $786 per fund.[73]

We expect that the external costs of providing the additional disclosure relating to a fund's portfolio managers, including other accounts they manage, compensation structure, and ownership of securities in investment companies or accounts they manage, would be minimal, because this disclosure would be required in a fund's SAI (and in the case of a closed-end fund, on Form N–CSR also). The SAI is typically not typeset, and is only required to be provided to shareholders upon request. Similarly, because the disclosure in Form N–CSR proposed for closed-end funds would not be required to be delivered to shareholders, we estimate that the external costs of this disclosure on Form N–CSR will be minimal as well.

We request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition.[74] Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[75]

The proposed amendments are intended to provide greater transparency for fund shareholders regarding the identity, incentives, and

[71] *See* Investment Company Act Release No. 26337 (Jan. 20, 2004) [66 FR 4040 (Jan. 27, 2004)] (proposing rule 204A–1(b)(1) under the Investment Advisers Act of 1940).

[72] This represents 30,998 additional hours for Form N–1A, 2,492 additional hours for Form N–2, 170 additional hours for Form N–3, and 4,398 additional hours for Form N–CSR.

[73] These internal cost estimates are based on a Commission estimate that approximately 3,800 funds would be subject to the proposed amendments and an estimated hourly wage rate of $78.48. This estimated wage rate is a blended rate, based on published hourly wage rates for compliance attorneys ($74.22) and programmers ($42.05) in New York City, and the estimate that professional and non-professional staff will divide time equally on compliance with the disclosure requirements, yielding a weighted wage rate of $58.135 [($74.22 × .50) + ($42.05 × .50)] = $58.135). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001) (for most current rate for compliance attorneys in New York City); Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2002* (Sep. 2002) (for most current rate for programmers in New York City). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $78.48 ($58.135 × 1.35 = $78.48).

[74] 15 U.S.C. 78w(a)(2).

[75] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

potential conflicts of interest of a fund's portfolio managers. These changes may improve efficiency. The enhanced disclosure requirements may enable shareholders to make a more informed assessment as to whether the interests of fund management are aligned with shareholders, which could promote more efficient allocation of investments by investors. These proposals may also improve competition, as enhanced transparency regarding a fund's portfolio managers may encourage investors to consider more carefully the background, incentives, and potential conflicts of interest of the portfolio managers of the funds in which they are invested, or in which they are considering investing. Finally, the proposed amendments will have no effect on capital formation.

Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency and competition, and the extent to which they would be offset by the costs of the proposals, are difficult to quantify. We note that most funds are currently required to provide disclosure in their prospectuses regarding the identity and background of their portfolio managers.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. We also request comment on any anti-competitive effects of the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 603. It relates to the Commission's proposed amendments to Forms N–1A, N–2, and N–3 under the Securities Act and the Investment Company Act, and to Form N–CSR under the Investment Company Act and the Exchange Act, that would require funds to provide improved disclosure about their portfolio managers.

A. Reasons for, and Objectives of, Proposed Amendments

Sections I and II of this Release describe the reasons for and objectives of the proposed form amendments. As we discuss in detail above, these proposals are designed to increase the transparency of the information that a fund provides regarding its portfolio managers, in order to better help investors evaluate their background, incentives in managing the fund, and potential conflicts of interest.

B. Legal Basis

The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)], and Sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37]. The Commission is adopting amendments to Form N–CSR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37].

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[76] Approximately 145 mutual funds registered on Form N–1A and approximately 70 closed-end funds registered on Form N–2 meet this definition.[77] We estimate that few, if any, registered separate accounts registered on Form N–3 are small entities.[78]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require a fund to identify and provide basic information in its prospectus regarding each member of a team responsible for managing the fund's portfolio. In addition, a fund would be required to provide additional disclosure in its SAI about its portfolio managers, including other accounts they manage, compensation structure, and ownership of securities in accounts they manage. A closed-end fund would also be required to provide this disclosure in its reports on Form N–CSR.

The Commission estimates some one-time formatting and ongoing costs and burdens that would be imposed on all funds, including funds that are small entities. We note, however, that in many cases mutual funds and closed-end funds currently provide disclosure in their prospectuses about their portfolio managers, including their names, titles, length of service, and business experience. For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would increase the hour burden of filings on Forms N–1A, N–2, N–3, and N–CSR by 38,058 hours annually. We estimate that this additional burden would increase total internal costs per fund, including funds that are small entities, by approximately $786 per fund annually.[79]

We expect that the external costs of providing the additional disclosure relating to a fund's portfolio managers, including other accounts they manage, compensation structure, and ownership of securities in accounts they manage, would be minimal, because this disclosure would be required in a fund's SAI (and in the case of a closed-end fund, on Form N–CSR also). The SAI is typically not typeset, and is only required to be provided to shareholders upon request. Similarly, because the disclosure in Form N–CSR proposed for closed-end funds would not be required to be delivered to shareholders, we estimate that the external costs of this disclosure on Form N–CSR will be minimal as well.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the

[76] 17 CFR 270.0–10.

[77] This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc., and Lipper.

[78] This estimate is based on figures compiled by Division of Investment Management staff regarding separate accounts registered on Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0–10(b) under the Investment Company Act [17 CFR 270.0–10(b)].

[79] These figures are based on an estimated hourly wage rate of $78.48. *See supra* note 73.

proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed amendments would provide investors with greater transparency of information regarding fund portfolio managers, including their compensation structure, other accounts that they manage, and their ownership of securities in the fund and in other accounts managed by the fund's investment adviser or the portfolio manager. This increased transparency would allow investors to better assess portfolio managers' incentives, alignment with shareholders' interests, and potential conflicts of interest. Different disclosure requirements for funds that are small entities may create the risk that investors in these funds would be less able to evaluate the portfolio management of these funds, and less able to make informed choices among funds. We believe it is important for the disclosure that would be required by the proposed amendments to be provided to investors in all funds, not just funds that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Based on our past experience, we believe that the proposed disclosure would be more useful to investors if there were enumerated informational requirements.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this Analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–12–04; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[80]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Enforcement Fairness Act of 1996,[81] a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37]. The Commission is proposing amendments to Form N–CSR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

§ 270.30a–2 [Amended]

4. Section 270.30a–2 is amended by:

a. Revising the reference "Item 11(a)(2)" in paragraph (a) to read "Item 12(a)(2)"; and

b. Revising the reference "Item 11(b)" in paragraph (b) to read "Item 12(b)".

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

[80] We do not edit personal identifying information, such as names or electronic mail addresses, from hard copy or electronic submissions. You should submit only information that you wish to make available publicly.

[81] Pub. L. No. 104–21, Title II, 110 Stat. 857 (1996).

Note: The text of Forms N–1A, N–2, N–3, and N–CSR do not, and these amendments will not, appear in the Code of Federal Regulations.

6. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising Item 1(b)(1) and Instruction 1 to Item 1(b)(1);

b. Revising Item 5(a)(2) and Instructions 1 and 2 to Item 5(a)(2) and deleting Instructions 3 and 4 to Item 5(a)(2);

c. Redesignating Items 15 through 29 as Items 16 through 30;

d. Adding new Item 15;

e. In paragraph B.2(b) of the General Instructions, revising the phrase "(except Items 1, 2, 3, and 8), B, and C (except Items 22(e) and (i)–(k))" to read "(except Items 1, 2, 3, and 8), B, and C (except Items 23(e) and (i)–(k))";

f. In Item 2(c)(2)(iii), revising the phrase "Instruction 5 to Item 21(b)(7)" to read "Instruction 5 to Item 22(b)(7)";

g. In Instruction 2(a) to Item 2(c)(2), revising the references "Item 20(a)", Item 20(b)(1)", and "Items 20(b)(2) and (3)" to read "Item 21(a)", Item 21(b)(1)", and "Items 21(b)(2) and (3)", respectively;

h. In Instruction 2(b) to Item 2(c)(2), revising the phrase "Instruction 6 to Item 21(b)(7)" to read "Instruction 6 to Item 22(b)(7)";

i. In Instruction 2(d) to Item 2(c)(2), revising the references "Item 20(b)(2)" and "Item 20" to read "Item 21(b)(2)" and "Item 21", respectively;

j. In Instruction 4 to Item 2(c)(2), revising the phrase "Instruction 11 to Item 21(b)(7)" to read "Instruction 11 to Item 22(b)(7)";

k. In Instruction to paragraph (a) of newly redesignated Item 18, revising the reference "Item 17(a)" to read "Item 18(a)";

l. In Instruction 4 to paragraph (c) of newly redesignated Item 18 and paragraph (k) of newly redesignated Item 23, revising the reference "Item 21" to read "Item 22";

m. In Instruction 1 to paragraph (c) of newly redesignated Item 20, revising the reference "Item 29" to read "Item 30";

n. In paragraph (b) of newly redesignated Item 27, revising the reference "Item 19" to read "Item 20";

o. In Instruction 2 to paragraph (c) of newly redesignated Item 27, revising the reference "Item 19(c)" to read "Item 20(c)";

p. In paragraph (b)(7)(ii)(B) of newly redesignated Item 22, revising the reference "Item 20(b)(1)" to read "Item 21(b)(1)";

q. In Instruction to paragraph (c)(1)(ii) of newly redesignated Item 22, revising the references "Item 21(b)(1)" and "Item 21(c)(1)" to read "Item 22(b)(1)" and "Item 22(c)(1)", respectively; and

r. In Instruction 2(a)(ii) to paragraph (d)(1) of newly redesignated Item 22, revising the reference "Item 21(d)(1)" to read "Item 22(d)(1)".

The additions and revisions are to read as follows:

Form N–1A

* * * * *

Item 1. Front and Back Cover Pages

* * * * *

(b) *Back Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Fund, and a statement to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In the Fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year.

Explain that the SAI and the Fund's annual and semi-annual reports are available, without charge, upon request, and explain how shareholders in the Fund may make inquiries to the Fund. Provide a toll-free (or collect) telephone number for investors to call: To request the SAI; to request the Fund's annual report; to request the Fund's semi-annual report; to request other information about the Fund; and to make shareholder inquiries. Also, state whether the Fund makes available its SAI and annual and semi-annual reports, free of charge, on or through the Fund's Web site at a specified Internet address. If the Fund does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an Internet Web site).

Instructions:

1. A Fund may indicate, if applicable, that the SAI, annual and semi-annual reports, and other information are available by E-mail request.

* * * * *

Item 5. Management, Organization, and Capital Structure

(a) * * *

(2) *Portfolio Manager.* State the name, title, and length of service of the person or persons employed by or associated with the Fund or an investment adviser of the Fund, if any, who are primarily responsible for the day-to-day management of the Fund's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund and other accounts managed by the Fund's investment adviser(s) or the Portfolio Manager(s).

Instructions:

1. This requirement does not apply to a Money Market Fund.

2. If a committee, team, or other group of persons associated with an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (*e.g.*, lead member).

* * * * *

Item 15. Portfolio Managers

(a) *Other Accounts Managed.* If a Portfolio Manager identified in response to Item 5(a)(2) is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

(1) The Portfolio Manager's name;

(2) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(A) Registered investment companies;

(B) Other investment companies;

(C) Other pooled investment vehicles; and

(D) Other accounts.

(3) For each of the categories in paragraph (a)(2) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

(4) A description of any conflicts of interest that may arise in connection with the Portfolio Manager's management of the Fund's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(2) of this Item, on the other. This description would include, for example, conflicts between the investment strategy of the Fund and the investment strategy of other accounts managed by the Portfolio Manager and conflicts in allocation of investment

opportunities between the Fund and other accounts managed by the Portfolio Manager. Include a description of the policies and procedures used by the Fund or the Fund's adviser to address any such conflicts.

Instructions:

1. Information should be provided as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, the account should be included in responding to paragraph (a) of this Item.

3. A Fund may satisfy the requirement to provide a description of the policies and procedures used by it or the adviser to address conflicts of interest by including a copy of the policies and procedures themselves.

(b) *Compensation.* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager identified in response to Item 5(a)(2). For each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), include a description of the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether compensation is based on Fund pre- or after-tax performance over a certain time period, and whether compensation is based on the value of assets held in the Fund's portfolio.

Instructions:

1. Information should be provided as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Fund, the Fund's investment adviser, or any other source with respect to management of the Fund and any other accounts included in the response to paragraph (a)(2) of this Item. This description should clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Fund and other accounts, *e.g.*, if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Fund, this should be disclosed.

(c) *Ownership of Securities.* For each Portfolio Manager identified in response to Item 5(a)(2), furnish the information required by the following table as to each class of securities owned beneficially or of record by the Portfolio Manager or his immediate family members in:

(i) The Fund;

(ii) Accounts included in the response to paragraph (a)(2) of this Item; and

(iii) Any other account, including an investment company, managed by an investment adviser of the Fund, or by any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

(1)	(2)	(3)	(4)
Name of Portfolio Manager	Investment Company or Account	Title of Class	Dollar Range of Securities in the Investment Company or Account

Instructions:

(1) Information should be provided as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

(2) An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.13.d–3 or 240.16a–1(a)(2)).

(3) Provide the information required by the table on an aggregate basis for each Portfolio Manager and his immediate family members.

(4) For purposes of this Item, the term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(5) In disclosing the dollar range of securities owned by a Portfolio Manager and his immediate family members in column (4), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, $100,001-$500,000, $500,001-$1,000,000, or over $1,000,000.

* * * * *

7. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. Revising Item 1.1.d;

b. Revising Item 9.1.c and the Instructions to Item 9.1.c;

c. Redesignating Items 21 through 33 as Items 22 through 34;

d. Adding new Item 21;

e. In paragraph E.3 of the General Instructions, revising the reference "Item 33.4" to read "Item 34.4";

f. In paragraph F of the General Instructions, revising the reference "Items 4.1 or 23" to read "Items 4.1 or 24";

g. In paragraph F of the General Instructions, revising the reference "Items 4.2, 8.6.c or 23" to read "Items 4.2, 8.6.c or 24";

h. In paragraph F of the General Instructions, revising the reference "Items 4.1, 4.2, 8.6.c or 23" to read "Items 4.1, 4.2, 8.6.c or 24";

i. In paragraph F of the General Instructions, revising the reference "Item 24.1" to read "Item 25.1";

j. In paragraph G.3 of the General Instructions, revising the reference "Items 24.2.h, 24.2.l, 24.2.n, and 24.2.o" to read "Items 25.2.h, 25.2.l, 25.2.n, and 25.2.o";

k. In the first paragraph of General Instructions for Part B: Statement of Additional Information, revising the reference "Item 33.6" to read "Item 34.6";

l. In Instruction 6 to Item 1.1.g, revising the reference "Item 26" to read "Item 27";

m. In Instruction 3 to Item 8.6.c, revising the reference "Item 23" to read "Item 24";

n. In Instruction 2 to Item 10.6, revising the reference "Item 24.2.n" to read "Item 25.2n";

o. In newly redesignated Item 24.1.b, revising the reference "Item 23" to read "Item 24";

p. In newly redesignated Item 25.2.o, revising the reference "Items 8.6 or 23" to read "Items 8.6 or 24"; and

q. In Instruction 2 to newly redesignated Item 25, revising the reference "Items 8.6 or 23" to read "Items 8.6 or 24".

The additions and revisions are to read as follows:

Form N–2

* * * * *

Item 1. Outside Front Cover

1. * * *

d. A statement that (A) the prospectus sets forth concisely the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be retained for future reference; and (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge (This statement should explain how to obtain the SAI, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the SAI appears in the prospectus. This statement should also explain how to obtain the Registrant's annual and semi-annual reports to shareholders. Provide a toll-free (or collect) telephone number for investors to call: To request the SAI; to request the Registrant's annual report; to request the Registrant's semi-annual report; to request other information about the Registrant; and to make shareholder inquiries. Also state whether the Registrant makes available its SAI and annual and semi-annual reports, free of charge, on or through the Registrant's Web site at a specified Internet address. If the Registrant does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Registrant does not have an Internet Web site.) Also include the information that the Commission maintains an Internet Web site (http://www.sec.gov) that contains the SAI, material incorporated by reference, and other information regarding registrants.);

* * * * *

Item 9. Management

1. * * *

c. *Portfolio Management:* The name, title, and length of service of the person or persons employed by or associated with the Registrant or an investment adviser of the Registrant, if any, who are primarily responsible for the day-to-day management of the Registrant's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Registrant and other accounts managed by the Registrant's investment adviser(s) or the Portfolio Manager(s).

Instruction:

If a committee, team, or other group of persons associated with an investment adviser of the Registrant is jointly and primarily responsible for the day-to-day management of the Registrant's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (*e.g.*, lead member).

* * * * *

Item 21. Portfolio Managers

1. *Other Accounts Managed:* If a Portfolio Manager identified in response to Item 9.1.c is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

a. The Portfolio Manager's name;

b. The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(1) Registered investment companies;

(2) Other investment companies;

(3) Other pooled investment vehicles; and

(4) Other accounts.

c. For each of the categories in Item 21.1.b., the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

d. A description of any conflicts of interest that may arise in connection with the Portfolio Manager's management of the Registrant's investments, on the one hand, and the investments of the other accounts included in response to Item 21.1b., on the other. This description would include, for example, conflicts between the investment strategy of the Registrant and the investment strategy of other accounts managed by the Portfolio Manager and conflicts in allocation of investment opportunities between the Registrant and other accounts managed by the Portfolio Manager. Include a description of the policies and procedures used by the Registrant or the Registrant's adviser to address any such conflicts.

Instructions:

1. Information should be provided as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, the account should be included in responding to Item 21.1.

3. A Registrant may satisfy the requirement to provide a description of the policies and procedures used by it or the adviser to address conflicts of interest by including a copy of the policies and procedures themselves.

2. *Compensation:* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager identified in response to Item 9.1.c. For each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), include a description of the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether compensation is based on the Registrant's pre- or after-tax performance over a certain time period, and whether compensation is based on the value of assets held in the Registrant's portfolio.

Instructions:

1. Information should be provided as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or

non-cash. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Registrant, the Registrant's investment adviser, or any other source with respect to management of the Registrant and any other accounts included in the response to Item 21.1.b. This description should clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Registrant and other accounts, *e.g.*, if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Registrant, this should be disclosed.

3. *Ownership of Securities:* For each Portfolio Manager identified in response to Item 9.1.c, furnish the information required by the following table as to each class of securities owned beneficially or of record by the Portfolio Manager or his immediate family members in:

a. The Registrant;

b. Accounts included in the response to Item 21.1.b.;

c. Any other account, including an investment company, managed by an investment adviser of the Registrant, or by any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant:

(1)	(2)	(3)	(4)
Name of Portfolio Manager	Investment Company or Account	Title of Class	Dollar Range of Securities in the Investment Company or Account

Instructions:

1. Information should be provided as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.13.d–3 or 240.16a–1(a)(2)).

3. Provide the information required by the table on an aggregate basis for each Portfolio Manager and his immediate family members.

4. For purposes of this Item, the term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

5. In disclosing the dollar range of securities owned by a Portfolio Manager and his immediate family members in column (4), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, $100,001–$500,000, $500,001–$1,000,000, or over $1,000,000.

* * * * *

8. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Revising Item 1(a)(vi);

b. Adding new Item 6(e);

c. Redesignating Items 22 through 37 as Items 23 through 38;

d. Adding new Item 22;

e. In paragraph G of the General Instructions, revising the reference "Items 4(a) or 27" to read "Items 4(a) or 28";

f. In paragraph G(2) of the General Instructions, revising the reference "Item 28(a)" to read "Items 29(a)";

g. In paragraph H(3) of the General Instructions, revising the reference "Item 28(b)(5), (12), (13), and (14)" to read "Items 29(b)(5), (12), (13), and (14)";

h. In Instruction 3(d) of Item 4(b), revising the reference "Item 27" to read "Item 28";

i. In Instruction 2 of Item 9, revising the reference "Item 26" to read "Item 27";

j. In newly redesignated Item 29(b)(14), revising the reference "Item 27" to read "Item 28"; and

k. In Instruction 2 of newly redesignated Item 29, revising the reference "Item 27" to read "Item 28".

The additions and revisions are to read as follows:

Form N–3

* * * * *

Item 1. Cover Page

(a) * * *

(vi) a statement or statements that (A) the prospectus sets forth information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be retained for future reference; and (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge (This statement should explain how to obtain the Statement of Additional Information ("SAI"), whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the SAI appears in the prospectus. This statement should also explain how to obtain the Registrant's annual and semi-annual reports to shareholders. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI; to request the Registrant's annual report; to request the Registrant's semi-annual report; to request other information about the Registrant; and to make shareholder inquiries. Also state whether the Registrant makes available its SAI and annual and semi-annual reports, free of charge, on or through the Registrant's Web site at a specified Internet address. If the Registrant does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Registrant does not have an Internet Web site.) Also include the information that the Commission maintains an Internet Web site *(http://www.sec.gov)* that contains the SAI, material incorporated by reference, and other information regarding registrants.);

* * * * *

Item 6. Management

* * * * *

(e) the name, title, and length of service of the person or persons employed by or associated with the Registrant or an investment adviser of the Registrant, if any, who are primarily responsible for the day-to-day management of the Registrant's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Registrant and other accounts

managed or sponsored by the Insurance Company, the Registrant's investment adviser(s), or the Portfolio Manager(s).

Instructions:

1. This requirement does not apply to a Registrant that holds itself out as a money market fund and meets the maturity, quality, and diversification requirements of rule 2a–7 [17 CFR 270.2a–7].

2. If a committee, team, or other group of persons associated with an investment adviser of the Registrant is jointly and primarily responsible for the day-to-day management of the Registrant's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (*e.g.*, lead member).

* * * * *

Item 22. Portfolio Managers

(a) If a Portfolio Manager identified in response to Item 6(e) is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

(i) The Portfolio Manager's name;

(ii) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(A) Registered investment companies;

(B) Other investment companies;

(C) Other pooled investment vehicles; and

(D) Other accounts.

(iii) For each of the categories in paragraph (a)(ii) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

(iv) A description of any conflicts of interest that may arise in connection with the Portfolio Manager's management of the Registrant's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(ii) of this Item, on the other. This description would include, for example, conflicts between the investment strategy of the Registrant and the investment strategy of other accounts managed by the Portfolio Manager and conflicts in allocation of investment opportunities between the Registrant and other accounts managed by the Portfolio Manager. Include a description of the policies and procedures used by the Registrant or the Registrant's adviser to address any such conflicts.

Instructions:

1. Information should be provided as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, the account should be included in responding to paragraph (a) of this Item.

3. A Registrant may satisfy the requirement to provide a description of the policies and procedures used by it or the adviser to address conflicts of interest by including a copy of the policies and procedures themselves.

(b) Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager identified in response to Item 6(e). For each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), include a description of the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether compensation is based on the Registrant's pre- or after-tax performance over a certain time period, and whether compensation is based on the value of assets held in the Registrant's portfolio.

Instructions:

1. Information should be provided as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Registrant, the Registrant's investment adviser, or any other source with respect to management of the Registrant and any other accounts included in the response to paragraph (a)(ii) of this Item. This description should clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Registrant and other accounts, *e.g.*, if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Registrant, this should be disclosed.

(c) For each Portfolio Manager identified in response to Item 6(e), furnish the information required by the following table as to each class of securities owned beneficially or of record by the Portfolio Manager or his immediate family members in:

(i) The Registrant;

(ii) Accounts included in the response to paragraph (a)(ii) of this Item; and

(iii) Any other account, including an investment company, managed or sponsored by the Insurance Company or an investment adviser of the Registrant, or by any person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant:

(1)	(2)	(3)	(4)
Name of Portfolio Manager	Investment Company or Account	Title of Class	Dollar Range of Securities in the Investment Company or Account

Instructions:

1. Information should be provided as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager should be provided as of the most recent

practicable date. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.13.d–3 or 240.16a–1(a)(2)).

3. Provide the information required by the table on an aggregate basis for each Portfolio Manager and his immediate family members.

4. For purposes of this Item, the term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

5. In disclosing the dollar range of securities owned by a Portfolio Manager and his immediate family members in column (4), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, $100,001–$500,000, $500,001–$1,000,000, or over $1,000,000.

* * * * *

9. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. Revising the reference "11(a)(1)" in General Instruction D and paragraphs (c) and (f)(1) of Item 2 to read "12(a)(1)";

b. Redesignating Items 8 through 11 as Items 9 through 12; and

c. Adding new Item 8.

The additions and revisions are to read as follows:

Form N–CSR

* * * * *

Item 8. Portfolio Managers of Closed-End Management Investment Companies.

(a) If the registrant is a closed-end management investment company that is filing an annual report on this Form N–CSR, provide the following information:

(1) State the name, title, and length of service of the person or persons employed by or associated with the registrant or an investment adviser of the registrant, if any, who are primarily responsible for the day-to-day management of the registrant's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years.

Instructions to paragraph (a)(1):

1. Information should be provided as of the date of filing of the report. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons associated with an investment adviser of the registrant is jointly and primarily responsible for the day-to-day management of the registrant's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (*e.g.*, lead member).

(2) If a Portfolio Manager identified in response to paragraph (a)(1) of this Item is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

(i) The Portfolio Manager's name;

(ii) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(A) Registered investment companies;

(B) Other investment companies;

(C) Other pooled investment vehicles; and

(D) Other accounts.

(iii)For each of the categories in paragraph (a)(2)(ii) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

(iv) A description of any conflicts of interest that may arise in connection with the Portfolio Manager's management of the registrant's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(2)(ii) of this Item, on the other. This description would include, for example, conflicts between the investment strategy of the registrant and the investment strategy of other accounts managed by the Portfolio Manager and conflicts in allocation of investment opportunities between the registrant and other accounts managed by the Portfolio Manager. Include a description of the policies and procedures used by the registrant or the registrant's adviser to address any such conflicts.

Instructions to paragraph (a)(2):

1. Information should be provided as of the end of the registrant's most recently completed fiscal year, except that, in the case of any newly identified Portfolio Manager, information should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, the account should be included in responding to paragraph (a)(2) of this Item.

3. A registrant may satisfy the requirement to provide a description of the policies and procedures used by it or the adviser to address conflicts of interest by including a copy of the policies and procedures themselves.

(3) Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager identified in response to paragraph (a)(1) of this Item. For each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), include a description of the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether compensation is based on the registrant's pre- or after-tax performance over a certain time period, and whether compensation is based on the value of assets held in the registrant's portfolio.

Instructions to paragraph (a)(3):

1. Information should be provided as of the end of the registrant's most recently completed fiscal year, except that, in the case of any newly identified Portfolio Manager, information should be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the registrant, the registrant's investment adviser, or any other source with respect to management of the registrant and any other accounts included in the response to paragraph (a)(2)(ii) of this Item. This description should clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the registrant and other accounts, *e.g.*, if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the registrant, this should be disclosed.

(4) For each Portfolio Manager identified in response to paragraph (a)(1) of this Item, furnish the information required by the following table as to each class of securities owned beneficially or of record by the Portfolio Manager or his immediate family members in:

(i) The registrant;

(ii) Accounts included in the response to paragraph (a)(2)(ii) of this Item;

(iii) Any other account, including an investment company, managed by an investment adviser of the registrant, or by any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the registrant:

(1)	(2)	(3)	(4)
Name of Portfolio Manager	Investment Company or Account	Title of Class	Dollar Range of Securities in the Investment Company or Account

Instructions to paragraph (a)(4):

1. Information should be provided as of the end of the registrant's most recently completed fiscal year, except that, in the case of any newly identified Portfolio Manager, information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.13.d–3 or 240.16a–1(a)(2)).

3. Provide the information required by the table on an aggregate basis for each Portfolio Manager and his immediate family members.

4. For purposes of this Item, the term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

5. In disclosing the dollar range of securities owned by a Portfolio Manager and his immediate family members in column (4), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, $100,001–$500,000, $500,001–$1,000,000, or over $1,000,000.

(b) If the registrant is a closed-end management investment company that is filing a report on this Form N–CSR other than an annual report, disclose any change, as of the date of filing, in any of the Portfolio Managers identified in response to paragraph (a)(1) of this Item in the registrant's most recent annual report on Form N–CSR. In addition, for any newly identified Portfolio Manager, provide the information required by paragraph (a)(1) of this Item as of the date of filing of the report and the information required by paragraphs (a)(2), (a)(3), and (a)(4) of this Item as of the most recent practicable date.

* * * * *

Dated: March 11, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5951 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
March 17, 2004

Part IV

Environmental Protection Agency

Pesticides; Fees and Decision Times for Registration Applications; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0060; FRL–7348–2]

Pesticides; Fees and Decision Times for Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a list of pesticide registration service fees and decision times applicable to specified pesticide applications and tolerance actions. This notice further provides initial guidance on submission of the required fees. The registration service fees will be used to supplement funding for expeditious review of the specified applications and their associated tolerance actions. This fee schedule becomes effective on March 23, 2004, for all covered applications received on or after that date, and for certain pending applications received before that date. Applications not covered by the fee schedule are not subject to the fee requirement or the decision review times. The publication of this fee schedule is required by section 33(b)(3) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended by the Consolidated Appropriations Act of 2004.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5944; fax number: (703) 305–5884; e-mail address: *frane.jean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you register pesticide products, or engage in animal or crop production, food processing, or public health activities that use pesticides. Potentially affected entities include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food processing (NAICS 3110)
- Pesticide manufacturers (NAICS 32532)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0060. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

II. Background

The Consolidated Appropriations Act of 2004, signed by President Bush on January 23, 2004, established a new section 33 of FIFRA, which establishes a registration service fee system for applications for specified pesticide registration, amended registration, and associated tolerance actions. Under that system, fees will be charged for covered applications received on or after March 23, 2004, and for certain pending applications received before that date. EPA is required to make a determination on the application within the decision times specified. The fee system is authorized until September 30, 2010, although the decision times under the system do not apply to applications received after September 30, 2008.

Under new section 33(b)(3) of FIFRA, EPA is required to publish a schedule of the fees and decision times for review of a covered application, which schedule is to be the same as that published in the Congressional Record of September 17, 2003, pages 11631 through 11633. Today's notice publishes that schedule, reformatted for clarity and understanding.

The fee schedules in this notice establish fees and decision times for 5 years; however, under section 33(b)(6) of FIFRA, the fee amounts will be increased as of October 1, 2005 by 5%. Furthermore, in FY 2009, the fees will be reduced by 40% and in FY 2010, the fees will be reduced by 70%. EPA will issue appropriate notices in the **Federal Register** publishing revised schedules.

III. Transition Provisions

A. New Applications Received on or After March 23, 2004

Under section 33(b)(1) of FIFRA, the fees apply to each new application (or other action specified in this notice) received by EPA on or after March 23, 2004. If accompanied by a petition for tolerance, no tolerance fee under 40 CFR 180.33 is required.

B. Pending Applications Received Before March 23, 2004

1. *Application for a new active ingredient.* (i) Applications for new covered active ingredients received by EPA before March 23, 2004, but that are not on the FY 2003 OPP Registration Division Work Plan are subject to the fees in the tables in this notice. Any fee previously paid in conjunction with the submission of a petition under section 408(m) of the Federal Food, Drug and Cosmetic Act and 40 CFR 180.33 will be credited toward the registration service fee specified in this notice. Readers may access the Registration Division workplan at *ww.epa.gov/opprd001/workplan.*

(ii) Applications for a new active ingredient received by EPA before March 23, 2004, and that are on the FY 2003 OPP Work Plan are not required to pay the fee in the tables in this notice.

2. *All other pending applications.* Pending applications other than those

for a new active ingredient, i.e., all applications for existing active ingredients, are not required to pay a fee.

IV. How to Pay Fees

Fees apply to covered applications and must be submitted. The majority of covered actions are new applications or requests; the remainder are applications submitted before March 23, 2004. EPA is considering different procedures for each.

Because applications and fees are sent to different addresses, there is potential for confusion and delay if clear procedures for submission, categorization, and verification are not established. EPA intends that the payment and verification of payment process be as expeditious as possible so that Agency review may begin (or continue). To facilitate this process, EPA is issuing the following guidance regarding submission of covered applications and associated fee payments and waiver requests.

A. Required Fees for New Covered Applications

The Agency is considering a two-step process for new covered applications. Under this process an application will first be submitted to the Agency and screened. EPA will then notify the applicant of the categorization of the application and the correct fee to be transmitted to the Agency's lockbox.

Applications (or other type of request) would be submitted to the Agency, at the address given in Unit IX. The applicant would identify the category number (1 through 90) that he believes applies to the action, explain why that category applies, and specify the amount of fee due for that particular action. These notations would be made in the comments section of the application form (EPA Form 8570–1), or in a submittal letter. If the applicant is applying for a fee waiver, the applicant would provide sufficient documentation as described in section 33(b)(7) of FIFRA. The applicant would not send payment at the time of application.

Upon receipt of application, EPA would screen the application to determine that the category is correct, and would assign a unique identification number to each covered pesticide registration application for which payment is expected. Within 3 business days, EPA would notify the applicant of the unique identification number together with instructions for submitting payment. This information would always be sent by mail and by either e-mail or fax at the applicant's request.

After receiving EPA's acknowledgment of the application and its unique identification number, the applicant may submit payment of the fee to the address provided in the acknowledgment. All payments would be in United States currency by check, bank draft, or money order drawn to the order of the Environmental Protection Agency, and would be required to include the unique identifying number assigned to the application.

The Treasury Department is currently upgrading its system for accepting electronic payment, and will not accept new electronic fund transactions at this time. When this situation is resolved, EPA will issue guidance regarding submission of payments via electronic fund transfer.

B. Required Fees for New Active Ingredients Not on the FY 03 Work Plan

Applications for new active ingredients submitted prior to March 23, 2004, and not on OPP's FY 2003 Work Plan are subject to fees. EPA would identify all such applications. EPA would assign each of the applications to the appropriate fee category, and calculate the fee that is due. The amount of fee due would be calculated by identifying the appropriate fee amount in the Fee Schedule and subtracting any previously submitted tolerance fees from that amount. This amount may be further reduced in proportion to the amount of work that has been done on the action prior to March 23, 2004.

EPA intends to notify each affected applicant, and provide instructions for submitting payment.

V. Elements of the Fee Schedule

This unit explains how EPA has organized the fee schedule required by the statute and how to read the fee schedule tables, and provides a key to the terminology published with the table in the Congressional Record. EPA's organization and presentation of the fee schedule information does not affect the categories of registration service fees, or the structure or procedures for submitting applications or petitions for tolerance.

A. The Congressional Record Fee Schedule

The fee schedule published in the Congressional Record of September 17, 2003, identifies the registration service fees and decision times and is organized according to the organizational units of the Office of Pesticide Programs (OPP) within the Environmental Protection Agency (EPA). Thereafter, the categories within the organizational unit sections of the table are further categorized according to the type of application being submitted, the use patterns involved, or, in some cases, upon the type of pesticide that is the subject of the application. The categories of fee differ by Division. Further guidance will be issued on the various categories in this fee schedule to improve descriptions and facilitate proper identification for the application process. Not all application types are covered by, or subject to, the fee system.

B. Fee Schedule and Decision Review Times

The table in the Congressional Record is presented as a single table for all Divisions and actions. In issuing today's notice, EPA has reformatted the information to be more user-friendly. EPA has divided the single table from the Congressional Record into 11 tables, organized by OPP Division and by type of application or pesticide subject to the fee. Unit VI. presents fee tables for the Registration Division (RD) (5 tables), Unit VII. presents fee tables for the Antimicrobials Division (AD) (3 tables), and Unit VIII. presents fee tables for the Biopesticides and Pollution Prevention Division (BPPD) (3 tables).

Under section 33(f)(4) of FIFRA, the decision review period for many applications commences within 21 days of EPA's receipt of the application and fee. For the initial stages of implementation, however, EPA intends to exercise flexibility in terms of when EPA's review begins in relationship to its receipt of the fee.

C. How to Read the Tables

1. Each table consists of the following columns:

- Column A numbers the fee categories. There are 90 categories spread across the 3 Divisions. There are 37 RD categories, 20 AD categories and 33 BPPD categories. For tracking purposes, OPP has numbered the 90 categories in sequential order, beginning with RD categories, followed by AD and BPPD categories. This is a change from the sequence of the Congressional Record. The categories are prefaced with a letter designation indicating which Division of OPP is responsible for applications in that category (R= Registration Division, A=Antimicrobials Division, B=Biopesticides and Pollution Prevention Division).
- Column A-1 cross-references the Congressional Record category number for convenience. However, EPA will be using the categories as numbered in Column A in its tracking systems.
- Column B describes the categories of action. The key in this unit is

unchanged from that published in the Congressional Record.

- Columns C through G list the decision times in months for each type of action for Fiscal Years 2004 (beginning on March 23, 2004) though 2008. The decision review periods in the tables are based upon EPA fiscal years (FY), which run from October 1 through September 30.
- Column H lists the registration service fee for the action.

2. The tables use a number of abbreviations and acronyms, statutory citations and other terminology that may be unfamiliar to registrants and the public. The following terms are defined in footnotes to the Congressional Record table:

EUP—Experimental Use Permit (EUP)

Fast-track—An application that qualifies for expedited processing under section 3(c)(3)(B)(i)(I) of FIFRA.

GW—Ground Water

Me-too product—A new product registration of an already registered active ingredient.

PHI—Pre-Harvest Interval

PPE—Personal Protective Equipment

REI—Restricted Entry Interval

SAP—FIFRA Scientific Advisory Panel

SW—Surface Water

3. The following footnotes apply to the tables:

Footnote 1—All uses (food and non-food) included in any original application or petition for a new active ingredient or a first food use are covered by the base fee for that application.

Footnote 2—EPA-initiated amendments shall not be charged fees.

Footnote 3—Example: Transfer of existing PIP by traditional breeding, such as from field corn to sweet corn.

Footnote 4—Example: Stacking PIP traits within a crop using traditional breeding techniques.

VI. Registration Division (RD) Fee Schedules

The Registration Division of OPP is responsible for the processing of pesticide applications and associated tolerance petitions for pesticides that are termed "conventional chemicals," excluding pesticides intended for antimicrobial uses. The term "conventional chemical" is a term of art that is intended to distinguish synthetic chemicals from those that are of naturally occurring or non-synthetic origin, synthetic chemicals that are identical to naturally occurring chemicals and microbial pesticides.

TABLE 1.—REGISTRATION DIVISION: NEW ACTIVE INGREDIENTS

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
R1	56	Food use[1]	38	34	24	24	24	475,000
R2	57	Food use, reduced risk[1]	32	26	21	21	21	475,000
R3	58	Food use Experimental Use Permit request submitted simultaneously with application for registration[1] (decision time for EUP and temporary tolerance same as #R4)	38	34	24	24	24	525,000
R4	59	Food use Experimental Use Permit, with temporary tolerance, submitted before application for registration ($300K credited toward new AI registration)	32	28	18	18	18	350,000
R5	60	Food use Submitted after an EUP[1] (decision time begins after EUP and temporary tolerance are granted)	28	24	14	14	14	175,000
R6	61	Non-food use, outdoor[1]	32	28	21	21	21	330,000
R7	62	Non-food use, outdoor[1] Reduced risk	26	22	18	18	18	330,000
R8	63	Non-food use, outdoor[1] Experimental Use Permit request submitted simultaneously with application for registration (decision time for EUP same as #R9)	32	28	21	21	21	365,000
R9	64	Non-food use, outdoor Experimental Use Permit submitted before application for registration ($210K credited toward new AI registration)	27	23	16	16	16	245,000
R10	65	Non-food use, outdoor Submitted after an EUP[1] (decision time begins after EUP has been granted)	24	20	12	12	12	120,000

TABLE 1.—REGISTRATION DIVISION: NEW ACTIVE INGREDIENTS—Continued

A	A1	B	C	D	E	F	G	H
R11	66	Non-food use, indoor[1]	30	26	20	20	20	190,000
R12	67	Non-food use, indoor[1] Reduced risk	26	22	17	17	17	190,000

TABLE 2.—REGISTRATION DIVISION: NEW USES

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
R13	68	First food use Indoor food/food handling[1]	30	24	21	21	21	150,000
R14	69	Additional food use Indoor food/food handling	30	24	21	15	15	35,000
R15	70	First food use[1]	32	26	21	21	21	200,000
R16	71	First food use Reduced risk[1]	28	22	18	18	18	200,000
R17	72	Each additional new food use	38	30	22	15	15	50,000
R18	73	Each additional new food use Reduced risk	36	28	20	12	12	50,000
R19	74	Additional new food uses, bundled, 6 or more	38	30	22	15	15	300,000
R20	75	Additional new food uses, bundled, 6 or more Reduced risk	36	28	20	12	12	300,000
R21	76	New food use Experimental Use Permit and temporary tolerance (no credit toward new use registration)	35	27	19	12	12	37,000
R22	77	New food use Experimental Use Permit, crop destruct basis	8	8	6	6	6	15,000
R23	78	New use Non-food, outdoor	28	24	20	15	15	20,000
R24	79	New use Non-food, outdoor Reduced risk	26	22	18	12	12	20,000
R25	80	New use Non-food, outdoor Experimental Use Permit (no credit toward new use registration)	8	8	6	6	6	15,000
R26	81	New use Non-food, indoor	24	18	12	12	12	10,000
R27	82	New use Non-food, indoor Reduced risk	22	16	9	9	9	10,000

TABLE 3.—IMPORT TOLERANCES

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
R28	83	Import tolerance New active ingredient or first food use[1]	38	30	21	21	21	250,000
R29	84	Import tolerance Additional new food use	38	30	22	15	15	50,000

TABLE 4.—REGISTRATION DIVISION: NEW PRODUCTS

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
R30	85	New product Me-too product Fast track	3	3	3	3	3	1,000
R31	86	New product Non-fast track (includes reviews of product chemistry, acute toxicity, public health pest efficacy)	10	8	6	6	6	4,000
R32	87	New product Non-fast track, new physical form (excludes selective citations)	16	14	12	12	12	10,000
R33	88	New manufacturing use product Old AI Selective citation	24	18	12	12	12	15,000

TABLE 5.—REGISTRATION DIVISION: AMENDMENTS TO REGISTRATION

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
R34	89	Non-fast-track (includes changes to precautionary label statements, source changes to an unregistered source)[2]	6	5	4	4	4	3,000
R35	90	Non-fast track (changes to REI, PPE, PHI rate and number of applications, add aerial application, modify GW/SW advisory statement[2]	20	16	12	8	8	10,000
R36	91	Non-fast track, isomers	22	20	18	18	18	240,000
R37	92	Cancer reassessment, applicant-initiated	22	20	18	18	18	150,000

VII. Antimicrobials Division (AD) Fee Schedules

The Antimicrobials Division of OPP is responsible for the processing of pesticide applications and associated tolerances for conventional chemicals intended for antimicrobial uses, that is, uses that are defined under section 2(mm)(1)(A) of FIFRA, including products for use against bacteria, protozoa, non-agricultural fungi, and viruses. AD is also responsible for a selected set of conventional chemicals intended for other uses, including most wood preservatives and antifoulants. The Antimicrobials Division fee tables use the same terminology as listed in Unit V.

TABLE 6.—ANTIMICROBIALS DIVISION: NEW ACTIVE INGREDIENTS

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
A38	36	Food use, with exemption[1]	35	24	24	24	24	90,000
A39	37	Food use, with tolerance[1]	35	24	24	24	24	150,000
A40	38	Non-food use, outdoor FIFRA section 2(mm) uses [1]	FIFRA section 3(h) decision times					75,000
A41	39	Non-food use, outdoor, other uses[1]	31	21	21	21	21	150,0000
A42	40	Non-food use, indoor FIFRA section 2(mm) uses [1]	FIFRA section 3(h) decision times					50,000
A43	41	Non-food use, indoor, other uses[1]	29	20	20	20	20	75,000

TABLE 7.—ANTIMICROBIALS DIVISION: NEW USES

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
A44	42	New use First food use, with exemption[1]	29	21	21	21	21	25,000
A45	43	New use First food use, with tolerance[1]	29	21	21	21	21	75,000
A46	44	New food use, with exemption	24	15	15	15	15	10,000
A47	45	New food use, with tolerance	24	15	15	15	15	25,000
A48	46	New use Non-food, outdoor FIFRA section 2(mm) uses	FIFRA section 3(h) decision times					15,000
A49	47	New use, non-food, outdoor, other uses	24	15	15	15	15	25,000
A50	48	New use Non-food, indoor FIFRA section 2(mm) uses	FIFRA section 3(h) decision times					10,000
A51	49	New use Non-food, indoor Other uses	20	12	12	12	12	10,000
A52	50	Experimental Use Permit	9	9	9	9	9	5,000

TABLE 8.—ANTIMICROBIALS DIVISION: NEW PRODUCTS AND AMENDMENTS

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
A53	51	New product, me-too, fast track	3	3	3	3	3	1,000
A54	52	New product, non-fast track, FIFRA section 2(mm) uses	FIFRA section 3(h) decision times					4,000
A55	53	New product, non-fast track, other uses	8	6	6	6	6	4,000

TABLE 8.—ANTIMICROBIALS DIVISION: NEW PRODUCTS AND AMENDMENTS—Continued

A	A1	B	C	D	E	F	G	H
A56	54	New manufacturing use product, old AI, selective citation	24	18	12	12	12	15,000
A57	55	Amendment, non-fast track[2]	6	4	4	4	4	3,000

VIII. Biopesticides and Pollution Prevention Division (BPPD) Fee Schedules

The Biopesticides and Pollution Prevention Division of OPP is responsible for the processing of pesticide applications for biochemical pesticides, microbial pesticides, and plant-incorporated protectants (PIPs).

The fee tables for BPPD tables are presented by type of pesticide rather than by type of action: Microbial and biochemical pesticides, straight chain lepidopteran pheromones (SCLPs), and plant-incorporated protectants (PIPs). Within each table, the types of application are the same as those in other divisions and use the same terminology as in Unit V.

TABLE 9.—BPPD: MICROBIAL AND BIOCHEMICAL PESTICIDES

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
B58	3	New AI Food use, with tolerance[1]	18	18	18	18	18	40,000
B59	4	New AI Food use, with exemption[1]	16	16	16	16	16	25,000
B60	5	New AI Non-food use[1]	12	12	12	12	12	15,000
B61	6	Experimental Use Permit Food use, with temporary tolerance exemption	9	9	9	9	9	10,000
B62	7	Experimental Use Permit, Non-food use	6	6	6	6	6	5,000
B63	8	New use First food use, with exemption	12	12	12	12	12	10,000
B64	9	New use First food use, with tolerance[1]	18	18	18	18	18	15,000
B65	10	New use, non-food	6	6	6	6	6	5,000
B66	11	New product Me-too Fast-track	3	3	3	3	3	1,000
B67	12	New product Non-fast-track	6	6	4	4	4	4,000
B68	13	Amendment[2] Non-fast-track	6	6	4	4	4	4,000

TABLE 10.—BPPD: STRAIGHT CHAIN LEPIDOPTERAN PHEROMONES (SCLPS)

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY04	FY05	FY06	FY07	FY08	
B69	14	New AI Food or non-food use[1]	6	6	6	6	6	2,000
B70	15	Experimental Use Permit New AI or new use	6	6	6	6	6	1,000

TABLE 10.—BPPD: STRAIGHT CHAIN LEPIDOPTERAN PHEROMONES (SCLPs)—Continued

A	A1	B	C	D	E	F	G	H
B71	16	New product Me-too Fast-track	3	3	3	3	3	1,000
B72	17	New product, non-fast-track	6	6	4	4	4	1,000
B73	18	Amendment, non-fast-track[2]	6	6	4	4	4	1,000

TABLE 11.—BPPD: PLANT-INCORPORATED PROTECTANTS (PIPs)

A	A1	B	C	D	E	F	G	H
EPA No.	CR No.	Action	Decision Time (months)					Fee ($)
			FY 04	FY 05	FY 06	FY 07	FY 08	
B74	19	Experimental Use Permit Non food/feed or crop destruct No Scientific Advisory Panel review required (if submitted before new AI package, $25 K credit toward new AI registration)	12	12	6	6	6	75,000
B75	20	Experimental Use Permit, with temporary tolerance or exemption No Scientific Advisory Panel review required (if submitted before new AI package, $50K credit toward new AI registration)	12	12	9	9	9	100,000
B76	21	Experimental Use Permit New AI Non-food/feed or crop destruct Scientific Advisory Panel review required (if submitted before new AI package, $75K credit toward new AI registration)	15	15	12	12	12	125,000
B77	22	Experimental Use Permit New AI Set temporary tolerance or exemption Scientific Advisory Panel review required (if submitted before new AI package, $100K credit toward new AI registration)	18	18	15	15	15	150,000
B78	23	Register new AI Non-food/feed No Scientific Advisory Panel review required	18	18	12	12	12	125,000
B79	24	Register new AI Non-food/feed Scientific Advisory Panel review required	24	24	18	18	18	225,000
B80	25	Register new AI Temporary tolerance or exemption exists No Scientific Advisory Panel review required	18	18	12	12	12	200,000
B81	26	Register new AI Temporary tolerance or exemption exists Scientific Advisory Panel review required	24	24	18	18	18	300,000
B82	27	Register new AI Set tolerance or exemption No Scientific Advisory Panel review required	21	21	15	15	15	250,000
B83	28	Register new AI Experimental Use Permit request Set tolerance or exemption No Scientific Advisory Panel review required	21	21	15	15	15	300,000

TABLE 11.—BPPD: PLANT-INCORPORATED PROTECTANTS (PIPs)—Continued

A	A1	B	C	D	E	F	G	H
B84	29	Register new AI Set tolerance or exemption Scientific Advisory Panel review required	24	24	21	21	21	350,000
B85	30	Register new AI With Experimental Use Permit request Set tolerance or exemption Scientific Advisory Panel review required	24	24	21	21	21	400,000
B86	31	Experimental Use Permit Food use Amendment[2]	6	6	6	6	6	10,000
B87	32	New use[3]	9	9	9	9	9	30,000
B88	33	New product[4]	12	12	9	9	9	25,000
B89	34	Amendment, seed production to commercial registration	15	15	12	9	9	50,000
B90	35	Amendment, non-fast-track[2] (except #B89 above)	6	6	6	6	6	10,000

IX. Addresses

New covered applications should be identified in the title line with the mail code (REGFEE).

A. By USPS Mail

Document Processing Desk (REGFEE)
Office of Pesticide Programs (7504C)
Environmental Protection Agency
1200 Pennsylvania Ave., NW.
Washington, DC 20460–0001

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List of Subjects

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Dated: March 11, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–6001 Filed 3–16–04; 8:45 am]

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H.R. 3915/P.L. 108–205

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through April 2, 2004, and for other purposes. (Mar. 15, 2004; 118 Stat. 553)

S. 714/P.L. 108–206

To provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes. (Mar. 15, 2004; 118 Stat. 554)

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