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7–27–05 Wednesday
Vol. 70 No. 143 July 27, 2005

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 16, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register
Vol. 70, No. 143
Wednesday, July 27, 2005

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 70, No. 143
Wednesday, July 27, 2005

Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–30 of July 15, 2005

Drawdown of Commodities and Services from the Department of Defense to Support African Union Peacekeeping in Darfur, Sudan

Memorandum for the Secretary of State [and] the Secretary of Defense

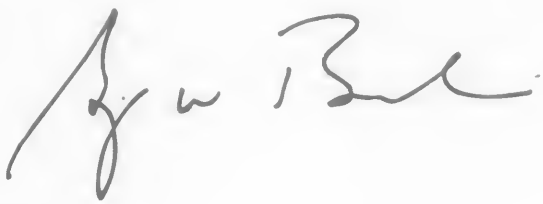
Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of up to $6 million in commodities and services from the Department of Defense to support the transportation of African Union forces to Darfur, Sudan.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 15, 2005.

[FR Doc. 05–14952
Filed 7–26–05; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 70, No. 143
Wednesday, July 27, 2005

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AD66

For-Profit Center Participation in the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule adds a provision to the Child and Adult Care Food Program (CACFP) regulations that authorizes for-profit centers providing child care or outside-school-hours care to participate based on the income eligibility of 25 percent of children in care for free or reduced price meals. This provision, which has been available nationwide on an interim basis through annual appropriation acts since December 2000, was permanently established by the Child Nutrition and WIC Reauthorization Act of 2004. This rule permits the ongoing participation of for-profit centers in the CACFP based on the income eligibility of children in care for free or reduced price meals.

DATES: This rule is effective August 26, 2005. To be assured of consideration, comments must be postmarked on or before September 26, 2005.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 640, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. All submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.
- Fax: Submit comments by facsimile transmission to: (703) 305–2879. Please address your comments to Mr. Eadie and identify your comments as "CACFP: For-Profit Centers".
- E-Mail: Send comments to *http://www.CNDProposal@fns.usda.gov*. Please identify your comments as "CACFP: For-Profit Centers".
- Hand Delivery or Courier: Deliver comments to 3101 Park Center Drive, Room 634, Alexandria, Virginia 22301–1594, during normal business hours of 8:30 a.m.–5 p.m.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Keith Churchill or Linda Jupin, Child Care and Summer Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 119(a) of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) amended section 17(a)(2)(B)(i) of the Richard B. Russell National School Lunch Act (NSLA)(42 U.S.C. 1766(a)(2)(B)(i)) to permanently authorize for-profit centers that provide child care or outside-school-hours care to participate in the CACFP if 25 percent of the children in care are eligible for free or reduced price meals under the Program. This criterion provides an additional means by which for-profit centers may qualify for Program participation. For-profit centers in all States have been permitted to participate in the Program since December 2000, when a provision of Public Law 106–554, added Section 17(a)(2)(B)(i) to the NSLA, 42 U.S.C. 1766(a)(2)(B)(i). That time-limited provision was subsequently renewed annually until made permanent by Public Law 108–265 on June 30, 2004. Prior to December 2000, the Food and Nutrition Service (FNS) implemented separate but similar authority in section 17(p) of the NSLA, 42 U.S.C. 1766(p), permitting for-profit centers in three States (Kentucky, Iowa, and Delaware) to participate in the Program. Section 119(a)(2) of Public Law 108–265 struck this provision. As a result of the permanent statutory provision affecting for-profit centers, these States have been notified that the pilot projects have been eliminated and their affected for-profit centers have been incorporated into regular for-profit Program participation under section 17(a)(2)(B)(i).

This authority differs from that in section 17(a)(2)(B)(ii) (42 U.S.C. 1766(a)(2)(B)(ii)), which permits for-profit centers providing child care or outside-school-hours care to participate in the CACFP. In such cases, for-profit centers are eligible if they receive compensation from the State title XX funds and if at least 25 percent of the enrolled children or the licensed capacity (whichever is less) receive benefits under title XX of the Social Security Act. This criterion was established by Public Law 101–147, which reauthorized child nutrition programs in November 1989, and is located at section 17(a)(2)(B)(ii) of the NSLA.

This interim rule adds a new definition of *For-profit center* to § 226.2 describing the eligibility criteria pertaining to for-profit centers serving children and adults. In doing so, this new definition incorporates the current definitions in § 226.2 for *Proprietary title XIX center* and *Proprietary title XX center*. This rule does not change the eligibility criteria for participation by for-profit adult day care centers. Rather it consolidates several definitions that pertain to for-profit centers into one comprehensive definition in order to standardize the regulatory language on for-profit center participation in the CACFP.

In addition, we have clarified in this new definition of a for-profit center that the eligibility criterion based on children's income eligibility or receipt of title XX benefits extends to centers that provide care to school age children outside of school hours, as mandated by section 17(a)(2)(B) of the NSLA, as well as to traditional child care centers. This includes any for-profit center that meets the definition in § 226.2 of *Child care center* or *Outside-school-hours care center*.

All other changes that are made by this interim rule stem from this new definition of for-profit center and consist primarily of name changes in which the new term "For-profit center" is substituted for "Proprietary title XIX center" or "Proprietary title XX center".

II. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Roberto Salazar, Administrator for the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This interim rule implements a statutory change that permanently authorizes for-profit centers to participate in the Child and Adult Care Food Program on the basis of income eligibility of 25 percent of children in care for free or reduced price meals. This provision has been available to for-profit centers as an eligibility criterion for participation in the Program since FY 2001. Since the provision is not new, the Food and Nutrition Service estimates that the permanent designation of this eligibility criterion will not substantially increase the number of for-profit centers that may apply to participate in the Program.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This interim rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of three categories called for under section (6)(a)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This interim rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of the rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Food Care Program, the administrative procedures are set forth at: (1) 7 CFR 226.6(k), which establishes appeal procedures; and (2) 7 CFR 226.22 and 7 CFR parts 3016 and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis, to identify and address any major civil rights impact the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. Regulations at § 226.6(f)(1) require that CACFP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Part 15, 15a, and 15b). At § 226.6(m)(1), State agencies are required to monitor CACFP institution compliance with these laws and regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collections of information unless it displays a current valid OMB control number. The interim rule does not contain information collections that are subject to review and approval by OMB.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This interim rule does not impose any information collections or transactions that require consideration under GPEA.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). This rule implements through amendments to current program regulations a nondiscretionary provision mandated by the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265). Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment.

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food and nutrition service, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

PART 226—[Nomenclature Change]

■ 2. In part 226, remove the words, "proprietary title XIX or title XX", wherever they appear and add the words, "for-profit", in their place.
■ 3. In § 226.2:
■ a. Revise the first sentence of the definition "Child care center";
■ b. Add a new definition "For-profit center" in alphabetical order;
■ c. Revise the first sentence of the definition "Outside-school-hours care center";
■ d. Remove the definitions "Proprietary title XIX center" and "Proprietary title XX center"; and
■ e. Revise the last sentence of paragraph (d) of the definition "Sponsoring organization".

The addition and revisions read as follows:

§ 226.2 Definitions.

* * * * *

Child care center means any public or private nonprofit institution or facility (except day care homes), or any for-profit center, as defined in this section, that is licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for children with disabilities. * * *

* * * * *

For-profit center means a Child care center, Outside-school-hours care center, or Adult day care center providing nonresidential care to adults or children that does not qualify for tax-exempt status under the Internal Revenue Code of 1986. For-profit centers serving adults must meet the criteria described in paragraph (a) of this definition; for-profit centers serving children must meet the criteria described in paragraphs (b)(1) or (b)(2) of this definition.

(a) A for-profit center serving adults must meet the definition of *Adult day care center* as defined in this section and, during the calendar month preceding initial application or reapplication, the center receives compensation from amounts granted to the States under title XIX or title XX and twenty-five percent of the adults enrolled in care are beneficiaries of title XIX, title XX, or a combination of titles XIX and XX of the Social Security Act.

(b) A for-profit center serving children must meet the definition of *Child care center* or *Outside-school-hours care center* as defined in this section and one of the following conditions during the calendar month preceding initial application or reapplication:

(1) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) are eligible for free or reduced-price meals; or

(2) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) receive benefits from title XX of the Social Security Act and the center receives compensation from amounts granted to the States under title XX.

* * * * *

Outside-school-hours care center means a public or private nonprofit institution or facility (except day care homes), or a *For-profit center* as defined in this section, that is licensed or approved to provide organized nonresidential child care services to children during hours outside of school.

* * *

* * * * *

Sponsoring organization * * *

(d) * * * The term "sponsoring organization" also includes a *For-profit center*, as defined in this section, that is entirely responsible for administration of the Program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers, or outside-school-hours care centers, provided that the centers are part of the same legal entity as the sponsoring organization.

* * * * *

■ 4. In § 226.6:
■ a. Revise paragraph (b)(1)(viii);
■ b. Revise paragraph (c)(3)(ii)(L); and
■ c. Revise paragraph (f)(3)(iv).

The revisions read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(1) * * *

(viii) *Documentation of for-profit center eligibility.* Institutions must document that each for-profit center for which application is made meets the definition of a *For-profit center*, as set forth at § 226.2;

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(L) Claiming reimbursement for meals served by a for-profit child care center or a for-profit outside-school-hours care center during a calendar month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries;

* * * * *

(f) * * *

(3) * * *

(iv) Require for-profit child care centers and for-profit outside-school-hours care centers to submit documentation of:

(A) Eligibility of at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) for free or reduced price meals; or

(B) Compensation received under title XX of the Social Security Act for nonresidential day care services and certification that at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were title XX beneficiaries during the most recent calendar month.

* * * * *

■ 5. In § 226.8, revise the second sentence of paragraph (a) to read as follows:

§ 226.8 Audits.

(a) * * * State agencies must establish audit policy for for-profit institutions. * * *

* * * * *

■ 6. In § 226.10, revise the third, fourth, and fifth sentences of paragraph (c) introductory text to read as follows:

226.10 Program payment procedures.

* * * * *

(c) * * * For each month in which independent for-profit child care centers and independent for-profit outside-school-hours care centers claim reimbursement, they must submit the number and percentage of children in care (enrolled or licensed capacity, whichever is less) that documents at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. Sponsoring organizations of for-profit child care centers or for-profit outside-school-hours care centers must submit the number and percentage of children in care (enrolled or licensed capacity, whichever is less) that documents that at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. Sponsoring organizations of such centers must not submit a claim for any for-profit center in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) during the claim month were eligible for free or reduced-price meals or were title XX beneficiaries. * * *

* * * * *

■ 7. In § 226.11:

■ a. Revise the first sentence of paragraph (b); and
■ b. Revise the introductory text of paragraph (c).

The revisions read as follows:

§ 226.11 Program payments for centers.

* * * * *

(b) Each child care institution or outside-school-hours care institution must report each month to the State agency the total number of meals, by type (breakfast, lunch, supper, and snack), served to children, except that such reports must be made for a for-profit center only for calendar months during which not less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were title XX beneficiaries. * * *

(c) Each State agency must base reimbursement to each child care institution or outside-school-hours institution on the number of meals, by type (breakfast, lunch, supper, and snack), served to children multiplied by the assigned rates of reimbursement, except that reimbursement must be payable to for-profit child care centers or for-profit outside-school-hours care centers only for calendar month during which at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were title XX beneficiaries. Each State agency must base reimbursement to each adult day care institution on the number of meals, by type, served to adult participants multiplied by the assigned rates of reimbursement, except that reimbursement must be payable to for-profit adult day care centers only for calendar months during which at least 25 percent of the enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX. In computing reimbursement, the State agency must either:

* * * * *

■ 8. In § 226.15, revise paragraph (a) to read as follows:

§ 226.15 Institution provisions.

(a) *Tax exempt status.* Except for for-profit centers and sponsoring organizations of such centers, institutions must be public, or have tax exempt status under the Internal Revenue Code of 1986.

* * * * *

■ 9. In § 226.17:
■ a. Remove the words "proprietary title XX" in paragraph (b)(2) and add in their place the words "for-profit"; and
■ b. Revise the second sentence of paragraph (b)(4).

The revision reads as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(4) * * * For-profit child care centers may not claim reimbursement for meals served to children in any month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were title XX beneficiaries. * * *

* * * * *

■ 10. In § 226.19:
■ a. In paragraph (b)(2), remove the words "proprietary title XX" and add in their place the words "for-profit"; and
■ b. Revise the second and third sentences in paragraph (b)(5).

The revision reads as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(5) * * * Reimbursement may not be claimed for more than two meals and one snack provided daily to each child or for meals served to children at any one time in excess of authorized capacity. For-profit centers may not claim reimbursement for meals served to children in any month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were title XX beneficiaries.

* * * * *

Dated: July 20, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–14811 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 780

RIN 0560–AG88

Appeal Procedures

AGENCY: Farm Service Agency, USDA.

ACTION: Interim final rule.

SUMMARY: The Farm Service Agency (FSA) is amending the regulations for informal agency appeals to make conforming and clarifying changes regarding FSA procedures.

DATES: *Effective Date:* This rule is effective August 26, 2005. Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations and must be received on or before September 26, 2005, in order to be assured of consideration.

ADDRESSES: FSA invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

E-Mail: Send comments to *Tal_Day@wdc.usda.gov.* Include "Part 780" in the subject line of the message.

- Fax: Submit comments by facsimile transmission to: 202/690–3003.
- Mail: Send comments to: H. Talmage Day, Appeals and Litigation Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0570, Washington, DC 20250–0570.
- Hand Delivery or Courier: Deliver comments to: H. Talmage Day, Appeals and Litigation Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 6722–S, Washington, DC 20250–0570.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: H. Talmage Day at the above address or 202/690–3297.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule is not significant for the purposes of Executive Order 12866; therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, FSA has determined that there will not be a significant economic impact on a substantial number of small entities. From experience, relatively few program decisions result in any form of appeal proceeding provided for in this rule. This rule codifies and clarifies existing procedures and deadlines applicable in agency informal appeals, but will not make fewer individuals eligible for any FSA program, nor will it increase the costs of compliance with program regulations for any participant. Similarly, this rule does not change any substantive provisions of the programs covered by this rule or limit options otherwise available to participants in covered programs. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

These regulations are not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, on Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent. Generally, all administrative appeal provisions, including those published at 7 CFR part 11, must be exhausted before any action for judicial review may be brought in connection with the matters that are the subject of this rule.

Environmental Evaluation

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and the FSA regulations for compliance with NEPA, 7 CFR parts 799 and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Background and Purpose

On December 29, 1995, the Office of the Secretary published an interim final rule (60 FR 67298–67319) to implement Title II, Subtitle H, of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Reorganization Act), Pub. L. 103–354, 7 U.S.C. 6995, setting forth interim procedures for appeals of adverse decisions by USDA agency officials to the National Appeals Division (NAD). The interim final rule also included conforming changes to regulations governing agency informal appeals, including 7 CFR part 780.

NAD published its final rule in the **Federal Register** on June 23, 1999 (64 FR 33367–33378). At that time, the Secretary expressly noted that the final rule for NAD did not contain rules for agency appeal procedures and that those rules would be published separately by the respective agencies.

Section 275 of the Reorganization Act provided for the Secretary to maintain the FSA informal appeals process that preceded the 1994 legislation. The rules in 7 CFR part 780 do that. This rule amends FSA informal appeal regulations to make clarifying changes and improvements to those rules to ensure better administration and conformity to existing laws.

The rule specifically reflects changes and additions to the current interim rule to document in regulations existing policies governing reconsideration of adverse decisions as a feature of the informal appeals process and policies governing mediation as an alternative dispute resolution technique in the informal appeals process. This rule also establishes a procedure for administrative review by State Executive Directors of local adverse determinations that certain issues are not appealable and makes other conforming changes required by other legislation, including limitations on judicial review of State Executive Director decisions on equitable relief as provided for in Section 1613 of the Farm Security and Rural Investment Act of 2002 (2002 Act), Pub. L. 107–171, 7 U.S.C. 7996. The changes and additions are incorporated in a general edit and reorganization of part 780 as set out in this rule. While this rule is exempt from the requirement for publication for prior public notice and comment because it is a rule of agency procedure and practice, the Agency will accept public comments for 60 days after publication of this rule.

As a general matter, the goal of FSA's informal appeals process is to maximize opportunity for resolution within FSA of disputes with participants that result from adverse program decisions. FSA's aim and expectation is that disputes with participants regarding adverse decisions can, for the most part, be resolved through further reviews within FSA. It is FSA's experience that only the most difficult disputes proceed to further appeals before NAD.

Dispute Resolution Procedures

FSA's informal appeals process provides a range of alternative procedures for dispute resolution. Program disputes in FSA vary significantly in complexity, sums at stake, and feasibility of resolution through discovery of additional alternatives or additional information. The availability of alternative procedures is, therefore, central to FSA's goal to achieve just, speedy, and inexpensive determinations in program disputes. As defined in the regulations (7 CFR 780.2), participants with rights in the appeals process include any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of FSA to which the regulations in this part apply is directly affected by a decision of FSA. The term may include anyone meeting this definition regardless of whether the participant in a particular proceeding is an appellant, an interested party, or a third party respondent. The term does not include individuals or entities whose disputes arise under the programs excluded in the definition of "participant" set out in the NAD rules of procedure found in 7 CFR part 11.

The regulations provide for the following dispute resolution procedures in the agency informal appeals process consistent with current practice:

Reconsideration: subsequent consideration by the same level decision maker or reviewing authority. Reconsideration affords a means to clarify Agency determinations and

consider additional facts. Any decision on reconsideration will constitute a new decision for purposes of running of the time limitations for any subsequent appeal within FSA or to NAD.

County Committee and State Committee appeals: subsequent consideration by a county or State committee established under Section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)). The decision of an employee of a county committee must be taken before the county committee before any other appeal procedure is available, either within FSA's informal appeals process or through appeal to NAD.

Alternative dispute resolution (ADR) procedures: This rule incorporates specific guidelines for mediation of program disputes that have to date been operative as generally applicable agency policy. Part 785 of 7 CFR provides for certification of and grants to State mediation programs that meet requirements of that part. When a certified mediation program is operating in a State, mediation is made available through that program. Mediation in a State without a certified mediation program is made available by the State FSA office. A request for mediation in a State without a certified mediation program must be submitted to the State Executive Director. If a participant makes a request for some other form of ADR, FSA will consider the request in good faith.

The regulations continue to provide for reservations of authority to permit representatives of FSA and the Commodity Credit Corporation (CCC) to correct errors in data entered on program contracts, loan agreements and other program documents and the results of the computations or calculations made pursuant to the contract or the agreement. Likewise, nothing in the regulations precludes the Secretary, Administrator, Executive Vice President of CCC, the Chief of NRCS, if applicable, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any decision made by FSA, its State or county committees, or CCC.

The decisions of the Administrator and Deputy Administrators are outside FSA's appeals process and, therefore, are not decisions subject to mediation, reconsideration, or further appeal within FSA. Although such decisions are final for purposes of appeal to NAD, in exceptional cases the Administrator or a Deputy Administrator may exercise discretion to reconsider or to refer a matter to mediation. Any decision on reconsideration or appeal within FSA will constitute a new decision for purposes of running of the time limitation for any subsequent appeal to NAD.

Adverse Program Decisions

Section 274 of the 1994 Reorganization Act, 7 U.S.C. 6994, Notice and Opportunity for Hearing, requires FSA to provide written notice of an adverse decision and notice of appeal rights no later than 10 working days after the decision is made. Accordingly, this rule provides that FSA will endeavor to mail or personally deliver written notice of a decision to a participant no later than 10 working days after FSA renders a decision.

Appealable and Non-Appealable Decisions

Not all decisions that affect program participants afford them the option for reconsideration, mediation, or appeal. Decisions made pursuant to statutory provisions or implementing regulations that are not dependent upon a unique set of facts are generally not appealable. For example, the determination whether a participant is a beginning farmer for purposes of sales of farmland that has been taken into inventory by FSA is not appealable because appeal is barred by 7 U.S.C. 1985. In general, any decision based on a program provision or program policy, or on a statutory or regulatory requirement that is applicable to all similarly situated participants is not appealable under these rules. Issues of fact regarding the applicability of a general rule, however, may be appealable. A letter transmitting an FSA decision that is determined not to be appealable will, as a general rule, set forth the facts on which the decision was based and will document that those facts are not in dispute.

Similarly, decisions of FSA State Executive Directors or others on equitable relief made under the regulations implementing Section 1613 of the 2002 Act are discretionary decisions that do not afford participants any rights of appeal within FSA or any right to judicial review. However, the underlying program decisions are appealable within FSA; and the final agency program decision under the applicable regulations and any denial of equitable relief under other authority, generally, is appealable to NAD.

In addition, requirements and conditions of participation that are designated by law to be developed by agencies other than FSA are not appealable through the procedures in this rule except as may involve the Department's Natural Resources Conservation Service under some circumstances as addressed in the rule. Examples of such requirements or conditions include flood plain determinations, archaeological and historic area preservation requirements, and designations of areas that have been determined to be inhabited by endangered species. As an additional safeguard in the agency appeals process, this rule provides an additional option to allow a participant to seek an administrative review by the State Executive Director when a program decision has been determined not to be appealable. It is in the interest of participants and FSA that program disputes be resolved by persons with expertise in agency programs whenever feasible. This provision for administrative review by the State Executive Director will afford participants another opportunity to avail themselves of FSA's informal appeals process. This option is in addition to a participant's right to seek an appealability review by the NAD Director in accordance with 7 CFR part 11.

Implementation of Final Decisions in Appeals

As a general matter, a decision in an FSA informal appeal will be implemented within 30 days after the period for appeal of the decision has run, *i.e.*, 30 days after the agency decision becomes a final decision of USDA. Implementation is understood to require that the next step to be taken in the matter will be initiated by the agency within the required period, but not necessarily completed. Additional time may be required, for example, to obtain updated financial or other information relating to eligibility or feasibility, to obtain a new appraisal, or to reassess any wetland features on a tract of farmland. This policy is consistent with implementation of final decisions in NAD appeals under 7 CFR 11.12.

Decisions can only be implemented to the extent otherwise allowed by law. For example, how the decision in an appeal may be implemented will sometimes depend upon the availability of funds. If funds are not available, a decision may not cause a payment to be issued immediately to a participant, notwithstanding a successful appeal. In such circumstances, the appeal is effective to resolve issues of a participant's compliance with the appealed program requirements. In an instance where Congress later appropriates additional funding for assistance under the subject program, or in future programs establishing the same

requirement, provided a participant's circumstances remain unchanged, FSA may effect payment.

Mediation

Mediation is a technique that can assist FSA, program participants and applicants, and other interested parties in resolving issues arising in FSA adverse decisions. As defined in § 780.2, mediation means a technique for resolution of disputes in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but in which the mediator has no authoritative decision making power.

Similarly, a mediator is defined to mean a neutral individual who functions specifically to aid the parties in a dispute during a mediation process. The regulations also set out a minimum requirement for mediator qualification that mediators must satisfy to be eligible to mediate an adverse decision in a State without a certified mediation program. The requirement incorporates, where applicable, the qualification requirements established in the law of the State where the adverse decision would be mediated, if the State has established mediator qualification requirements in statutory law or regulations, and otherwise prescribes a minimum requirement. These definitions are consistent with definitions in the FSA Certified State Mediation Program regulations at 7 CFR part 785. The rule also explains as a requirement of impartiality that a mediator may not have served as an advocate or representative for any party in the mediation and may not so serve thereafter in a proceeding related to the mediated dispute.

In States with certified mediation programs, the mediation process may encompass a number of activities in addition to intake and scheduling of mediations to prepare participants for mediation. A certified State's mediation process may involve, for example, iterative rounds of financial counseling assistance to participants in efforts to develop a feasible plan for a farming operation before any session or sessions with a mediator. Nothing in this rule operates to limit the scope of a mediation process or the number of sessions that may be involved in the single mediation of an adverse decision, including the issues of fact material to an adverse decision.

When mediation is available in the informal appeals process, FSA's adverse decision letters will advise participants how to exercise that option. In States with a mediation program certified under 7 CFR part 785, adverse decision letters will provide guidance on how the participant may contact the certified mediation program to request mediation. In States without a certified mediation program, adverse decision letters will instruct participants to direct requests for mediation to the State Executive Director when mediation is an available option. If a qualified mediator is available and accepted by the participant, FSA will notify third parties and interested parties of the mediation. If no qualified mediator is available, FSA will not participate in mediation, but will attend any meeting of creditors requested by a participant to the extent that it may be required under part 1951, subpart S, of this title or any successor regulation.

This rule provides that FSA is obligated to participate in good faith in mediation under the auspices of a State-certified mediation program when applicable. In that regard, the rule provides that FSA will endeavor to:

- Designate a person to represent FSA in the mediation;
- Define the FSA representative's authority to bind FSA to agreements reached in the mediation;
- Instruct FSA's representative to ensure that any agreement reached during, or as a result of, the mediation is consistent with the statutory and regulatory provisions and generally applicable program policies and is mutually agreed to in writing by all affected parties;
- Authorize FSA's representative to assist in identifying and exploring additional options that may resolve the dispute;
- Assist as necessary in making pertinent records available for review and discussion during the mediation;
- Direct FSA's representative in the mediation to forward any written agreement proposed in mediation to the appropriate FSA official for approval; and
- Timely consider dispute resolution proposals requiring actions or approvals under broader authority than is vested in the representative in the mediation.

The foregoing specifications reflect a difference between the function of mediation in private disputes and public program disputes that FSA believes is essential for understanding the role and potential of mediation as a means for resolving agency program disputes. In contrast to private disputes, the ultimate issue in mediation of an agency program dispute is usually whether one or more parties to the mediation meets, or can meet, program requirements that are set forth in regulations. Parties mediating a regulatory program dispute are not free to make their own law, and mediation of these disputes should not be perceived as a means to obtain a result not otherwise obtainable under statute, regulations, or generally applicable agency policy and program procedure. Hence, while mediation, unlike some other forms of ADR, emphasizes assistance to parties in developing alternatives, the alternatives developed in mediation of an FSA program dispute must be feasible and consistent with statutory and regulatory requirements and FSA's generally applicable interpretations of them. Within these constraints, FSA believes that mediation of program disputes can produce benefits when the mediation reveals additional relevant facts and new points of view. Examples of activities that may productively occur during an FSA program mediation include identifying alternative means for a participant to comply with regulatory requirements, exploring alternative mitigation strategies when a wetland has been converted, or considering possible changes in a farming operation or additional resources that may be made available to meet the farming operation's financial requirements. In addition, when other private parties are involved, for example, other creditors, the mediation may assist in identifying potential flexibility in the positions of these private parties as in a purely private mediation. In other cases, the mediation may simply clarify the basis for a decision.

The features distinguishing mediation of a regulatory program dispute are reasons that FSA believes that attendance at a mediation of a representative with final authority to bind FSA is not essential to effective mediation of agency program disputes. In addition, such a procedure would be impractical in many situations. For example, it would be unworkable to have county and/or State committees attend mediation sessions. As a matter of sound management policy, FSA will consistently endeavor to ensure that the representative designated for FSA in any mediation is a person with appropriate knowledge of the legal parameters implicated in the program dispute.

This rule does not establish guidelines for mediations that may occur in advance of any decision that is appealable under this rule. As a general matter, FSA believes that mediation is most likely to be productive when an adverse decision has been issued that presents clear issues to challenge and

resolve. Also, the early stages in FSA decision-making when an issue may be defined for mediation ensure that mediation is available in the agency informal appeals process at a very early stage. As an example, under existing farm loan regulations, participants have a means to obtain decisions at an early stage of difficulty. FSA loan servicing regulations afford borrowers a means to be considered for relief as financially distressed borrowers before a delinquency has occurred. Similarly, participants seeking new farm loans or refinancing may likewise obtain decisions on eligibility without submitting a complete loan application. Also, it is in participants' interests that their requests for loans be submitted before outstanding loans have gone delinquent.

In farm commodity and marketing assistance and conservation programs, mediation in advance of any adverse decision is much more rarely likely to be productive. In the Conservation Reserve Program, for example, the regulatory requirements that will determine eligibility for a future sign-up cannot be anticipated until guidelines are published. Similarly, in commodity assistance programs, while general criteria of eligibility tend to persist in successively authorized assistance programs, the exact conditions under which assistance will be made available frequently depend on details of enacted legislation that cannot be accurately projected before legislation is signed. Notwithstanding, in certain limited cases, where it is clear that only one issue will be in dispute and some resolution seems clearly feasible, e.g., because of potential flexibility in positions of third parties, mediation may be considered by FSA to expedite progress toward a favorable resolution of the initial administrative request. If mediation occurs in advance of an adverse decision, mediation on that issue will not again be offered to a participant as an option in the informal appeals process.

This rule is consistent with 7 CFR 11.5(c)(2) of the NAD Rules of Procedure, which states that a participant may request mediation or any other method of alternative dispute resolution at any time prior to a NAD hearing. If a participant lodges such a request after having filed an appeal with NAD, provided such a request is lodged within 30 days of the date the participant receives the adverse decision, FSA will participate in such a mediation in good faith provided the decision under appeal is not a decision by an official in FSA's national office and the matter has not been mediated.

Consistent with the Administrative Dispute Resolution Act, 5 U.S.C. 574, and the regulations in this part, mediations will be handled with a concern for confidentiality. During the course of a mediation, it is anticipated that FSA's representative may need to communicate with other agency officials. Such communications are not inconsistent with the requirement that mediations be confidential. Restrictions on confidentiality may vary with the circumstances in a particular mediation. As a general matter, participants will not require other parties' consents to disclose information in a mediation to agents furnishing confidential services to a participant, *e.g.*, attorneys, accountants, or other agents bound to furnish services under a duty of confidentiality. A participant may, in any event, obtain other parties' consent to contemplated disclosures.

List of Subjects in 7 CFR Part 780

Administrative practice and procedure, Agricultural commodities, Agriculture, Farmers, Federal aid programs, Loan programs, Price support programs, Soil conservation, Wetlands.

■ For the reasons stated in the preamble, FSA revises 7 CFR part 780 to read as follows:

PART 780—APPEAL REGULATIONS

Sec.

Authority: 5 U.S.C. 301 and 574; 7 U.S.C. 6995; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

§ 780.1 General.

This part sets forth rules applicable to appealability reviews, reconsiderations, appeals and alternative dispute resolution procedures comprising in aggregate the informal appeals process of FSA. FSA will apply these rules to facilitate and expedite participants' submissions and FSA reviews of documentary and other evidence material to resolution of disputes arising under agency program regulations.

§ 780.2 Definitions.

For purposes of this part:

1994 Act means the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

Adverse decision means a program decision by an employee, officer, or committee of FSA that is adverse to the participant. The term includes any denial of program participation, benefits, written agreements, eligibility, etc., that results in a participant receiving less funds than the participant believes should have been paid or not receiving a program benefit to which the participant believes the participant was entitled.

Agency means FSA and its county and State committees and their personnel, CCC, NRCS, and any other agency or office of the Department which the Secretary may designate, or any successor agency.

Agency record means all documents and materials maintained by FSA that are related to the adverse decision under review that are compiled and reviewed by the decision-maker or that are compiled in the record provided to the next level reviewing authority.

Appeal means a written request by a participant asking the next level reviewing authority within FSA to review a decision. However, depending on the context, the term may also refer to a request for review by NAD.

Appealability review means review of a decision-maker's determination that a decision is not appealable under this part. That decision is, however, subject to review according to § 780.5 or 7 CFR part 11 to determine whether the decision involves a factual dispute that is appealable or is, instead, an attempt to challenge generally applicable program policies, provisions, regulations, or statutes that were not appealable.

Appellant means any participant who appeals or requests reconsideration or mediation of an adverse decision in accordance with this part or 7 CFR part 11.

Authorized representative means a person who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in a reconsideration, mediation, or appeal.

CCC means the Commodity Credit Corporation, a wholly owned Government corporation within USDA.

Certified State means, in connection with mediation, a State with a mediation program, approved by the

Secretary, that meets the requirements of 7 CFR part 785.

Confidential mediation means a mediation process in which neither the mediator nor parties participating in mediation will disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 or 7 CFR part 785.

County committee means an FSA county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

Determination of NRCS means a decision by NRCS made pursuant to Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), as amended.

FSA means the Farm Service Agency, an agency within USDA.

Final decision means a program decision rendered by an employee or officer of FSA pursuant to delegated authority, or by the county or State committee upon written request of a participant. A decision that is otherwise final shall remain final unless the decision is timely appealed to the State committee or NAD. A decision of FSA made by personnel subordinate to the county committee is considered "final" for the purpose of appeal to NAD only after that decision has been appealed to the county committee under the provisions of this part.

Hearing means an informal proceeding on an appeal to afford a participant opportunity to present testimony, documentary evidence, or both to show why an adverse decision is in error and why the adverse decision should be reversed or modified.

Implement means the taking of action by FSA, NRCS, or CCC that is necessary to effectuate fully and promptly a final decision.

Mediation means a technique for resolution of disputes in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but in which the mediator has no authoritative decision making power.

Mediator means a neutral individual who functions specifically to aid the parties in a dispute during a mediation process.

NAD means the USDA National Appeals Division established pursuant to the 1994 Act.

NAD rules means the NAD rules of procedure published at 7 CFR part 11, implementing title II, subtitle H of the 1994 Act.

Non-certified State means a State that is not approved to participate in the certified mediation program under 7 CFR part 785, or any successor regulation.

NRCS means the Natural Resources Conservation Service of USDA.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of FSA to which the regulations in this part apply is affected by a decision of FSA. The term includes anyone meeting this definition regardless of whether, in the particular proceeding, the participant is an appellant or a third party respondent. The term does not include individuals or entities whose claim(s) arise under the programs excluded in the definition of "participant" published at 7 CFR 11.1.

Qualified mediator means a mediator who meets the training requirements established by State law in the State in which mediation services will be provided or, where a State has no law prescribing mediator qualifications, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, by an accredited college or university, or by one of the following organizations: State Bar of a qualifying State, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

Reconsideration means a subsequent consideration of a program decision by the same level of decision-maker or reviewing authority.

Reviewing authority means a person or committee assigned the responsibility of making a decision on reconsideration or an appeal filed by a participant in accordance with this part.

State committee means an FSA State committee established in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) including, where appropriate, the Director of the Caribbean Area FSA office for Puerto Rico and the Virgin Islands.

State Conservationist means the NRCS official in charge of NRCS operations within a State, as set forth in part 600 of this title.

State Executive Director means the executive director of an FSA State office with administrative responsibility for a FSA State office as established under the Reorganization Act.

USDA means the U.S. Department of Agriculture.

Verbatim transcript means an official, written record of proceedings in an appeal hearing or reconsideration of an adverse decision appealable under this part.

§ 780.3 Reservations of authority.

(a) Representatives of FSA and CCC may correct all errors in data entered on program contracts, loan agreements, and other program documents and the results of the computations or calculations made pursuant to the contract or agreement. FSA and CCC will furnish appropriate notice of such corrections when corrections are deemed necessary.

(b) Nothing contained in this part shall preclude the Secretary, or the Administrator of FSA, Executive Vice President of CCC, the Chief of NRCS, if applicable, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any decision made by a subordinate employee of FSA or its county and State committees, or CCC.

§ 780.4 Applicability.

(a)(1) Except as provided in other regulations, this part applies to decisions made under programs and by agencies, as set forth herein:

(i) Decisions in programs administered by FSA to make, guarantee or service farm loans set forth in chapters VII and XVIII of this title relating to farm loan programs;

(ii) Decisions in those domestic programs administered by FSA on behalf of CCC through State and county committees, or itself, which are generally set forth in chapters VII and XIV of this title, or in part VII relating to conservation or commodities;

(iii) Appeals from adverse decisions, including technical determinations, made by NRCS under title XII of the Food Security Act of 1985, as amended;

(iv) Penalties assessed by FSA under the Agricultural Foreign Investment Disclosure Act of 1978, 5 U.S.C. 501 *et seq.*;

(v) Decisions on equitable relief made by a State Executive Director or State Conservationist pursuant to section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171; and

(vi) Other programs to which this part is made applicable by specific program regulations or notices in the **Federal Register**.

(2) The procedures contained in this part may not be used to seek review of statutes or regulations issued under

Federal law or review of FSA's generally applicable interpretations of such laws and regulations.

(3) For covered programs, this part is applicable to any decision made by an employee of FSA or of its State and county committees, CCC, the personnel of FSA, or CCC, and by the officials of NRCS to the extent otherwise provided in this part, and as otherwise may be provided in individual program requirements or by the Secretary.

(b) With respect to matters identified in paragraph (a) of this section, participants may request appealability review, reconsideration, mediation, or appeal under the provisions of this part, of decisions made with respect to:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

(3) Issuance of payments or other program benefits to a participant in a program; and

(4) Determinations under Title XII of the Food Security Act of 1985, as amended, made by NRCS.

(c) Only a participant directly affected by a decision may seek administrative review under § 780.5(c).

§ 780.5 Decisions that are not appealable.

(a) Decisions that are not appealable under this part shall include the following:

(1) Any general program provision or program policy or any statutory or regulatory requirement that is applicable to similarly situated participants;

(2) Mathematical formulas established under a statute or program regulation and decisions based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions that expressly make agency decisions final or their implementing regulations;

(4) Decisions on equitable relief made by a State Executive Director or State Conservationist pursuant to Section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171;

(5) Decisions of other Federal or State agencies;

(6) Requirements and conditions designated by law to be developed by agencies other than FSA.

(7) Disapprovals or denials because of a lack of funding.

(8) Decisions made by the Administrator or a Deputy Administrator.

(b) A participant directly affected by an adverse decision that is determined not to be subject to appeal under this part may request an appealability review of the determination by the State Executive Director of the State from which the underlying decision arose in accordance with § 780.15.

(c) Decisions that FSA renders under this part may be reviewed by NAD under part 11 of this title to the extent otherwise allowed by NAD under its rules and procedures. An appealability determination of the State Executive Director in an administrative review is considered by FSA to be a new decision.

§ 780.6 Appeal procedures available when a decision is appealable.

(a) For covered programs administered by FSA for CCC, the following procedures are available:

(1) Appeal to the county committee of decisions of county committee subordinates;

(2) Reconsideration by the county committee;

(3) Appeal to the State committee;

(4) Reconsideration by the State committee;

(5) Appeal to NAD;

(6) Mediation under guidelines specified in § 780.9.

(b) For decisions in agricultural credit programs administered by FSA, the following procedures are available:

(1) Reconsideration under § 780.7;

(2) Mediation under § 780.9;

(3) Appeal to NAD.

(c) For programs and regulatory requirements under Title XII of the Food Security Act of 1985, as amended, to the extent not covered by paragraph (a) of this section, the following procedures are available:

(1) Appeal to the county committee;

(2) Appeal to the State committee;

(3) Mediation under § 780.9;

(4) Appeal to NAD.

§ 780.7 Reconsideration.

(a) A request for reconsideration under this part must be submitted in writing by a participant or by a participant's authorized representative and addressed to the FSA decision maker as may be instructed in the adverse decision notification.

(b) A participant's right to request reconsideration is waived if, before requesting reconsideration, a participant:

(1) Has requested and begun mediation of the adverse decision;

(2) Has appealed the adverse decision to a higher reviewing authority in FSA; or

(3) Has appealed to NAD.

(c) Provided a participant has not waived the right to request reconsideration, FSA will consider a request for reconsideration of an adverse decision under these rules except when a request concerns a determination of NRCS appealable under the procedures in § 780.11, the decision has been mediated, the decision has previously been reconsidered, or the decision-maker is the Administrator, Deputy Administrator, or other FSA official outside FSA's informal appeals process.

(d) A request for reconsideration will be deemed withdrawn if a participant requests mediation or appeals to a higher reviewing authority within FSA or requests an appeal by NAD before a request for reconsideration has been acted upon.

(e) The Federal Rules of Evidence do not apply to reconsiderations. Proceedings may be confined to presentations of evidence to material facts, and evidence or questions that are irrelevant, unduly repetitious, or otherwise inappropriate may be excluded.

(f) The official decision on reconsideration will be the decision letter that is issued following disposition of the reconsideration request.

(g) A decision on reconsideration is a new decision that restarts applicable time limitations periods under § 780.15 and part 11 of this title.

§ 780.8 County committee appeals.

(a) A request for appeal to a county committee concerning a decision of a subordinate of the county committee must be submitted by a participant or by a participant's authorized representative in writing and must be addressed to the office in which the subordinate is employed.

(b) The Federal Rules of Evidence do not apply to appeals to a county committee. However, a county committee may confine presentations of evidence to material facts and may exclude evidence or questions that are irrelevant, unduly repetitious, or otherwise inappropriate.

(c) The official county committee decision on an appeal will be the decision letter that is issued following disposition of the appeal.

(d) Deliberations shall be in confidence except to the extent that a county committee may request the assistance of county committee or FSA employees during deliberations.

§ 780.9 Mediation.

(a) Any request for mediation must be submitted after issuance of an adverse decision but before any hearing in an appeal of the adverse decision to NAD.

(b) An adverse decision and any particular issues of fact material to an adverse decision may be mediated only once:

(1) If resolution of an adverse decision is not achieved in mediation, a participant may exercise any remaining appeal rights under this part or appeal to NAD in accordance with part 11 of this title and NAD procedures.

(2) If an adverse decision is modified as a result of mediation, a participant may exercise any remaining appeal rights as to the modified decision under this part or appeal to NAD, unless such appeal rights have been waived pursuant to agreement in the mediation.

(c) Any agreement reached during, or as a result of, the mediation process shall conform to the statutory and regulatory provisions governing the program and FSA's generally applicable interpretation of those statutes and regulatory provisions.

(d) FSA will participate in mediation in good faith and to do so will take steps that include the following:

(1) Designating a representative in the mediation;

(2) Instructing the representative that any agreement reached during, or as a result of, the mediation process must conform to the statutes, regulations, and FSA's generally applicable interpretations of statutes and regulations governing the program;

(3) Assisting as necessary in making pertinent records available for review and discussion during the mediation; and

(4) Directing the representative to forward any written agreement proposed in mediation to the appropriate FSA official for approval.

(e) Mediations will be treated in a confidential manner consistent with the purposes of the mediation.

(f) For requests for mediation in a Certified State, if the factual issues implicated in an adverse decision have not previously been mediated, notice to a participant of an adverse decision will include notice of the opportunity for mediation, including a mailing address and facsimile number, if available, that the participant may use to submit a written request for mediation.

(1) If the participant desires mediation, the participant must request mediation in writing by contacting the certified mediation program or such other contact as may be designated by FSA in an adverse decision letter. The request for mediation must include a copy of the adverse decision to be mediated.

(2) Participants in mediation may be required to pay fees established by the mediation program.

(3) A listing of certified State mediation programs and means for contact may be found on the FSA Web site at *http://www.udsa.gov/fsa/dispute-mediation.htm*.

(g) For requests for mediation in a Non-certified State, if the factual issues implicated in an adverse decision have not previously been mediated, notice to a participant of an adverse decision will, as appropriate, include notice of the opportunity for mediation, including the mailing address of the State Executive Director and a facsimile number, if available, that the participant may use to submit a written request for mediation.

(1) It is the duty of the participant to contact the State Executive Director in writing to request mediation. The request for mediation must include a copy of the adverse decision to be mediated.

(2) If resources are available for mediation, the State Executive Director will select a qualified mediator and provide written notice to the participant that mediation is available and the fees that the participant will incur for mediation.

(3) If the participant accepts such mediation, FSA may give notice of the mediation to interested parties and third parties whose interests are known to FSA.

(h) Mediation will be considered to be at an end on that date set out in writing by the mediator or mediation program, as applicable, or when the participant receives written notice from the State Executive Director that the State Executive Director believes the mediation is at an impasse, whichever is earlier.

(i) To provide for mediator impartiality:

(1) No person shall be designated as mediator in an adverse program dispute who has previously served as an advocate or representative for any party in the mediation.

(2) As a condition of retention to mediate in an adverse program dispute under this part, the mediator shall agree not to serve thereafter as an advocate or representative for a participant or party in any other proceeding arising from or related to the mediated dispute, including, without limitation, representation of a mediation participant before an administrative appeals entity of USDA, or any other Federal Government department.

§ 780.10 State committee appeals.

(a) A request for appeal to the State committee from a decision of a county committee must be submitted by a participant or by a participant's authorized representative in writing and addressed to the State Executive Director.

(b) A participant's right to appeal a decision to a State committee is waived if a participant has appealed the adverse decision to NAD before requesting an appeal to the State Committee.

(c) If a participant requests mediation or requests an appeal to NAD before a request for an appeal to the State Committee has been acted upon, the appeal to the State Committee will be deemed withdrawn.

(d) The Federal Rules of Evidence do not apply in appeals to a State committee. Notwithstanding, a State committee may confine presentations of evidence to material facts and exclude evidence or questions as irrelevant, unduly repetitious, or otherwise inappropriate.

(e) The official record of a State committee decision on an appeal will be the decision letter that is issued following disposition of the appeal.

(f) Deliberations shall be in confidence except to the extent that a State committee may request the assistance of FSA employees during deliberations.

§ 780.11 Appeals of NRCS determinations.

(a) Notwithstanding any other provision of this part, a determination of NRCS issued to a participant pursuant to Title XII of the Food Security Act of 1985, as amended, including a wetland determination, may be appealed to the county committee in accordance with the procedures in this part.

(b) If the county committee hears the appeal and believes that the challenge to the NRCS determination is not frivolous, the county committee shall refer the case with its findings on other issues to the NRCS State Conservationist to review the determination, or may make such a referral in advance of resolving other issues.

(c) A decision of the county committee not to refer the case with its findings to the NRCS State Conservationist may be appealed to the State Committee.

(d) The county or State committee decision must incorporate, and be based upon, the results of the NRCS State Conservationist's review and subsequent determination.

§ 780.12 Appeals of penalties assessed under the Agricultural Foreign Investment Disclosure Act of 1978.

(a) Requests for appeals of penalties assessed under the Agricultural Foreign Investment Disclosure Act of 1978 must be addressed to: Administrator, Farm Service Agency, Stop 0572, 1400 Independence Avenue, SW., Washington, DC 20250–0572.

(b) Decisions in appeals under this section are not subject to

reconsideration and are administratively final.

§ 780.13 Verbatim transcripts.

(a) Appellants and their representatives are precluded from making any electronic recording of any portion of a hearing or other proceeding conducted in accordance with this part. Appellants interested in obtaining an official recording of a hearing or other proceeding may request a verbatim transcript in accordance with paragraph (b) of this section.

(b) Any party to an appeal or request for reconsideration under this part may request that a verbatim transcript be made of the hearing proceedings and that such transcript be made the official record of the hearing. The party requesting a verbatim transcript shall pay for the transcription service, provide a copy of the transcript to FSA free of charge, and allow any other party in the proceeding desiring to purchase a copy of the transcript to order it from the transcription service.

§ 780.14 [Reserved]

§ 780.15 Time limitations.

(a) To the extent practicable, no later than 10 business days after an agency decision maker renders an adverse decision that affects a participant, FSA will provide the participant written notice of the adverse decision and available appeal rights.

(b) A participant requesting an appealability review by the State Executive Director of an agency decision made at the county, area, district or State level that is otherwise determined by FSA not to be appealable must submit a written request for an appealability review to the State Executive Director that is received no later than 30 calendar days from the date a participant receives written notice of the decision.

(c) A participant requesting reconsideration, mediation or appeal must submit a written request as instructed in the notice of decision that is received no later than 30 calendar days from the date a participant receives written notice of the decision.

(d) Notwithstanding the time limits in paragraphs (b) and (c) of this section, a request for an appealability review, reconsideration, or appeal may be accepted if, in the judgment of the reviewing authority with whom such request is filed, exceptional circumstances warrant such action. A participant does not have the right to see an exception under this paragraph. FSA's refusal to accept an untimely request is not appealable.

(e) Decisions appealable under this part are final unless review options available under this part or part 11 are timely exercised.

(1) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the pertinent FSA office is not open for the transaction of business during normal working hours, the time for submission of a request will be extended to the close of business on the next working day.

(2) The date when an adverse decision or other notice pursuant to these rules is deemed received is the earlier of physical delivery by hand, by facsimile with electronic confirmation of receipt, actual stamped record of receipt on a transmitted document, or 7 calendar days following deposit for delivery by regular mail.

§ 780.16 Implementation of final agency decisions.

To the extent practicable, no later than 30 calendar days after an agency decision becomes a final administrative decision of USDA, FSA will implement the decision.

§ 780.17 Judicial review.

(a) Decisions of the Administrator in appeals under this part from Agriculture Foreign Investment Disclosure Act penalties are administratively final decisions of USDA.

(b) The decision of a State Executive Director or State Conservationist on equitable relief made under § 718.307 of this title is administratively final and also not subject to judicial review.

Signed at Washington, DC, on July 7, 2005.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 05–14767 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV05–981–2 FR]

Almonds Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Almond Board of California (Board) for the 2005–06 and subsequent crop years from $0.025 to $0.030 per pound of almonds received. Of the $0.030 per pound assessment, 60 percent (or $0.018 per pound) will be available as credit-back for handlers who conduct their own promotional activities. The Board locally administers the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: July 28, 2005.

FOR FURTHER INFORMATION CONTACT: California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable almonds beginning August 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2005–06 and subsequent crop years from $0.025 to $0.030 per pound of almonds received. Of the $0.030 per pound assessment, 60 percent (or $0.018 per pound) will be available as credit-back for handlers who conduct their own promotional activities.

The order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 and subsequent crop years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 12, 2005, and unanimously recommended 2005–06 expenditures of $28,756,000. In comparison, last year's budgeted expenditures were $24,077,344. The recommended assessment rate of $0.030 is $0.005 higher than the rate in effect for the 2004–05 crop year, and the credit-back portion of the assessment rate ($0.018 per pound) is $0.004 more than the 2004–05 credit-back portion currently in effect.

The major expenditures recommended by the Board for the 2005–06 crop year include $15,423,000 for domestic advertising, market research, and public relations; $4,920,000 for operational expenses; $4,873,000 for international public relations and other promotion and education programs, including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS); $1,200,000 for nutrition research; $850,000 for production research; $830,000 for food quality programs; and $500,000 for environmental research, plus other minor sums. Budgeted expenses for these items in 2004–05 were $12,540,000 for domestic advertising, market research, and public relations; $3,611,981 for operational expenses; $4,340,000 for international public relations and other promotion and education programs, including a MAP administered by USDA's FAS; $1,200,000 for nutrition research; $947,321 for production research; $858,000 for food quality programs; and $460,042 for environmental research, plus other minor sums.

The Board recommended increasing the assessment rate from $0.025 per pound to $0.030 per pound of almonds handled. Of the $0.030 per pound assessment, 60 percent (or $0.018 per pound) will be available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval. The increased assessment rate is needed because the 2005–06 crop is projected at 816 million pounds of assessable almonds, down from the 1.0368 billion pound 2004–05 crop, and projected assessment revenue will likely be reduced. The increased rate should generate adequate revenue to fund the Board's 2005–06 budgeted expenses and to maintain a small financial reserve. Section 981.81(c) authorizes a financial reserve of approximately one-half year's budgeted expenses. One-half of the 2005–06 crop year's budgeted expenses of $28,756,000 equals $14,378,000. The Board's financial reserve at the end of the 2005–06 crop year is projected to be $1.1 million which is well within the authorized reserve.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized an estimate of 816 million pounds of assessable almonds for the 2005–06 crop year. If realized, this will provide estimated assessment revenue of $9,792,000 from all handlers, and an additional $9,180,000 from those handlers who do not participate in the credit-back program, for a total of $18,972,000. In addition, it is anticipated that $10,851,797 will be provided by other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources should be adequate to cover budgeted expenses. Any unexpended funds from the 2005–06 crop year may be carried over to cover expenses during the succeeding crop year. Funds in the reserve at the end of the 2005–06 crop year are estimated to be approximately $1.1 million which would be within the amount permitted by the order.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2005–06 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 115 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

Data for the most recently completed crop year indicates that about 48 percent of the handlers shipped over $6,000,000 worth of almonds and about 52 percent of handlers shipped under $6,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately $261,248. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2005–06 and subsequent crop years from $0.025 to $0.030 per pound of almonds. Of the $0.030 per pound assessment, 60 percent (or $0.018 per pound) will be available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval.

The Board met on May 12, 2005, and unanimously recommended 2005–06 expenditures of $28,756,000 and an assessment rate of $0.030 per pound. Of the $0.030 per pound assessment, 60 percent (or $0.018 per pound) will be available as credit-back for handlers who conduct their own promotional activities. The assessment rate of $0.030 will be $0.005 higher than the current rate, and the credit-back portion of $0.018 per pound will be $0.004 more than the 2004–05 credit-back portion. The quantity of assessable almonds for the 2005–06 crop year is estimated at 816,000,000 pounds. The assessment rate will provide estimated assessment revenue of $9,792,000 from all handlers, and an additional $9,180,000 from those handlers who do not participate in the credit-back program, for a total of $18,972,000. In addition, it is anticipated that $10,851,797 will be provided by other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources should be adequate to cover budgeted expenses. The projected financial reserve at the end of 2005–06 should be $1,137,797 which would be within the maximum permitted under the order.

The major expenditures recommended by the Board for the 2005–06 crop year include $15,423,000 for domestic advertising, market research, and public relations; $4,920,000 for operational expenses; $4,873,000 for international public relations and other promotion and education programs, including a MAP administered by USDA's FAS; $1,200,000 for nutrition research; $850,000 for production research; $830,000 for food quality programs; and $500,000 for environmental research, plus other minor sums. Budgeted expenses for these items in 2004–05 were $12,540,000 for domestic advertising, market research, and public relations; $3,611,981 for operational expenses; $4,340,000 for international public relations and other promotion and education programs, including a MAP administered by USDA's FAS; $1,200,000 for nutrition research; $947,321 for production research; $858,000 for food quality programs; and $460,042 for environmental research, plus other minor sums.

The Board considered alternative assessment rate levels, including the portion available for handler credit-back. After deliberating the issue, the Board recommended increasing the assessment rate to $0.030 per pound, with 60 percent (or $0.018 per pound) available for handler credit-back. In arriving at its budget, the Board considered information from its various committees. Alternative expenditure levels were discussed by these groups, based on the value of various activities to the industry. The committees ultimately recommended appropriate activities and funding levels, which were adopted by the Board.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2005–06 season could range between $3.00 and $3.50 per pound of almonds. Therefore, the estimated assessment revenue for the 2005–06 crop year (disregarding any amounts credited pursuant to §§ 981.41 and 981.441) as a percentage of total grower revenue could range between 1.00 and 0.86 percent, respectively.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 12, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 17, 2005 (70 FR 35182). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the **Federal Register**. A 10-day comment period ending June 27, 2005, was provided for interested persons to respond to the proposal. A comment was received that supported the proposal, while another response was not relevant to the proposal. Accordingly, no changes were made to the rule, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–06 crop year begins on August 1, 2005, and the order requires that the rate of assessment for

each crop year apply to all assessable almonds handled during such crop year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 10-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.343 is revised to read as follows:

§ 981.343 Assessment rate.

On and after August 1, 2005, an assessment rate of $0.030 per pound is established for California almonds. Of the $0.030 assessment rate, 60 percent per assessable pound is available for handler credit-back.

Dated: July 21, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–14770 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE229, Special Condition 23–168–SC]

Special Conditions; Duncan Aviation Inc., EFIS on the Raytheon 300 King Air; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; correction.

SUMMARY: The FAA published a document on June 22, 2005 concerning final special conditions for Duncan Aviation Inc., on the Raytheon Model 300 King Air. There was an error in the preamble of the special conditions in the reference to the docket number. The correct document number appears in the addresses section in one place; however, the docket number is incorrect in the heading, in one other location in the address, and in the "Comments Invited" section. This document contains a correction to the docket number.

DATES: The effective date of these special conditions is June 15, 2005. Comments must be received on or before July 22, 2005.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE229, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE229. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on June 22, 2005 (70 FR 35985) that issued final special conditions with a request for comments. In the document under the heading, in the "Addresses" section, and in the "Comments Invited" section, the docket number "229" appears. The correct docket number is "CE229." This document corrects that error.

Correction of Publication

Accordingly, the preamble of the special conditions is revised to remove the docket number "229" and to replace it with "CE229" wherever it appears.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE229." The postcard will be date stamped and returned to the commenter.

Issued in Kansas City, Missouri on July 14, 2005.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14763 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–0098

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing this Final Rule to amend the FTC's Telemarketing Sales Rule ("TSR") hy revising the fees charged to entities accessing the National Do Not Call Registry ("the Registry").

DATES: *Effective date:* The amendment to § 310.8 ("the Fee Rule") will become effective September 1, 2005.

ADDRESSES: Requests for copies of this Final Fee Rule should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete public record of this proceeding is also available at that address, and on the Internet at: *http://www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/index.htm.*

FOR FURTHER INFORMATION CONTACT: David B. Robbins, (202) 326–3747, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The amended rule increases the annual fee for each area code of data to $56.00 per area code, or $28.00 per area code of data during the second six months of an entity's annual subscription period. The maximum amount that would be charged to any single entity for

accessing 280 area codes of data or more is increased to $15,400.00. In addition, the amended rule retains the provisions regarding free access by "exempt" organizations, as well as free access to the first five area codes of data by all entities.

Statement of Basis and Purpose

I. Background

On December 18, 2002, the Commission issued final amendments to the TSR, which, *inter alia*, established the Registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls ("Amended TSR").[1] Under the Amended TSR, most telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.[2] Telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.[3]

Shortly after issuance of the Amended TSR, Congress passed the Do-Not-Call Implementation Act ("the Implementation Act").[4] The Implementation Act gave the Commission the specific authority to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]."[5] The Implementation Act also provides that "[n]o amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available * * * to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement."[6]

On July 29, 2003, pursuant to the Implementation Act and the Consolidated Appropriations Resolution, 2003,[7] the Commission issued a Final Rule further amending the TSR to set fee amounts for entities accessing the National Do Not Call Registry ("the 2003 Fee Rule").[8] Those fees were based on the FTC's best estimate of the number of paying entities that would access the Registry, and the need to raise $18.1 million in Fiscal Year 2003 to cover the costs associated with the implementation and enforcement of the "do-not-call" provisions of the Amended TSR. The Commission determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The 2003 Fee Rule established an annual fee of $25 for each area code of data requested from the Registry, with the first five area codes of data provided at no cost.[9] The maximum annual fee was capped at $7,375 for entities accessing 300 area codes of data or more.[10]

On July 30, 2004, pursuant to the Implementation Act and the Consolidated Appropriations Act, 2004 ("the 2004 Appropriations Act"),[11] the Commission issued a revised Final Rule further amending the TSR, which increased fees on entities accessing the National Do Not Call Registry ("the 2004 Fee Rule").[12] Those fees were based on the FTC's experience through June 1, 2004, its best estimate of the number of paying entities that would access the Registry, and the need to raise $18 million in Fiscal Year 2004 to cover the costs associated with the implementation and enforcement of the "do-not-call" provisions of the Amended TSR. The Commission determined that the fee structure would continue to be based on the number of different area codes of data that an entity wished to access annually. The 2004 Fee Rule established an annual fee of $40 for each area code of data requested from the Registry, with the first five area codes of data provided at no cost.[13] The maximum annual fee was capped at $11,000 for entities accessing 280 area codes of data or more.[14]

In the Consolidated Appropriations Act, 2005 ("the 2005 Appropriations Act"),[15] Congress directed the FTC to collect offsetting fees in the amount of $21.9 million in Fiscal Year 2005 to implement and enforce the TSR.[16] Pursuant to the 2005 Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act ("the Telemarketing Act"),[17] the FTC issued a Notice of Proposed Rulemaking to amend the fees charged to entities accessing the Registry ("the 2005 Fee Rule NPR").[18]

In the 2005 Fee Rule NPR, the Commission proposed revising the fees for access to the Registry in order to raise $21.9 million to offset costs the FTC expects to incur in this Fiscal Year for purposes related to implementing and enforcing the "do-not-call" provisions of the Amended TSR. Based on the number of entities that had accessed the Registry through the end of February 2005, the Commission proposed revising the fees to charge $56 annually for each area code of data requested from the Registry, with the first five area codes of data provided at no cost. As a consequence of the increase in the per-area-code charge, the maximum annual fee would increase to $15,400 for entities accessing 280 area codes of data or more.[19]

In the 2005 Fee Rule NPR, the Commission sought comment on the following issues relating to the proposed amendment:

(1) Whether entities accessing the Registry should continue to obtain the first five area codes of data for free;[20]

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[1] *See* 68 FR 4580 (Jan. 29, 2003) (codified at 16 CFR 310).

[2] 16 CFR 310.4(b)(1)(iii)(B).

[3] 16 CFR 310.4(b)(3)(iv). The TSR requires telemarketers to access the Registry at least once every thirty-one days, effective January 1, 2005. *See* 69 FR 16368 (March 29, 2004).

[4] Do-Not-Call Implementation Act, Pub. L. 108–10, 117 Stat. 557 (2003).

[5] *Id.* at section 2.

[6] *Id.*

[7] Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, 117 Stat. 11 (2003).

[8] 68 FR 45134 (July 31, 2003).

[9] Once an entity requested access to area codes of data in the Registry, it could access those area codes as often as it deemed appropriate for one year (defined as its "annual period"). If, during the course of its annual period, an entity needed to access data from more area codes than those initially selected, it would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period was divided into two semi-annual periods of six months each. Obtaining additional data from the Registry during the first semi-annual, six month period required a payment of $25 for each new area code. During the second semi-annual, six month period, the charge for obtaining data from each new area code requested during that six-month period was $15. These payments for additional data would provide the entity access to those additional area codes of data for the remainder of its annual term.

[10] 68 FR at 45141.

[11] Consolidated Appropriations Act, 2004, Pub. L. 108–199, 118 Stat. 3 (2004).

[12] 69 FR 45580 (July 30, 2004).

[13] *Id.* at 45584. The 2004 Fee Rule has the same fee structure as the 2003 Fee Rule; however, fees were increased from $25 to $40 per area code, from $15 to $20 per area code for the second semi-annual six month period, and from a maximum of $7,375 to $11,000.

[14] *Id.*

[15] Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2004).

[16] *Id.* at Division B, Title V.

[17] 15 U.S.C. 6101–08.

[18] 70 FR 20848 (April 22, 2005).

[19] *Id.* at 20852.

[20] *Id.* at 20850. The Commission was particularly interested in comments addressing (a) whether there are alternatives to providing free access to the first five area codes of data that would better balance the burdens faced by small businesses with the need to raise appropriate fees to fund the Registry in a more equitable manner; (b) the propriety of changing or eliminating the number of area codes for which there is no charge, and the effect, if any, on entities that access the Registry, including small businesses; (c) the nature and type of entities that are accessing five or fewer area codes at no cost, and whether these entities are primarily the types of businesses that the Regulatory Flexibility Act requires the FTC to consider when adopting regulations, and whether such entities need access to one, two, three, four, or five area codes; and (d) whether any changes in the number of free area codes would affect an entity's business practices, including whether an entity would

(2) Whether "exempt" organizations should continue to be provided with free access to the Registry;[21]

(3) The number and type of small business entities that may be subject to the revised fees;[22] and

(4) Whether there are any significant alternatives that would further minimize the impact of the rule on small entities, consistent with the objectives of the Telemarketing Act, the 2005 Appropriations Act, the Implementation Act, and the Regulatory Flexibility Act.[23]

In response to the 2005 Fee Rule NPR, the Commission received nine comments.[24] The amended rule, comments, and the basis for the Commission's decision on the various recommendations are analyzed in detail below.

II. The Amended Rule

Based on the 2005 Appropriations Act, the Implementation Act, and the Telemarketing Act, as well as its review of the record in this proceeding, and on its law enforcement experience in this area, the Commission has decided to modify the fees required under the TSR Fee Rule. Under the amended rule provisions adopted herein, the annual fee for accessing the Registry will increase from $40.00 per area code to $56.00 per area code, and from a maximum of $11,000.00 to $15,400.00 for access to 280 area codes of data or more. The fee for accessing area codes during the second six months of an entity's annual subscription period also will increase, from $20.00 to $28.00. Further, the Commission has decided to continue to provide all organizations with free access to the first five area codes of data, and has decided to continue to provide "exempt" organizations with free access to the Registry, as well.

III. Discussion of Comments

The Commission received nine comments in response to the 2005 Fee Rule NPR.[25] Of the nine comments received, one comment was from a consumer who favored providing free access to the entire Registry to all entities "in order to promote the widest possible distribution of the Do Not Call Lists," thereby maximizing the "positive effect of the legislation."[26] The remaining eight comments were submitted by a mix of business and industry commenters, all of whom were opposed to the increase in fees, but who were divided on whether the Commission should reduce or eliminate the number of free area codes provided. In addition, one commenter opposed the proposal to continue providing free access to "exempt" organizations.[27] Importantly, in addressing the specific issues posed by the Commission, the commenters submitted only limited data or information that differed from that previously submitted in connection with fee rulemakings. Instead, the comments primarily relied on information provided by the FTC as part of its 2005 Fee Rule NPR, and/or in previous rulemaking proceedings.[28] Similarly, the primary arguments submitted in response to the 2005 Fee Rule NPR's proposal to raise fees also have been previously considered by the Commission.[29]

While most of the comments submitted represented views previously considered, some of the comments raised new points. For example, three of the commenters expressed concern that fees are continuing to increase each year.[30] One comment also expressed opposition to any increase in fees that might be attributable to the inclusion of wireless telephone numbers on the Registry.[31] This same comment posited that the Commission should not adopt the increase in fees, because it is "unjustified at this time and unnecessary for continued operation of the registry." This comment further stated that the Commission is "not required to collect fees up to [the] amount, which was authorized by Congress," but rather, that the Commission should only collect fees up to the amount necessary to fund and operate the Registry, an amount this comment sets at $18.1 million.[32]

The major themes that emerged from the record are summarized below.

1. Five Free Area Codes

In the 2005 Fee Rule NPR, the Commission proposed, at least for the next annual period, to continue allowing all entities accessing the Registry to obtain the first five area codes of data for free. The Commission proposed to continue allowing such free access "to limit the burden placed on small businesses that only require access to a small portion of the Registry."[33] The Commission noted, as it has in the past, that such a fee structure was consistent with the mandate of the Regulatory Flexibility Act,[34] which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact. As stated in the 2005 Fee Rule NPR and in the 2004 Fee Rule, "the Commission continues to believe that providing access to five area codes of data for free is an appropriate compromise between the goals of equitably and adequately funding the national registry, on one

choose not to access an area code if it had to pay for that area code or whether the entity would pay to continue accessing that area code.

[21] *Id.* at 20851. The 2005 Fee Rule NPR, the 2003 Fee Rule, and the 2004 Fee Rule stated that "there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required to under this Rule, 47 CFR 64.1200, or any other federal law." 16 CFR 310.8(c). Such "exempt" organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to 16 CFR 310.4(b)(1)(iii)(B)(i) or (ii), and who do not access the Registry for any other purpose. *See* 70 FR at 20849 n. 22. *See also* 69 FR at 45585–45586, and 68 FR at 45144.

[22] *See* 70 FR at 20851.

[23] *Id.* at 20850.

[24] A list of the commenters in this proceeding, and the acronyms used to identify each, is attached hereto as an appendix. Comments submitted in response to the 2005 Fee Rule NPR will be cited in this Notice as "[Acronym of Commenter] at [page number]." The nine comments that were submitted included a joint comment filed on behalf of the DMA, the ATA, and the NAA (i.e., DMA/ATA/NAA).

[25] *See* the appendix for a list of commenters.

[26] *See* DM at 1.

[27] *See* ARDA at 3.

[28] For example, four of the commenters noted, as did the Commission in the 2005 Fee Rule NPR, that 100 percent of the fees are paid by a small minority of the entities that access the Registry (e.g., only 11 percent of entities who access the Registry actually pay anything for such access). *See* comments submitted by FNBO, WF, WST, and ARDA. However, this same point was also made in the 2004 Fee Rule proceeding: "[m]any noted that only 11 percent of all entities accessing the registry currently pay the entire cost of the registry." *See* 69 FR at 45582.

[29] As another example, comments also included suggestions that the Commission use "revenue from enforcement proceedings to subsidize" the Registry, and that the Commission should "increase efforts to identify those entities that are not accessing the Registry," rather than increase the fees on those that are already complying with the rules. *See* ARDA at 2–3. However, this same point was also made in the 2004 Fee Rule proceeding: "The FTC must investigate whether there are entities that should be paying for access but fail to do so" and "the FTC should use fines obtained from enforcement actions to offset some of the fee increase." *See* 69 FR at 45581–45582. Two of the comments also question whether the fees that are being collected are being used for purposes other than to fund the Registry. *See* ARDA at 3, and DMA/ATA/NAA at 3. This same issue was also raised in the 2004 Fee Role proceeding: "the fees should be used only to cover the costs to operate the registry." *See* 69 FR at 45582.

[30] *See* FNBO at 2, ARDA at 1, and DMA/ATA/NAA at 2.

[31] *See* DMA/ATA/NAA at 4.

[32] *Id.* at 1–2.

[33] *See* 70 FR at 20850. *See also* 68 FR at 45140, and 69 FR at 45582.

[34] 5 U.S.C. 601.

hand, and providing appropriate relief for small businesses, on the other."[35] In addition, the Commission noted again, as it has in the past, that requiring a large number of entities to pay a small fee for access to five or fewer area codes from the Registry would place a significant burden on the Registry, requiring the expenditure of even more resources to handle properly that additional traffic.[36]

While the 2005 Fee Rule NPR proposed to continue providing free access to five area codes of data, the Commission nevertheless noted a particular interest in comments regarding the propriety, impact, and effects of these provisions on all entities accessing the Registry. In this regard, the Commission specifically observed that "the implementation and enforcement costs are borne by a small percentage of entities that access the registry,"[37] but "that the cost of accessing the registry is relatively modest."[38] As an example the Commission explained that, if it were to stop providing free access to five or fewer area codes, the cost for accessing five area codes of data could be as little as $185. Therefore, "given the modest nature of the fees, along with the increasing burden borne by those organizations that do pay for access,"[39] the Commission noted its particular interest in comments addressing these issues.

The Commission received seven comments that addressed the issue of five free area codes. Four of the commenters opposed providing the first five area codes of data at no charge, noting that the entire cost of the Registry is borne by a small percentage of all entities who access the system.[40] They maintained that a fee structure that requires so few organizations to bear such a significant portion of the total costs is not equitable.[41] Commenters also reiterated the Commission's view that if the Commission were to stop providing free access to five or fewer area codes, the cost for accessing five area codes of data would be relatively modest.[42] These commenters also suggested that any additional burden to the system caused by the need to collect additional payments should be factored into the fees, assuming that this would not increase fees beyond the amounts proposed in the 2005 Fee Rule NPR.[43]

These commenters suggested that eliminating access to five free area codes would make the fee structure more equitable,[44] and that "the cost of the Registry should be borne by all users that are required to access the Registry and absorbed as a cost of doing business."[45] Another alternative suggested by one commenter was that the Commission continue to provide free access to five area codes, "provided they qualify as a small business as defined by the Small Business Administration."[46] One commenter also suggested that the Commission charge "at least a reduced fee."[47]

On the other hand, three of the comments supported providing the first five area codes of data at no charge.[48] One commenter stated that:

> Removing the five area code exemption would disproportionately impact [small] businesses as they would pay the same per area code fee as larger telemarketers, that place a much heavier volume of calls to phone numbers registered within these area codes. * * * Removing the exemption altogether would have a significant impact on our members and many other small and medium size businesses. * * * These businesses have already assumed significant training, systems, and other compliance costs associated with the National DNC rules and other federal and state telemarketing restrictions.[49]

Another commenter cited information from the Small Business Administration's Office of Advocacy which it claimed shows that "small businesses represent 99 percent of American companies" and "very small firms with fewer than 20 employees * * * spend 60 percent more per employee than larger firms to comply with federal regulations."[50] This commenter also pointed out that:

> in today's increasingly interconnected world, a business may be small in size * * * but not be limited to a small geographic market area * * * many small businesses, including real estate agents and brokers, often have the need to call a limited number of consumers who reside in a variety of states and/or area codes beyond their primary five area code local calling region.[51]

After considering all of the comments submitted in this proceeding, the Commission has determined to retain the provision allowing the free access of up to five area codes. Although the Commission continues to recognize that only a small percentage of the total number of entities accessing the Registry pay for that access, these figures also illustrate the large number of small businesses that likely would be adversely affected by a change in the number of area codes provided at no cost. In fact, over 50,000 entities have accessed five or fewer area codes of the Registry. As observed in the 2005 Fee Rule NPR and the 2004 Fee Rule, the Commission continues to believe that most of these entities—realtors, car dealers, community-based newspapers, and other small businesses—are precisely the types of businesses that the Regulatory Flexibility Act requires the FTC to consider when adopting regulations.[52] Moreover, the

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[35] *See* 70 FR at 20850. *See also* 68 FR at 45141, and 69 FR at 45584.

[36] *See* 70 FR at 20850.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See* FNBO, WF, WST, and ARDA. These commenters relied solely on the data presented in the Commission's 2005 Fee Rule NPR, noting, for example, that only 11 percent of all entities accessing the Registry currently pay the entire cost of the Registry. Commenters also noted the complementary statistic, that approximately 89% of all entities who access the Registry pay nothing. *See, e.g.*, FNBO at 2; WST at 1 (noting that an even greater burden is borne by those entities who purchase all area codes); and ARDA at 2.

[41] *See* FNBO at 2; WST at 2; WF at 1; and ARDA at 1–2.

[42] *See* WF at 1, stating that the "cost of paying for access to the first five area codes * * * would hardly be a significant burden on even the smallest of businesses." *See also* WST at 2, stating that "this amount would not seem so exorbitant as to place an undue burden on small business."

[43] *See* FNBO at 1, and WST at 2. FNBO stipulated, however, "that the Commission should only allocate fees to all required users if it can be done without increasing expenditures, which could result in increased fees for everyone."

[44] *Id.*

[45] *See* FNBO at 2.

[46] *See* WST at 2.

[47] *See* ARDA at 1–2.

[48] *See* NAR at 2, NADA at 1, and DMA/ATA/NAA at 1.

[49] *See* NADA at 1–2. Two commenters specifically questioned the relationship between the size of a business, and the number of area codes such businesses need to access. *See* ARDA at 2, and NAR at 1. ARDA and NAR suggested that some small businesses may need to place a low volume of calls to many area codes, while some large businesses may place a large volume of calls to a limited number of area codes. Accordingly, ARDA and NAR suggested that the Commission's current fee structure, based on area codes accessed, does not adequately address small business issues. However, ARDA and NAR proposed two opposing solutions to this problem: ARDA suggested that all entities should be charged for all area codes they access, thus eliminating the free access to five area codes, while NAR suggested that small businesses should be provided free access to the entire Registry, thus expanding the free access currently provided.

[50] *See* NAR at 2.

[51] *See* NAR at 1. NADA's comment echoed these concerns. NADA also provided an example to illustrate the impact it felt would occur: "Since most major metropolitan areas cover more than one area code, most businesses that serve that area would be affected if the number of free area codes were reduced. For example, the DC Metropolitan area consists of the following area codes: 202, 703, 571, 301, 240. If a small automobile dealership in this area were limited to one or two free area codes on the registry, they would have to pay to access the remaining area codes. Thus, any reduction in the number of free area codes would likely have a significant economic impact on small businesses." *See* NADA at 2.

[52] The comments submitted in response to the 2005 Fee Rule NPR do not offer any information or data to contradict this assertion. In this regard, we note that the business and organization commenters who support the proposal to continue providing

Commission again finds significant the information submitted by commenters discussing the disproportionate impact compliance with the "do-not-call" regulations may have on small businesses. In order to lessen that impact, the Commission believes that retaining the five free area code provision is appropriate.

The Commission does not believe that the alternatives suggested instead of the five free area code provision would be as effective in minimizing the impact of the Do Not Call regulations on small businesses and that these proposed alternatives may create undue burdens that the current system does not impose. For example, the suggestion to eliminate or reduce the number of area codes provided for free would result in tens of thousands of entities that currently access the Registry for free being required to pay the same fee to access the Registry as much larger businesses. While, to some, such a fee might seem modest, it nonetheless would represent an increase in costs to more than 50,000 entities, most of whom are already disproportionately impacted by the cost of complying with the "do-not-call" regulations. Alternatively, the suggestion to base the fees on the actual size of the entity requesting access would, as noted in the 2004 Fee Rule, require all entities to submit sensitive data concerning annual income, number of employees, or other similar factors. It also would require the FTC to develop an entirely new system to gather that information, maintain it in a proper manner, and investigate those claims to ensure proper compliance. As the Commission has previously stated, such a system "would present greater administrative, technical, and legal costs and complexities than the Commission's current exemptive proposal, which does not require any proof or verification of that status." [53] As a result, the Commission continues to believe that the most appropriate and effective method to minimize the impact of the Rule on small businesses is to provide access to a certain number of area codes at no charge.

The comments also do not provide any new information to support a change in the number of area codes to provide at no charge. Thus, the Commission does not believe that any change in the current level of five free area codes is necessary or appropriate. The Commission continues to recognize that reducing the number of free area codes would result in slightly lower fees charged to the entities that must pay for access. At the same time, however, as noted previously, such a change also would result in increased costs to thousands of small businesses. On the other hand, the Commission is not persuaded that it should increase the number provided at no charge, although it continues to recognize that some small businesses located in large metropolitan areas may need to make calls to more than five area codes. Obviously, increasing the number of area codes provided at no charge would decrease the pool of paying entities, and further increase the fees that entities must pay. As a result, the Commission continues to believe that allowing all entities to gain access to the first five area codes of data from the Registry at no cost is appropriate.

2. Exempt Entity Access

In the 2005 Fee Rule NPR, the Commission also proposed to continue allowing "exempt" organizations to obtain free access to the Registry.[54] The Commission stated its belief that any exempt entity, voluntarily accessing the Registry to avoid calling consumers who do not wish to receive telemarketing calls, should not be charged for such access. Charging such entities access fees, when they are under no legal obligation to comply with the "do-not-call" requirements of the TSR, may make them less likely to obtain access to the Registry in the future, resulting in an increase in unwanted calls to consumers.[55]

Three of the comments supported continuing to allow "exempt" entities to access the Registry at no charge, for the reasons set forth in the 2005 Fee Rule NPR.[56] One commenter opposed the provision, claiming that fees are necessary in order to make it more difficult for "bad actors" [57] to gain access to the system, as well as to help "fund the Registry." [58]

The Commission continues to believe that if it charged exempt entities for access to the Registry, many, if not most, of those entities would no longer seek access.[59] As a result, as noted in the 2004 Fee Rule, registered consumers would receive an increase in the number of unwanted telephone calls. Exempt entities are, by definition, under no legal obligation to access the Registry. Many are outside the jurisdiction of the FTC. They are voluntarily accessing the Registry in order to avoid calling consumers whose telephone numbers are registered. They should be encouraged to continue doing so, rather than be charged a fee for their efforts. The Commission will, therefore, continue to allow such exempt entities to access the Registry at no charge, after they have completed the required certification.

3. Imposition of the Fees and Use of the Funds

While the commenters disagreed on whether access to five area codes of data should continue to be provided at no cost, they were unanimous in their opposition to the increase in fees for access to the National Do Not Call Registry. Generally, in addition to arguing that it would be unfair to continue raising fees on the small percentage of entities who pay for accessing the Registry, [60] commenters also posited other reasons in opposition to the increase.

One commenter disapproved of the proposed increase in fees, stating that "the Commission should increase efforts to identify those entities that are not accessing the Registry as required." [61] Since the opening of the Registry, the FTC has monitored industry payment for access. We have found no evidence of widespread noncompliance with the 2004 Fee Rule. Moreover, no commenter has provided any concrete information about such alleged noncompliance. As part of our law enforcement activities, we continue to welcome any specific information that can be provided in this regard. The FTC continues to conduct non-public investigations of violations of the fee provision as well as violations of the do-not-call provisions of the TSR, and will file law enforcement actions addressing such violations when appropriate.[62]

five free area codes, purport to represent more than 1.2 million members and/or affiliates; many of whom appear to be small business entities. See NAR, NADA, and DMA/ATA/NAA. However, those business and organization commenters who oppose the proposal to continue providing five free area codes appear to represent a much smaller number of organizations, and do not purport to represent a significant number of small business entities. However, the Commission also notes that the volume of comments received does not conclusively indicate the number of organizations that will be affected by the rule change.

[53] *See* 69 FR at 45583. *See also* 68 FR at 16243 n.53.

[54] *See* supra footnote 21, citing 70 FR at 20849 n. 22, 69 FR at 45585–45586, and 68 FR at 45144.

[55] *See* 70 FR at 20851.

[56] *See* FNBO at 2, WF at 1, and WST at 2.

[57] The Commission has found no evidence of widespread non-compliance with the Do Not Call provisions of the TSR. *See* discussion in section III.3.

[58] *See* ARDA at 3.

[59] *See also* WF at 1, stating that "it is safe to assume that few if any such entities would access the list at all if they were required to pay for such access."

[60] *See* discussion starting in section III.1., above.

[61] *See* ARDA at 3.

[62] As of April 21, 2005, the FTC had initiated seven DNC Registry cases and obtained four

Continued

This same commenter suggested that the FTC should use "revenue from enforcement actions" to offset some of the fee increase.[63] However, as stated in the 2004 Fee Rule, by statute, the FTC cannot retain any civil penalties it obtains in such law enforcement actions. Instead, all such civil penalties are deposited into the General Fund of the United States Treasury.[64] Accordingly, by law, any monies obtained from enforcement actions cannot be used to offset fees.

Two of the commenters also questioned whether fees that are being collected are being used for purposes other than to fund the Registry.[65] One commenter stated that "fees * * * should only be used to fund enforcement and administrative costs directly associated with the Registry,"[66] and another commenter stated that they "are concerned that fees are being used for telemarketing enforcement based on fraud or other violations of the TSR, where there may also be an incidental violation of the registry."[67] These commenters also noted the Commission's statements regarding industry's high rate of compliance, and argued that it is unfair to continue increasing fees and imposing enforcement costs on the very organizations that are most compliant with the rules.[68]

Consistent with the Implementation Act, and as stated in previous rulemaking proceedings,[69] the Commission has limited the amount of fees to be collected to those needed to implement and enforce the "do-not-call" provisions of the Amended TSR. The amount of fees collected pursuant to this revised rule is intended to offset costs in the following three areas: first, funds are collected to operate the Registry. This operation includes items such as handling consumer registration and complaints, telemarketer access to the Registry, state access to the Registry, and the management and operation of law enforcement access to appropriate information. Second, funds are collected for law enforcement and educational activities, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and consumer and business education outreach. These law enforcement efforts are a significant component of the total costs, given the large number of ongoing investigations currently being conducted by the FTC, and the substantial effort necessary to complete such investigations. Third, funds are collected to cover infrastructure and administration costs associated with the operation and enforcement of the Registry, including information technology structural supports and distributed mission overhead support costs for staff and non-personnel expenses such as office space, utilities, and supplies.[70]

Three of the commenters also raised concerns regarding the pattern of annual fee increases that the Commission has adopted.[71] One commenter stated that it was "concerned, given the sharp increases in the cost of the Registry over the first two years of activation, that this cost will continue to increase and over time become a significant cost that will ultimately be passed on to the consumer."[72] Another commenter raised the concern that:

> As the user fee increases, it is inevitable that compliant sellers will be motivated to (1) reduce or stop outbound telemarketing; or (2) avoid paying the fees in violation of the rules. Either event will reduce the number of sellers (and/or area codes accessed by the sellers), which will result in lower fees, and in turn result in more fee increases in the future to be paid by only the most profitable businesses.[73]

A third commenter stated that while fees have increased, the "Commission has not indicated in the NPRM that costs to run the registry have increased or that enforcement or other costs have increased."[74] The Commission has increased the fees charged to telemarketers for accessing the Registry; in 2004, this was primarily because fewer area codes of information were purchased than were anticipated in the 2003 Fee Rule.[75] As part of the 2004 Fee Rule proceedings, the Commission reviewed the fees that had been collected, along with data about the number of area codes that had been purchased, and revised its initial assumptions accordingly. As a result, the Commission increased the fees based on the latest information then available.[76] Similarly, in the 2005 Fee Rule NPR, the Commission analyzed the current information, and issued a proposal that reflected both the amount that needed to be raised,[77] along with the number of area codes that were projected to be purchased. As a result, the fees that were proposed in the 2005 Fee Rule NPR represented an increase over the fees adopted in the 2004 Fee Rule.

In this regard, one commenter stated its belief that this increase is unjustified and only reflects the "increase in the annual congressional authorization."[78] However, an increase in the amount of funding required to cover the administrative costs of the Registry, while a component of the fee increase, is not the only component. As in the 2004 Fee Rule, a second major factor that influenced the increase proposed in the 2005 Fee Rule NPR was the number of area codes that were purchased by entities accessing the Registry. The fees that the Commission proposed in the 2005 Fee Rule NPR reflect both the amount of funds necessary to implement and enforce the Registry, as well as the number of area codes that the Commission assumes will be purchased by entities accessing the Registry, based on the Commission's current experience. Importantly, the Commission believes that, through experience, it will continue to obtain better information about the number of entities accessing the Registry, their purchasing behavior, and the costs associated with running the Registry. The Commission expects this experience and improved information to result in more stable and predictable fee rates.

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settlements (two of those cases were filed by the Department of Justice on the FTC's behalf). In addition, the FTC had filed four cases against do-not-call scams.

[63] *See* ARDA at 2.

[64] *See* Miscellaneous Receipts Act, 31 U.S.C. 3302.

[65] *See* ARDA at 3 and DMA/ATA/NAA at 3.

[66] *See* ARDA at 3.

[67] *See* DMA/ATA/NAA at 3.

[68] *See* ARDA at 2, and DMA/ATA/NAA at 3–4. DMA/ATA/NAA further stated their belief that "it is inappropriate for entities that comply with the law to bear the enforcement costs of the FTC. If the do-not-call registry is as successful as the FTC indicates, the FTC itself or Congress should provide any additional necessary funding increases over the current fee structure." *See* DMA/ATA/NAA at 3–4.

[69] *See* 69 FR at 45582. *See* also 68 FR at 45141.

[70] *See* 70 FR at 20850.

[71] *See* FNBO at 2, ARDA at 1, and DMA/ATA/NAA at 2.

[72] *See* FNBO at 2. Interestingly, FNBO also notes "that the Registry's overall cost per year does not in and of itself significantly impact our company's bottom line." *Id.*

[73] *See* ARDA at 1–2.

[74] *See* DMA/ATA/NAA at 2.

[75] *See* 68 FR at 45140. As stated in the 2003 Fee Rule, the fees were "based on the best information available to the agency at [that] time." However, as the Commission noted, we "received virtually no comments providing information on the validity of the Commission's assumptions."

[76] *See* 69 FR at 45584.

[77] The Commission views the current Congressional authorization as an instruction regarding the fees to be collected.

[78] *See* DMA/ATA/NAA at 2. The Commission also notes that DMA/ATA/NAA stated that Congress authorized the Commission to collect $18.1 million in offsetting fees in 2004. However, Congress actually authorized the Commission to collect $23.1 million in the 2004 Appropriations Act. However, in its rulemaking, the Commission stated that it was only seeking $18.1 million in offsetting fees during Fiscal year 2004 because of the $5.1 million from the 2003 Fee Rule that the Commission collected in Fiscal Year 2004. *See* 69 FR at 23702 n. 4.

In addition, one commenter also expressed opposition to any increase in fees that might be attributable to the inclusion of wireless telephone numbers on the Registry, stating that:

> Telemarketing calls to wireless numbers without consent are prohibited under the FCC's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. 227 *et seq.* Thus, as a legal matter, consumers receive no fewer telemarketing calls by placing their wireless numbers on the registry. Because such calls already are prohibited in the first instance, there is no basis for allowing such numbers to be placed on the registry.[79]

However, this commenter overstated the nature of the prohibition enacted by the Federal Communication Commission ("FCC"). The FCC's prohibitions on telemarketing calls placed to wireless telephone numbers, proscribe the use of an "automatic telephone dialing system or an artificial or prerecorded message" to place such calls.[80] In this regard, the Commission has received no information that would suggest that those engaged in telemarketing activities only use the aforementioned technology to place calls to consumers. The TSR's prohibitions concerning fraudulent or abusive telemarketing acts or practices apply to both land line and wireless telephones, and the Registry has never differentiated between the two. At this point, the Commission sees no reason to make such a distinction.

Accordingly, the Commission concludes that an increase in fees is necessary.

IV. Calculation of the Revised Fees

As previously stated, the Commission proposed in the 2005 Fee Rule NPR to increase the fees charged to access the National Do Not Call Registry to $56 annually for each area code of data requested, with the maximum annual fee capped at $15,400 for entities accessing 280 area codes of data or more. The Commission based this proposal on the total number of entities that accessed the Registry from March 1, 2004 through February 28, 2005.[81] The Commission noted, however, that it would adjust the final revised fee to reflect the actual number of entities that had accessed the Registry at the time of issuance of the Final Rule.[82]

As of June 1, 2005, there have been no significant or material changes in the number of entities that have accessed the Registry since the Commission issued the 2005 Fee Rule NPR.

Therefore, based on the figures contained in the 2005 Fee Rule NPR, and the need to raise $21.9 million in fees to offset costs it expects to incur in this Fiscal Year for implementing and enforcing the "do-not-call" provisions of the Amended TSR, the Commission is revising the fees to be charged for access to the Registry as follows: the fee charged for each area code of data will be $56 per year, with the first five area codes provided to each entity at no charge. "Exempt" organizations, as defined by the Do Not Call regulations, will continue to be allowed access to the Registry at no charge. The maximum amount that will be charged any single entity will be $15,400, which will be charged to any entity accessing 280 area codes of data or more. The fee charged to entities requesting access to additional area codes of data during the second six months of their annual period will be $28.

The Commission establishes September 1, 2005, as the effective date for this rule change. Thus, the revised fees will be charged to all entities that renew their subscription account number after their current subscription has expired.

V. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act,[83] the Office of Management and Budget ("OMB") has approved the information collection requirements in the 2004 Fee Rule and assigned OMB Control Number 3084–0097. The rule amendment, as discussed above, provides for an increase in the fees that are charged for accessing the National Do Not Call Registry, but creates no new recordkeeping, reporting, or third-party disclosure requirements that would be subject to review and approval by OMB pursuant to the Paperwork Reduction Act.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires the FTC to provide an Initial Regulatory Flexibility Analysis ("IRFA") with its proposed rule, and a Final Regulatory Flexibility Analysis ("FRFA") with its final rule, unless the FTC certifies that the rule will not have a significant economic impact on a substantial number of small entities. As explained in the 2005 Fee Rule NPR and this Statement, the Commission hereby certifies that it does not expect that its Final Amended Fee Rule will have the threshold impact on small entities. As discussed above, this Amended Rule specifically charges no fee for access to data included in the Registry from one to five area codes. As a result, the Commission anticipates that many small businesses will be able to access the Registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed revised fees. Nonetheless, the Commission published an IRFA with the 2005 Fee Rule NPR, and is also publishing a FRFA with its Final Amended Fee Rule below, in the interest of further explaining its determination, even though the Commission believes that it is not required to publish such analyses.

A. Reasons for Consideration of Agency Action

The Amended Final Fee Rule has been considered and adopted pursuant to the requirements of the Implementation Act and the 2005 Appropriations Act, which authorize the Commission to collect fees sufficient to implement and enforce the "do-not-call" provisions of the Amended TSR.

B. Statement of Objectives and Legal Basis

As explained above, the objective of the Amended Final Fee Rule is to collect sufficient fees from entities that must access the National Do Not Call Registry. The legal authority for this Rule is the 2005 Appropriations Act, the Implementation Act, and the Telemarketing Act.

C. Description of Small Entities to Which the Rule Will Apply

The Small Business Administration has determined that "telemarketing bureaus" with $6 million or less in annual receipts qualify as small businesses.[84] Similar standards, *i.e.*, $6 million or less in annual receipts, apply for many retail businesses that may be "sellers" and subject to the revised fee provisions set forth in this Amended Final Rule. In addition, there may be other types of businesses, other than retail establishments, that would be "sellers" subject to this rule.

To date more than 50,000 entities have accessed five or fewer area codes

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[79] *See* DMA/ATA/NAA at 4.

[80] *See* FCC Telemarketing and Telephone Solicitation Rules, 47 CFR 64.1200 (2005).

[81] At that time, more than 60,800 entities had accessed all or part of the information in the Registry. Approximately 1,300 of these entities are "'exempt"and therefore have accessed the Registry at no charge. An additional 52,700 entities have accessed five or fewer area codes of data, also at no charge. As a result, approximately 6,700 entities have paid for access to the Registry, with slightly less than 1,100 entities paying for access to the entire Registry. *See* 70 FR at 20849–20850.

[82] *Id.* at 20850 n.24.

[83] 44 U.S.C. 3501–3520.

[84] *See* 13 CFR 121.201.

of data from the Registry at no charge.[85] While not all of these entities may qualify as small businesses, and some small businesses may be required to purchase access to more than five area codes of data, the Commission believes that this is the best estimate of the number of small entities that will be subject to this Amended Final Rule. In any event, as explained elsewhere in this Statement, the Commission believes that, to the extent the Amended Final Fee Rule has an economic impact on small business, the Commission has adopted an approach that minimizes that impact to ensure that it is not substantial, while fulfilling the legal mandate of the Implementation Act and 2005 Appropriations Act to ensure that the telemarketing industry supports the cost of the National Do Not Call Registry.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection activities at issue in this Amended Final Rule consist principally of the requirement that firms, regardless of size, that access the Registry submit minimal identifying and payment information, which is necessary for the FTC to collect the required fees. The cost impact of that requirement and the labor or professional expertise required for compliance with that requirement were discussed in Section VI of the 2005 Fee Rule NPR.[86]

As for compliance requirements, small and large entities subject to the Amended Fee Rule will pay the same fees to obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the Registry. As noted earlier, however, compliance costs for small entities are not anticipated to have a significant impact on small entities, to the extent the Commission believes that compliance costs for those entities will be largely minimized by their ability to obtain data for up to five area codes at no charge.

E. Duplication With Other Federal Rules

None.

F. Discussion of Significant Alternatives

The Commission discussed the proposed alternatives in Section III, above.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

VII. Final Rule

■ Accordingly, for the reasons set forth above, the Commission hereby amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Revise § 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $56 per area code of data accessed, up to a maximum of $15,400; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay $56 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay $28 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX—LIST OF ACRONYMS FOR COMMENTERS TO THE TSR 2005 FEE RULE PROPOSAL

Commenter	Acronym
1. American Resort Development Association	ARDA
2. Darian Miller	DM
3. Direct Marketing Association, Inc. (DMA), American Teleservices Association (ATA), and Newspaper Association of America (NAA).	DMA/ATA/NAA
4. First National Bank of Omaha	FNBO
5. Influent, Inc	INF
6. National Association of Realtors	NAR
7. National Automobile Dealers Association	NADA
8. Wells Fargo & Company	WF
9. West Corporation	WST

[85] *See supra* note 81.

[86] *See* 70 FR at 20851.

[FR Doc. 05–14905 Filed 7–26–05; 8:45 am]
BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston 05–037]

RIN 1625–AA87

Security Zones; Charleston Harbor, Cooper River, SC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a fixed security zone in the waters from the Don Holt, I–526 Bridge, on the Cooper River to the entrance of Foster Creek on the Cooper River, South Carolina. This security zone is necessary to protect the public and port from potential subversive acts during port embarkation operations. Vessels are prohibited from entering, transiting, anchoring, mooring, or loitering within this zone, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or the Captain of the Port's designated representative.

DATES: This rule is effective on June 1, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Charleston 05–037] and are available for inspection or copying at the Marine Safety Office Charleston between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Matthew Meskun, Chief of Waterways Management Division at 843–720–3240.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 6, 2005, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Charleston Harbor, Cooper River, SC" in the **Federal Register** (70 FR 23950). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A similar temporary final rule (70 FR 1187, January 6, 2005) is in place but will expire on June 1, 2005. Delaying the effective date would be contrary to the public interest as this final rule is necessary to prevent terrorist acts and to protect military and civilian personnel should a terrorist act occur.

Background and Purpose

This security zone is necessary to protect the safety of life and property on navigable waters and prevents potential terrorist threats aimed at military installations during strategic embarkation operations. The security zone will encompass all waters from the Don Holt I–526 Bridge over the Cooper River to the entrance of Foster Creek on the Cooper River. Occasionally multiple military vessels are in port at the same time, all of which require security zones. When this occurs, the safest way to secure the assets is to close this portion of the river. Additionally, this security zone has been in place on a temporary basis since the terrorist attacks of September 11, 2001. The current temporary security zone, 33 CFR 165.T07–145, was published in the **Federal Register** January 6, 2005 (70 FR 1187).

Discussion of Comments and Changes

No substantive issues were raised during the comment period and no changes were made from the proposed regulatory text.

Discussion of Rule

The security zone will encompass all waters from the Don Holt I–526 Bridge over the Cooper River to the entrance of Foster Creek on the Cooper River. The Charleston Captain of the Port will enforce the security zone on the Cooper River from time to time and in the interest of national security vessels that are carrying cargo for the Department of Defense (DoD).

These vessels that carry DoD cargo need a level of security that requires the Cooper River to be closed to all traffic for short periods of time. Security assets would be on scene and mariners will be given as much advanced notice as possible. Marine Safety Office Charleston will notify the maritime community of closure periods via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz), or Marine Safety Information Bulletins, or actual notice from on scene security assets enforcing the zone.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

The limited geographic area encompassed by the security zone should not restrict the movement of commercial or recreational vessels through the Port of Charleston. Also, the Coast Guard Captain of the Port or the Captain of the Port's designated representative may allow an individual to transit the security zone subsequent to an individual's request.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit a portion of the Cooper River while the security zone is in effect.

This security zone will not have a significant economic impact on a substantial number of small entities because it will only be in place for short periods of time on an infrequent basis. As much advanced notice will be provided to mariners in order to accommodate for any enforcement of the security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. No comments were made regarding federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. No comments were made on this section.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were made on this section. -

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were made on this section.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. No comments were made on this section.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. No comments were made on this section.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. No comments were made on this section.

Technical Standards

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. No comments were made on this section.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits within paragraph (34)(g) because it is a security zone.

Under figure 2–1, paragraph (34)(g) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.709 to read as follows:

§ 165.709 Security Zone; Charleston Harbor, Cooper River, South Carolina.

(a) *Regulated area.* The Coast Guard is establishing a fixed security zone on all waters of the Cooper River, bank-to-bank and surface to bottom, from the Don Holt I–526 Bridge to the intersection of Foster Creek at a line on 32 degrees 58 minutes North Latitude.

(b) *Enforcement period.* This section will be enforced when security assets are on scene and Marine Safety Office Charleston has notified the maritime community that an Enforcement Period is in effect. Marine Safety Office Charleston will notify the maritime community by broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz), or Marine

Safety Information Bulletins, or actual notice from on scene security assets enforcing the security zone.

(c) *Regulations.* During enforcement of the security zone described in paragraph (a) of this section, vessels or persons are prohibited from entering, transiting, mooring, anchoring, or loitering within the security zone unless authorized by the Captain of the Port Charleston, South Carolina or his or her designated representative.

(1) Persons desiring to transit the Regulated Area may contact the Captain of the Port via VHF–FM channel 16 or by telephone at (843) 720–3240 and request permission to transit the security zone.

(2) If permission to transit the security zone is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: June 1, 2005.

John E. Cameron,

Captain,U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 05–14857 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0046; FRL–7727–7]

Spiromesifen; Pesticide Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of April 27, 2005, concerning tolerances for spiromesifen. This document is being issued to correct typographical errors regarding corn, sugar beet, and wheat tolerances in the tables of tolerances for 40 CFR Chapter I Part 180.607.

DATES: This final rule is effective on July 27, 2005.

ADRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *Harris.Thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT.**

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

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

II. What Does this Correction Do?

FR Doc. 05–8120 published in the **Federal Register** ofApril 27, 2005 (70 FR 21631) (FRL–7705–1) is being corrected to clarify errors that were made to the tables of tolerances for § 180.607. The tolerances for corn, sugar beet, and wheat were affected. Also, the table for indirect tolerances was moved from paragraph (a)(2) to paragraph (d).

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting language that was inadvertently mistyped in the previously published final rule. The correct text was present in the Supplemental Information Section of the April 27, 2005 final rule but mistyped in the tolerance table. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

The applicable statutory and Executive Order reviews were included in the April 27, 2005 **Federal Register** document. This document is a technical correction and as such no new review requirements are applicable.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 19, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—AMENDED

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

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

■ 2. Section 180.607 is revised to read as follows:

§ 180.607 Spiromesifen; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in or on the following primary crop commodities:

Commodity	Parts per million
Corn, field, forage	3.0
Corn, field, grain	0.02
Corn, field, stover	5.0
Cotton, gin byproducts	15
Cotton, undelinted seed	0.50
Strawberry	2.0
Tomato, paste	0.60
Vegetable, brassica, head and stem, subgroup 5A	2.0

Commodity	Parts per million
Vegetable, brassica, leafy greens, subgroup 5B	12
Vegetable, cucurbit, group 9	0.10
Vegetable, fruiting, group 8	0.30
Vegetable, leafy greens, subgroup 4A	12
Vegetable, tuberous and corm, subgroup 1C	0.02

(2) Tolerances are established for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), and its metabolites containing the enol (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one) and 4-hydroxymethyl (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one) moieties, calculated as the parent compound equivalents in the following livestock commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat byproducts	0.05
Goat, fat	0.05
Goat, meat byproducts	0.05
Horse, fat	0.05
Horse, meat byproducts	0.05
Milk, fat	0.10
Sheep, fat	0.05
Sheep, meat byproducts	0.05

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

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

(d) *Indirect or inadvertent residues.* Tolerances are established for the inadvertent or indirect combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1- oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), and its metabolites containing the 4-hydroxymethyl moiety (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in the following rotational crop commodities:

Commodity	Parts per million
Alfalfa, forage	1.5
Alfalfa, hay	3.0
Barley, grain	0.03
Barley, hay	0.25
Barley, straw	0.15
Beet, sugar, roots	0.03
Beet, sugar, tops	0.20
Wheat, forage	0.20
Wheat, grain	0.03
Wheat, hay	0.15
Wheat, straw	0.25

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0196; FRL–7727–1]

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of propiconazole 1-[[2-2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent in or on soybean, soybean forage, and soybean hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on soybeans. This regulation establishes maximum permissible levels for residues of propiconazole in these food commodities. The tolerances will expire and are revoked on December 31, 2009.

DATES: This regulation is effective July 27, 2005. Objections and requests for hearings must be received on or before September 26, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0196. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:(703) 308–9367; e-mail address: *Sec-18-Mailbox@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the fungicide propiconazole 1-[[2-2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-

dichlorobenzoic acid and expressed as parent, in or on soybean at 2.0 parts per million (ppm); soybean, forage at 10 ppm; and soybean, hay at 25 ppm. These tolerances will expire and are revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

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

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

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

III. Emergency Exemption for Propiconazole on Soybeans and FFDCA Tolerances

The States of Minnesota and South Dakota, as lead state agencies in what is essentially a national section 18 request for all soybean growing states, have petitioned the Agency requesting an Emergency Exemption for propiconazole to control soybean rust under Section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). On November 10, 2004, U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS) confirmed the presence of *Phakopsora pachyrhizi*, the pathogen that causes soybean rust, on soybean leaf samples taken from two plots associated with a Louisiana State University research farm. Soybean rust has been designated as a biosecurity threat and therefore it is important that control measures be available for the disease. EPA has authorized under FIFRA section 18 the use of propiconazole on soybeans for control of soybean rust in Minnesota, South Dakota, and all the other states that have requested an exemption for this use. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of propiconazole in or on soybean, soybean forage, and soybean hay. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2009, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on soybean, soybean forage, and soybean hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of propiconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of propiconazole 1-[[2-2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent in or on soybean at 2.0 ppm; soybean forage at 10 ppm; and soybean hay at 25 ppm.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at

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

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for propiconazole used for human risk assessment is shown in the following Table 1:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50)	NOAEL = 30 mg/kg/day UF =300 Acute RfD = 0.1 mg/kg/day	FQPA SF = 1X aPAD =acute RfD = 0.1 mg/kg/day	Developmental Toxicity Study - Rats. LOAEL = 90 mg/kg/day based on developmental toxicity manifested by increased incidence of rudimentary ribs, cleft palate malformations (0.3%) unossified sternebrae, as well as increased incidence of shortened and absent renal papillae.
Acute Dietary (General Population)	NOAEL = 90 mg/kg/day UF =300 Acute RfD = 0.3 mg/kg/day	FQPA SF = 1X aPAD =acute RfD = 0.3 mg/kg/day	Developmental Toxicity Study - Rats. LOAEL = 300 mg/kg/day based on developmental toxicity manifested by severe maternal toxicity: ataxia, coma, lethargy, prostration, audible and labored respiration, salivation and lacrimation
Chronic Dietary (All populations)	NOAEL= 10 mg/kg/day UF = 100 Chronic RfD = 0.1 mg/kg/day	FQPA SF = 1X cPAD =chronic RfD = 0.1 mg/kg/day	24 Month Oncogenicity Study - Mice. LOAEL = 50 mg/kg/day based on liver toxicity (increased liver weight in males and increase in liver lesions (masses/raised areas/ swellings/ nodular areas mainly)
Short Term (1-30 days) Incidental Oral	Maternal NOAEL = 90 mg ai/kg/day	Residential MOE =300	Developmental Toxicity Study - Rats. LOAEL = 360 mg/kg/day based on severe clinical signs
Short Term (1-30 days) Dermal (Females 13-50 years old)	Oral Developmental NOAEL = 30 mg ai/kg/dayDermal absorption rate1 = 1%	Residential MOE = 300	Developmental Toxicity Study - Rats. LOAEL = 90 mg/kg/day based on developmental toxicity: increased incidence of rudimentary ribs, unossified sternebrae, and shortened and absent renal papillae.

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short Term (1-30 days) Dermal (General Populations, including infants and children)	Oral Maternal NOAEL = 90 mg ai/kg/dayDermal absorption rate1 = 1%)	Residential MOE = 300	Developmental Toxicity Study - Rats. LOAEL = 300 mg/kg/day based on severe maternal clin-ical toxicity (ataxia, coma, lethargy, prostration, audible and labored respiration, salivation and lacrimation)
Short Term (1-30 Days) Inhalation	Oral Developmental NOAEL = 30 mg/kg/day(Inhalation absorption rate = 100%)	Residential MOE = 300	Developmental Toxicity Study - Rats. LOAEL = 90 mg/kg/day based on developmental toxicity manifested by increased incidence of rudimentary ribs, unossified sternebrae, as well as increased incidence of shortened and absent renal papillae.
Cancer	Group C - possible human carcinogen, non-quantifiable		

B. Exposure Assessment

1. *Dietary exposure from food and drinking water.* Tolerances are established for residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in/on various plant and animal commodities. The established permanent tolerances for plant and animal commodities range from 0.05 ppm (milk) to 40 ppm (grass hay). Time-limited tolerances are established for cranberry, dry bean forage, dry bean hay, and dry beans. In addition, time-limited tolerances are established for aspirated grain fractions (20 ppm), sorghum grain, and stover. Tolerances with regional registration are also established for mint at 0.3 ppm and wild rice at 0.5 ppm. No tolerances are established for rotational crops.

In conducting the acute and chronic dietary risk assessments, EPA used the Dietary Exposure Evaluation Model (DEEM™) software. Modeled estimates of drinking water concentrations were directly entered into the exposure model to assess the contribution from drinking water. Risk assessments were conducted by EPA to assess dietary exposures from [propiconazole] in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier I assessment was conducted using tolerance-level residues, 100% crop treated (CT) information for all commodities, and default processing factors from DEEM were used for processed commodities when available. EPA estimated exposure based on the 95th percentile value in this Tier I assessment. Aggregate acute food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The Agency used the acute water concentration (264 ppb) derived from surface water modeling results, which was significantly higher than the modeled ground water concentration, and therefore protective of potential exposures via ground water sources of drinking water.

ii. *Chronic exposure.* The chronic dietary exposure assessment also used tolerance level residues and the chronic analysis module of the DEEM-FCID™ software. As with the acute assessment, default DEEM processing factors were used, and no adjustments were made for percent crop treated. Aggregate chronic food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The Agency used the chronic water concentration (80 ppb) derived from surface water modeling results, which was significantly higher than the modeled ground water concentration, and therefore protective of potential exposures via ground water sources of drinking water.

iii. *Cancer.* Propiconazole has been classified as a Group C possible human carcinogen, non-quantifiable. Consequently, the standard chronic dietary exposure analysis (as discussed above) and risk assessment using the cPAD serves as the assessment for cancer.

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

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index

reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of propiconazole for acute exposures are estimated to be 264 parts per billion (ppb) for surface water and 1.5 ppb for ground water. The EECs for chronic exposures are estimated to be 80 ppb for surface water and 1.5 ppb for ground water.

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

Propiconazole is a fungicide that can be used to control turfgrass diseases on residential lawns, sod farms and golf courses. There is potential, therefore, for dermal exposures to propiconazole residues on treated turf. The short-term aggregate risk assessment takes into account average exposure estimates from dietary consumption of propiconazole (food and drinking water) and non-occupational exposures (turf). Postapplication exposures from the use on turf is considered short-term. Therefore, a short-term aggregate risk assessment was conducted, using children with combined dermal and oral exposures from the turf use as a worst case.

The assessment is considered conservative because it assumes reentry immediately after the application of propiconazole at the highest recommended rate of 1.79 pounds ai per acre and that it was estimated that all of the propiconazole available for the consumer market is applied to lawns. Therefore, aggregate exposure is considered to be an overestimate of potential exposure and risk.

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

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

However, the Agency does have concern about potential toxicity to 1,2,4-triazole and two conjugates, triazolylalanine and triazolyl acetic acid, metabolites common to most of the triazole fungicides. To support the extension of existing parent triazole-derivative fungicide tolerances, EPA conducted an interim human health assessment for aggregate exposure to 1,2,4-triazole. The exposure and risk estimates presented in this assessment are overestimates of actual likely exposures and therefore, should be considered to be highly conservative. Based on this assessment EPA concluded that for all exposure durations and population subgroups, aggregate exposures to 1,2,4-triazole are not expected to exceed EPA's level of concern. This assessment is presented in the final rule published in the **Federal Register** on April 22, 2005 (70 FR 20821) (FRL–7702–4) for another triazole fungicide, tetraconazole. This assessment should be considered interim due to the ongoing series of studies being conducted by the U.S. Triazole Task Force (USTTF). Those studies are designed to provide the Agency with more complete toxicological and residue information for free triazole. Upon completion of the review of these data, EPA will prepare a more sophisticated assessment based on the revised toxicological and exposure databases.

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The pre-natal and post-natal toxicology database for propiconazole is complete with respect to current FQPA-relevant toxicological data requirements. Propiconazole is not developmentally toxic in the rabbit. There is evidence that propiconazole is developmentally toxic in the rat. As noted in the developmental toxicity study in rats, quantitative susceptibility was evidenced by increased incidence of rudimentary ribs, unossified sternebrae, as well as increased incidence of shortened and absent renal papillae and increased cleft palate at 90 mg/kg/day, a dose lower than that evoking maternal toxicity (severe clinical toxicity at 300 mg/kg/day).

Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for propiconazole, the Agency characterized the degree of concern for the effects observed in this study as low, noting that there is a clear NOAEL and well-characterized dose response for the developmental effects observed. No residual uncertainties were identified, and no special FQPA safety factor is needed. Although there is no evidence of neurotoxicity, neuropathology, or abnormalities in the development of the fetal nervous system based on available data, neurotoxic effects (ataxia, lethargy, salivation, rales) were noted in pregnant rats administered high doses (360 mg/kg/ day) during the gestation period. Therefore, the Agency has determined that an acute neurotoxicity study is required, and that the need for a developmental neurotoxicity study will be reconsidered upon review of the acute neurotoxicity study.

The Agency has determined that for acute (single dose) and short-term exposure scenarios a 3X database uncertainty factor is adequate to account for the lack of the acute neurotoxicity study based on the following considerations:

i. It is assumed that an acute neurotoxicity study will be conducted at dose levels similar to those used in the rat developmental study wherein neurotoxic effects including ataxia, lethargy, salivation, and rales were observed in pregnant rats at 360 mg/kg/day (the highest dose tested for the first 5 days of dosing in the study). The

NOAEL for the observed neurotoxic effects was 300 mg/kg/day.

ii. The results of the acute neurotoxicity study are not expected to impact the current acute RfD (or endpoints selected for short-term exposure scenarios) by more than 3X since the NOAELs used for the these risk assessment endpoints (e.g., 90 mg/kg/day for acute RfD for the general populations and 30 mg/kg/day for acute females 13- 50 and short-term incidental oral, dermal, and inhalation) are already 3 to 10-fold lower than the NOAEL for neurotoxic effects in the developmental rate study conducted with propiconazole (300 mg/kg/day).

3. *Conclusion.* Although EPA has required that an acute neurotoxicity study be submitted on propiconazole, EPA has concluded that a 3X (acute) and a 1X (chronic) additional safety factor will be sufficient to protect infants and children given the results seen in the existing data bearing on neurotoxicity. This FQPA safety factor of 3X will be applied in the form of a database uncertainty factor and thus used in deriving the aRfD.

D. Aggregate Risks and Determination of Safety

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

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

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

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. Combining screening level estimates of pesticide residues in drinking water from drinking water models with what may be more realistic values for residues in food is not ideal. Once screening level values are combined with more realistic values it is easy to lose sight of the fact that aggregate exposure estimate is based on a mixture of very conservative and less conservative estimates. Nonetheless, this concern with mixing screening level and more realistic values is outweighed by the advantages of being able to incorporate information on actual body weights and water consumption into the aggregate exposure calculation. This risk assessment for propiconazole was conducted using this approach.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propiconazole will occupy 7% of the aPAD for the U.S. population, 16% of the aPAD for females 13 years and older, 20% of the aPAD for all infants (<1 year old) and 11% of the aPAD for children 1-2 years old. EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO PROPICONAZOLE

Population Subgroup	aPAD (mg/kg)	% aPAD (food + water)
General U.S. Population	0.3	7%
All Infants (< 1 year old)	0.3	20%
Children 1-2 years old	0.3	11%
Children 3-5 years old	0.3	10%
Children 6-12 years old	0.3	7%
Youth 13-19 years old	0.3	5%
Adults 20-49 years old	0.3	5%
Adults 50+ years old	0.3	5%
Females 13-49 years old	0.1	16%

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to propiconazole from food and water will utilize 5% of the cPAD for the general U.S. population, and 12% of the cPAD for all infants <1 year old (the most highly exposed subgroup). Based on the use pattern, chronic residential exposure to residues of propiconazole is not expected. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PROPICONAZOLE

Population Subgroup	cPAD (mg/kg/day)	% cPAD
General U.S. Population	0.1	5%
All Infants (< 1 year old)	0.1	12%
Children 1-2 years old	0.1	11%
Children 3-5 years old	0.1	9%

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PROPICONAZOLE—Continued

Population Subgroup	cPAD (mg/kg/day)	% cPAD
Children 6-12 years old	0.1	6%
Youth 13-19 years old	0.1	4%
Adults 20-49 years old	0.1	4%
Adults 50+ years old	0.1	4%

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PROPICONAZOLE—Continued

Population Subgroup	cPAD (mg/kg/day)	% cPAD
Females 13-49 years old	0.1	4%

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

Propiconazole is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for propiconazole.

The short-term aggregate risk assessment takes into account average exposures estimates from dietary consumption of propiconazole (food and drinking water) and non-occupational uses (turf). Postapplication exposures from the use on turf is considered short-term. Therefore, a short-term aggregate risk assessment was conducted, using children with combined dermal and oral exposures from the turf use as a worst case. The MOE from food, water, and non-occupational uses is 2,000. Therefore, short-term aggregate risk does not exceed the Agency's level of concern.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PROPICONAZOLE

Population Group	NOAEL mg/kg/day	Max Exposure[1] mg/kg/day	Average Food + Water Exposure mg/kg/day	Residential Exposure[2], mg/kg/day	Aggregate MOE[3]
All Infants	90	0.3	0.011512	0.033	2,000

[1]Maximum Exposure (mg/kg/day) = NOAEL/Target MOE of 300
[2]Residential Exposure = Combined dermal and incidental oral ingestion for infants. Only infants were assessed since the represent a worst case with their higher food exposure plus incidental oral exposure to treated turf.
[3]Aggregate MOE = [NOAEL ÷ (Avg Food Exposure + Residential Exposure)]

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

There are currently no intermediate-term exposure scenarios for the use of propiconazole, therefore, quantification of intermediate-term risk is not required.

5. *Aggregate cancer risk for U.S. population.* Propiconazole has been classified as a Group C possible human carcinogen, non-quantifiable. Consequently, the standard chronic dietary exposure analysis and risk assessment using the cPAD serves as the assessment for cancer. Since carcinogenic risk for propiconazole is addressed with the cPAD, cancer risk from the proposed use on soybeans is not expected to be of concern.

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

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRLs) for propiconazole on soybeans. Therefore, there are no international harmonization issues associated with this action.

VI. Conclusion

Therefore, the tolerances are established for residues of propiconazole 1-[[2-2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent in or on soybean at 2.0 ppm; soybean forage at 10 ppm; and soybean hay at 25 ppm.

VII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

you must identify docket ID number –OPP–2005–0196 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 26, 2005.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number –OPP–2005–0196, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175.

Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 15, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.434 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.434 Propiconazole; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/ revocation date
* * *	* *	* *
Soybean	2.0	December 31, 2009
Soybean, forage.	10.0	December 31, 2009
Soybean, hay	25	December 31, 2009

* * * * *

[FR Doc. 05–14599 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0106; FRL–7724–5]

Pymetrozine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pymetrozine in or on asparagus. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 27, 2005. Objections and requests for hearings must be received on or before September 26, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0106. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Inforination (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of June 9, 2004 (69 FR 32346) (FRL–7360–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E6467) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.556 be amended by establishing a tolerance for residues of the insecticide pymetrozine, [4,5-dihydro-6-methyl-4-[(E)-(3-pyridinylmethylene)amino]-1,2,4-triazin-3(2H)-one], in or on asparagus at 0.02 parts per million (ppm). The petition was subsequently amended to establish a tolerance of 0.04 ppm. That notice included a summary of the

petition prepared by Syngenta, the registrant. There were no comments received in response to the notice of filing.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of pymetrozine on asparagus at 0.04 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pymetrozine, as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of December 27, 2001 (66 FR 66786) (FRL–6804–1).

B. Toxicological Endpoints

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

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

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

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

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

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

SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYMETROZINE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13-49 years of age)	NOAEL = 10 mg/kg/day UF = 1,000 Acute RfD = 0.01 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/Special FQPA SF = 0.01 mg/kg/day	Rabbit development study LOAEL = 75 mg/kg/day based on reduced body weight gain, food consumption and feed efficiency. Also, increased incidence of skeletal anomalies in pups.
Acute dietary (General population including infants and children)	LOAEL = 125 mg/kg/day UF = 1,000 Acute RfD = 0.125 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/Special FQPA SF = 0.125 mg/kg/day	Rat acute neurotoxicity study LOAEL = 125 mg/kg/day based on decreased body temperature, decreased motor activity and FOB parameters associated with decreased activity.
Chronic dietary (all populations)	NOAEL= 0.377 mg/kg/kg/day UF = 100 Chronic RfD = 0.0038 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = 0.0038 mg/kg/day	Rat chronic feeding study LOAEL = 3.76 mg/kg/day based on liver hypertrophy pathology supported by chronic feeding and multi-generation reproduction studies and dog sub-chronic and chronic studies.
Cancer	Cancer Classification: "Likely to be carcinogen to humans" (Q* of 0.0119 mg/kg/day)		

C. Exposure Assessment

1. *Dietary exposure from food, and drinking water.* Tolerances have been established (40 CFR 180.556) for the residues of pymetrozine, in or on a variety of raw agricultural commodities. In conducting the acute and chronic dietary risk assessments, EPA used the LifeLine™ Model software. This LifeLine assessment was conducted using the same consumption data as the DEEM-FCID™ (CSFII, 1994–1996 and 1998). LifeLine™ models the individual's dietary exposures over a season by selecting a new CSFII diary each day from a set of similar individuals. Lifeline organizes groups, or "bins," of CSFII diaries based on the respondents' age and the season during which the food diary was recorded. Both age and season were found to be the critical determinants of dietary patterns.

Modeled estimates of drinking water concentrations were directly entered into the exposure model (LifeLine™) to assess the contribution from drinking water. Risk assessments were conducted by EPA to assess dietary exposures from pymetrozine in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The following assumptions were made for the acute exposure assessment: A Tier 1 analysis was utilized; which assumes tolerance-level residues of pymetrozine *per se* in/on all commodities (along with additional residues, calculated and summed with the parent compound to account for plant metabolites), and also assumes 100 percent crop treated (PCT). Actual PCT and/or anticipated residues were not used. Aggregate acute food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The Agency used the acute water concentration (16.3 ppb) derived from surface water modeling results, which was significantly higher than the modeled ground water concentration, and therefore protective of potential exposures via ground water sources of drinking water.

ii. *Chronic exposure.* The following assumptions were made for the chronic exposure assessment: A Tier 3 analysis was utilized; tolerance-level residues of pymetrozine (plus metabolites) and 100 PCT were assumed for asparagus. For all other commodities, anticipated residues were derived from average crop field trial residue values, and PCT data were taken from prior risk assessments. Actual PCT and/or anticipated residues were used. Aggregate chronic food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The Agency used the chronic water concentration (10.1 ppb) derived from surface water modeling results, which was significantly higher than the modeled ground water concentration, and therefore protective of potential exposures via ground water sources of drinking water.

iii. *Cancer.* The following assumptions (identical to those for the chronic exposure assessment) were made for the cancer exposure assessment: A Tier 3 analysis was utilized; tolerance-level residues of pymetrozine (plus metabolites) and 100 PCT were assumed for asparagus. For all other commodities, anticipated residues were derived from average crop field trial residue values, and PCT data for existing uses were taken from prior risk assessments. Actual PCT and/or anticipated residues were used. Aggregate cancer food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The Agency used the average water concentration (6.0 ppb) derived from surface water modeling results, which was significantly higher than the modeled ground water concentration, and therefore protective of potential exposures via ground water sources of drinking water.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must, pursuant to section 408(f)(1), require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-

Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Cucumbers 10%; squash (winter and summer) 8%; cantaloupes 25%; pumpkins 10%; watermelons 20%; potatoes 20%; cotton 6%; tomatoes 12%; peppers 8%; spinach 16%; leaf lettuce 25%; head lettuce 25%; celery 25%; cabbage 12%; and broccoli 25%.

The Agency believes that the three conditions listed in Unit III.B., have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses an average PCT for chronic dietary exposure estimates. The average PCT figure is derived by combining available federal, state, and private market survey data, averaging by year, averaging across all years, and rounding up to the nearest multiple of five. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which pymetrozine may be applied in a particular area.

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

The Agency used Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Ground water (SCI-GROW), which predicts pesticide concentrations in ground water. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water.

Pymetrozine is not generally considered to be persistent. It tends to break down relatively quickly in the environment through a variety of degradation mechanisms such as acidic hydrolysis, aqueous photolysis, and soil photolysis. In aerobic soils, it exhibits a strong bi-phasic degradation pattern consisting of a rapid initial breakdown of the available pymetrozine, followed by a much slower degradation process which could be possibly due to the strong binding of this chemical to the soil matrix. Approximately 35% of the pymetrozine and 40% of the pymetrozine plus CGA-359009 remained at the end of the aerobic soil metabolism studies. Furthermore, based on its high soil/water partitioning coefficients, pymetrozine is expected to have a low potential to leach. Laboratory studies conducted to assess the mobility of pymetrozine on a variety of soils classify this chemical as a "low mobility to no mobility" chemical.

Fifteen degradates were observed in laboratory studies. Because CGA-359009 is structurally similar to the parent, the Agency concluded that CGA-359009 should be included in the drinking water assessment in addition to the parent. CGA-359009 is expected to be more mobile than the parent due to the addition of the hydroxyl group and therefore more likely to reach to drinking water.

Based on the PRZM/EXAMS model, the estimated environmental concentrations (EECs) of pymetrozine for acute, chronic, and cancer exposures are estimated to be 16.3 parts per billion (ppb), 10.1 ppb and 6.0 ppb for surface water respectively. Based on the SCI-GROW model, the EEC of pymetrozine for the acute and chronic exposure is estimated to be 0.038 ppb for ground water. The acute, chronic, and cancer estimated water concentrations derived from surface water modeling results were significantly higher than the modeled ground water concentrations, and therefore protective of potential exposures via ground water sources of drinking water when incorporated into aggregate exposure estimates. The pymetrozine EEC's were incorporated into LifeLine version 2.0 to determine aggregate pesticide exposures from pesticide residues in the diet.

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

Fulfill® is the pymetrozine pesticide product for use on ornamentals. Application of this product must be by a licensed pesticide applicator. Currently, there are no applications for registration of a homeowner use of pymetrozine. EPA believes that there is a low likelihood of adults and children engaging in activities in and/or around treated or landscaped areas and/or ornamentals that could lead to any meaningful exposure. As a result, dermal and oral post-application exposures are expected to be negligible.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Based on the results of the developmental and reproduction studies, there is no indication of increased sensitivity in rats or rabbits to *in utero* and/or postnatal exposure to pymetrozine.

3. *Conclusion.* Due to the lack of a required developmental neurotoxicity study, EPA is retaining the additional 10X FQPA safety factor for the protection of infants and children. Evaluation of the pymetrozine database indicates that the DNT has the potential to lower regulatory endpoints for pymetrozine and therefore the 10X factor is being retained.

E. Aggregate Risks and Determination of Safety

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

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

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

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

There are no existing or proposed uses for pymetrozine that would result in residential non-dietary exposure, therefore aggregate acute, chronic and cancer risks are based solely on exposure from food and water, which are as follows:

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pymetrozine will occupy 2.3% of the aPAD for the U.S. population, 31% of the aPAD for females 13 years and older, 2.5% of the aPAD for all infants < 1 years old, and 3.4% of the aPAD for children 1-2 years old. EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pymetrozine from food will utilize 5.1% of the cPAD for the U.S. population, 16% of the cPAD for all infants < 1 year old, and 8.9% of the cPAD for children 1-2 years old. There are no residential uses for pymetrozine that result in chronic residential exposure to pymetrozine. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pymetrozine is not registered for use on any sites that would result in significant residential exposure. Although postapplication non-occupational exposure could occur as a result of contact with treated ornamental plants, EPA believes that there is a low likelihood of adults and children engaging in activities in and/or around treated or landscaped areas and/or ornamentals that could lead to any meaningful exposure. As a result, dermal and oral post-application exposures are expected to be negligible.

4. *Aggregate cancer risk or U.S. population.* Under the reasonable certainty of no harm standard in FFDCA section 408(b)(2)(A)(ii), cancer risks must be no greater than negligible. EPA has consistently interpreted negligible cancer risks to be risks within the range of an increased cancer risk of 1 in 1 million (1×10^{-6}). Risks as high as 3 in

1 million have been considered to be within this risk range. The estimated chronic cancer exposure of the general U.S. population to pymetrozine is 0.000137 mg/kg/day. Applying the Q1* of 0.0119 $(mg/kg/day)^{-1}$ to the exposure value results in a cancer risk estimate of 1.6×10^{-6}, which is within the negligible risk range of 1×10^{-6}. The exposure value of 0.000137 mg/kg/day, although somewhat refined, is a high-end estimate. Use of food monitoring data, if available, would likely result in a significant reduction in the exposure estimate since residues would be from actual pymetrozine use patterns and not from trials designed to maximize residues for tolerance-setting purposes. It is EPA's experience that monitoring data from sources such as the USDA's Pesticide Data Program show that residues in foods are significantly less than those produced from field trials. In addition, default processing factors were used with no adjustments made to account for consumer practices such as washing and peeling. Based on those factors, the Agency is confident that actual dietary exposure to pymetrozine in food and drinking water will be much less than our estimate of 0.000137 mg/kg/day and that the actual cancer risk will be correspondingly lower than 1×10^{-6}.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

The HPLC/UV methods, AG-643A and AG-647, are adequate for collecting data on residues of pymetrozine and GS-23199, respectively, in/on the following commodities: Undelinted cottonseed, cotton gin byproducts, cottonseed processed commodities, broccoli, cabbage (with and without wrapper leaves), celery, hops (green and dried cones), lettuces, mustard greens, spinach, pecans, cucurbits, and fruiting vegetables. The validated limit of quantitation (LOQ) is 0.02 ppm for each analysis in each matrix with the exception of pymetrozine in dried hops cones. The Agency's Analytical Chemistry Branch (ACB) validated Method AG-643A on tomatoes, hops, and cottonseed. This method is considered adequate for enforcement purposes on plant commodities.

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

B. International Residue Limits

There are no MRLs or Codex limits for pymetrozine on asparagus.

V. Conclusion

Therefore, the tolerance is established for residues of pymetrozine, [4,5-dihydro-6-methyl-4-[(E)-(3-pyridinylmethylene)amino]-1,2,4-triazin-3(2H)-one], in or on asparagus at 0.04 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0106 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 26, 2005.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0106, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the

contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 18, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.556 is amended by alphabetically adding the commodity to the table in paragraph (a) to read as follows:

§ 180.556 Pymetrozine; tolerances for residues.

(a) * * *

Commodity	Parts per million
Asparagus	0.04
* * *	* *

* * * * *

[FR Doc. 05–14598 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0038; FRL–7726–8]

2,4-D; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of 2,4-dichlorophenoxyacetic acid (2,4-D) in or on hop, soybean, and wild rice . Interregional Research Project Number 4 (IR-4) and the Industry Task Force II on 2,4-D Research Data (Task Force) and its registrant members and affiliates on behalf of IR-4 requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 27, 2005. Objections and requests for

hearings must be received on or before September 26, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP–2005–0038. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental ProtectionAgency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of March 14, 2002 (67 FR 11480) (FRL–6826–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E4636) by Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.142 be amended by establishing a tolerance for residues of the herbicide 2,4-D in or on wild rice at 0.1 parts per million (ppm). That notice included a summary of the petition prepared by Rhone-Poulenc Ag Co., the registrant. In the **Federal Register** of December 15, 2004 (69 FR 75066) (FRL–7688–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E3060) by the Task Force and its registrant members and affiliates, 1900 K St., NW., Washington, DC 20006 on behalf of IR-4. The petition requested that 40 CFR 180.142(a)(11) be amended by removing the expiration date of December 31, 2004 for 2,4-D in or on the raw agricultural commodity soybean seed at 0.02 ppm. That notice included a summary of the petition prepared by the Task Force, the petitioner. In the **Federal Register** of April 13, 2005 (70 FR 19442) (FRL–7707–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E6352) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the herbicide 2,4-D in or on hop at 0.05 ppm. That notice included a summary of the petition prepared by IR-4, the petitioner. Two comments were received in response to the notices of filing and they are addressed in Unit IV.D.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of 2,4-D on hop at 0.05 ppm, soybean at 0.02 ppm, and wild rice at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by 2,4-D are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—2,4-D SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study type	Results
870.3100	90–Day oral toxicity—rodents—rats	NOAEL = 15 milligrams/kilogram/day (mg/kg/day) LOAEL = 100 mg/kg/day based on decreases in body weight/gain, alterations in hematology and clinical chemistry (decreased T3 and T4) parameters, and cataract formation in females.
870.3150	90–Day oral toxicity—nonrodents—beagle dogs	NOAEL = 1 mg/kg/day LOAEL = 3 mg/kg/day based on decreased body weight/body-weight gain and food consumption (males), alterations in clinical chemistry parameters (increased blood urea nitrogen (BUN) (both sexes), creatinine (males)), and decreased testis weight in males.
870.3150	90–Day oral toxicity—nonrodents—beagle dogs	NOAEL = 1 mg/kg/day LOAEL = 3.75 mg/kg/day based on decreased body-weight gain (both sexes) and food consumption (males), as well as alterations in clinical chemistry parameters (increased BUN, creatinine, and alanine aminotransferase) in both sexes, and decreased testes weight and slightly higher incidence of hypospermatogenesis/juvenile testis and inactive/juvenile prostate were observed.
870.3200	21–Day dermal toxicity	NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on no adverse effects at the limit dose.
870.3700	Prenatal developmental—rodents—rats	*Maternal*: NOAEL = 25 mg/kg/day LOAEL = 75 mg/kg/day based on decreased body-weight gains. Survival was not affected by treatment. *Developmental*: NOAEL = 25 mg/kg/day LOAEL = 75 mg/kg/day based on skeletal abnormalities.
870.3700	Prenatal developmental—nonrodents—rabbits	*Maternal*: NOAEL = 30 mg/kg/day LOAEL = 90 mg/kg/day based on clinical signs (ataxia, decreased motor activity, loss of righting reflex, cold extremities), abortion (2), decreased body-weight gains. Survival was not affected by treatment. *Developmental*: NOAEL = 30 mg/kg/day LOAEL = 90 mg/kg/day based on abortions.
870.3800	Reproduction and fertility effects—rats	*Parental/Systemic*: NOAEL = 5 mg/kg/day LOAEL = 20 mg/kg/day based on decreased female body weight/body-weight gain (F1) and renal tubule alteration in males (F0 and F1). *Reproductive*: NOAEL = 20 mg/kg/day LOAEL = 80 mg/kg/day based on an increase in gestation length (F0 females producing F1b pups). *Offspring*: NOAEL = 5 mg/kg/day LOAEL = 20 mg/kg/day based on decreased pup body weight (F1b). At 80 mg/kg/day, there was an increase in dead pups.
870.4100	Chronic toxicity—dogs	NOAEL = 1 mg/kg/day LOAEL = 5 mg/kg/day based on decreased body-weight gain (both sexes) and food consumption (females), as well as alterations in clinical chemistry parameters (increased BUN, creatinine, and alanine aminotransferase, decreased glucose) in both sexes, and decreased brain weight in females, and histopathological lesions in liver and kidneys.

TABLE 1.—2,4-D SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study type	Results
870.4300	Combined chronic toxicity carcinogenicity —rodents (rats)	NOAEL = 5 mg/kg/day LOAEL = 75 mg/kg/day based on decreased body-weight gain (females) and food consumption (females), alterations in hematology (decreased red blood cells (RBC), hematocrit (HCT), and hemoglobin (HGB) (females), platelets (both sexes)) and clinical chemistry parameters (increased creatinine (both sexes), alanine and aspartate aminotransferases (males), alkaline phosphatase (both sexes), decreased T4 (both sexes), glucose (females), cholesterol (both sexes), and triglycerides (females)), increased thyroid weights (both sexes at study termination), and decreased testes and ovarian weights. At highest dose tested (HDT), there were microscopic lesions in the eyes, liver, adipose tissue, and lungs. There was no evidence of carcinogenicity
870.4300	Carcinogenicity—mice	NOAEL = 5 mg/kg/day LOAEL = 62/150 mg/kg/day based on an increased absolute and/or relative kidney weights and an increased incidence of renal microscopic lesions. There was no evidence of carcinogenicity
870.5265	Gene mutation Ames, reverse mutation	No evidence of bacterial mutation in *S. typhimurium* strains TA1535, TA1537, TA1538, TA98, TA100, with and without S9.
870.5395	*In vivo* erythrocyte micro-nucleus assay Institute for Cancer Research (ICR) mice	No significant increase in bone marrow polychromatic erythrocytes.
870.5375	Cytogenetics *in vitro* chromosome aberration (human lymphocytes)	No evidence of increased chromosome aberrations in human lymphocytes.
870.5385	Cytogenetics *in vivo* chromosome aberration (Wistar rat bone marrow)	Equivocal (+ at top 2 doses, but results were similar to dimethyl sulfoxide (DMSO) control).
870.5450	Other effects (Unscheduled DNA synthesis assay)	No evidence of induction of unscheduled DNA synthesis.
870.6200	Acute neurotoxicity screening battery—rats	NOAEL = 67 mg/kg/day LOAEL = 227 mg/kg/day based on an increased incidence of incoordination and slight gait abnormalities (described as forepaw flexing or knuckling) and decreased total motor activity.
870.6200	Subchronic neurotoxicity screening battery—rats	NOAEL = 75 mg/kg/day LOAEL = 150 mg/kg/day based on increased forelimb grip strength.
870.7485	Metabolism and pharmacokinetics—rats	85.5%–93.7% of dose eliminated in urine; 3.6%–10.5% of dose eliminated via the feces; no differences noted between the sexes; at the high-dose level, it appears that a nonlinear region (decreased clearance) is being reached in the disposition of 2,4-D. Parent 2,4-D was the major metabolite found in urine (72.9%–90.5% of the oral dose), with small amounts of uncharacterized compounds (0.6%–1.3% and 0%–0.7%) being found in the urine.
870.7600	Dermal penetration	5.8%
	Special studies pharmacokinetics/ metabolism study (single exposure) Fischer 344 ratand beagle dogs	Study designed specifically to compare the rat and dog with respect to the excretion of 2,4-D and the relevancy of the dog data for risk assessment.

B. Toxicological Endpoints

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

Three other types of safety or UFs may be used:"Traditional uncertainty factors;" the "special FQPA safety factor;" and the "default FQPA safety factor." By the term "traditional uncertainty factor," EPA is referring to those additional UFs used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by FQPA into the additional safety factor for the protection of infants and children. The term "special FQPA safety factor" refers to those safety factors that are deemed necessary for the protection of infants

and children primarily as a result of FQPA. The "default FQPA safety factor" is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

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

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

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

A summary of the toxicological endpoints for 2,4-D used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR 2,4-D FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose used in risk assessment, interspecies and intraspecies and any traditional UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age)	NOAEL = 25 mg/kg/day UF = 1,000 Acute RfD = 0.025 mg/kg/day	Special FQPA SF = 1 aPAD = acute RfD/Special FQPA SF = 0.025 mg/kg/day	Rat developmental toxicity study LOAEL = 75 mg/kg/day based on skeletal abnormalities.
Acute dietary (General population including infants and children)	NOAEL = 67 mg/kg/day UF = 1,000 Acute RfD = 0.067 mg/kg/day	Special FQPA SF = 1 aPAD = acute RfD/Special FQPA SF = 0.067 mg/kg/day	Acute neurotoxicity study in rats LOAEL = 227 mg/kg/day based on gait abnormalities.
Chronic dietary (All populations)	NOAEL = 5 mg/kg/day UF = 1,000 Chronic RfD = 0.005 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD/Special FQPA SF = 0.005 mg/kg/day	Rat chronic toxicity study LOAEL = 75 mg/kg/day based on decreased body-weight gain (females) and food consumption (females), alterations in hematology (decreased RBC, HCT, and HGB (females), platelets (both sexes)) and clinical chemistry parameters (increased creatinine (both sexes), alanine and aspartate aminotransferases (males), alkaline phosphatase (both sexes), decreased T4 (both sexes), glucose (females), cholesterol (both sexes), and triglycerides (females)).
Short-term incidental oral (1 to 30 days) (Residential)	Oral study NOAEL = 25 mg/kg/day	LOC for MOE = 1,000 (Residential)	Rat developmental toxicity study LOAEL = 75 mg/kg/day based on decreased maternal body-weight gain.
Intermediate-term incidental oral (1 to 6 months) (Residential)	Oral study NOAEL = 15 mg/kg/day	LOC for MOE = 1,000 (Residential)	Subchronic oral toxicity—rat LOAEL = 100 mg/kg/day based on decreased body weight/body-weight gain, alterations in some hematology (decreased platelets (both sexes)) and clinical chemistry (decreased T3 (females) and T4 (both sexes)) parameters, and cataract formation.
Short-term dermal (1 to 7 days) (Residential)	Oral study NOAEL = 25 mg/kg/day (Dermal absorption rate = 10 %)	LOC for MOE = 1,000 (Residential)	Rat developmental toxicity study LOAEL = 75 mg/kg/day based on decreased maternal body-weight gain and skeletal abnormalities.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR 2,4-D FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure scenario	Dose used in risk assessment, interspecies and intraspecies and any traditional UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Intermediate-term dermal (1 week to several months) (Residential)	Oral study NOAEL = 15 mg/kg/day (Dermal absorption rate = 10 %	LOC for MOE = 1,000 (Residential)	Subchronic oral toxicity—rat LOAEL = 100 mg/kg/day based on decreased body weight/body-weight gain, alterations in some hematology (decreased platelets (both sexes)) and clinical chemistry (decreased T3 (females) and T4 (both sexes)) parameters, and cataract formation.
Long-term dermal (Several months to lifetime) (Residential)	Oral study NOAEL = 5 mg/kg/day (Dermal absorption rate = 10 % when appropriate)	LOC for MOE = 1,000 (Residential)	Rat chronic toxicity study LOAEL = 75 mg/kg/day based on decreased body-weight gain (females) and food consumption (females), alterations in hematology (decreased RBC, HCT, and HGB (females), platelets (both sexes)) and clinical chemistry parameters (increased creatinine (both sexes), alanine and aspartate aminotransferases (males), alkaline phosphatase (both sexes), decreased T4 (both sexes), glucose (females), cholesterol (both sexes), and triglycerides (females)), increased thyroid weights (both sexes at study termination), and decreased testes and ovarian weights.
Short-term inhalation (1 to 7 days) (Residential)	Inhalation (or oral) study NOAEL = 25 mg/kg/day (Inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential)	Rat developmental toxicity study LOAEL = 75 mg/kg/day based on decreased maternal body-weight gain and skeletal abnormalities.
Intermediate-term inhalation (1 week to several months) (Residential)	Inhalation (or oral) study NOAEL = 15 mg/kg/day (Inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential)	Subchronic oral toxicity—rat LOAEL = 100 mg/kg/day based on decreased body weight/body-weight gain, alterations in some hematology (decreased platelets (both sexes)) and clinical chemistry (decreased T3 (females) and T4 (both sexes)) parameters, and cataract formation.
Long-term inhalation (Several months to lifetime) (Residential)	Inhalation (or oral) study NOAEL = 5 mg/kg/day (Inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential)	Rat chronic toxicity study LOAEL = 75 mg/kg/day based on decreased body-weight gain (females) and food consumption (females), alterations in hematology (decreased RBC, HCT, and HGB (females), platelets (both sexes)) and clinical chemistry parameters (increased creatinine (both sexes), alanine and aspartate aminotransferases (males), alkaline phosphatase (both sexes), decreased T4 (both sexes), glucose (females), cholesterol (both sexes), and triglycerides (females)), increased thyroid weights (both sexes at study termination), and decreased testes and ovarian weights.
Cancer (Oral, dermal, inhalation)	Not likely to pose a cancer risk based on the lack of carcinogenicity in a rat carcinogenicity study and a mouse carcinogenicity study.		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.142) for the residues of 2,4-D, in or on a variety of raw agricultural commodities, fish, meat, milk, poultry, and eggs. Risk assessments were conducted by EPA to assess dietary exposures from 2,4-D in food as follows:

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

In conducting the acute dietary risk assessment EPA used Lifeline Model Version 2.0 (Lifeline) and the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID, Version 1.33). DEEM incorporates consumption data from United States Department of Agriculture's (USDA) Continuing

Surveys of Food Intakes by Individuals (CSFII), 1994–1996 and 1998. Lifeline uses food consumption data from USDA's CSFII from 1994–1996 and 1998. Lifeline uses recipe files contained within the program to relate raw agricultural commodities (RACs) to foods "as-eaten." Lifeline converts the RAC residues into food residues by randomly selecting a RAC residue value from the "user defined" residue distribution (created from the residue, percent crop treated (PCT), and processing factors data), and calculating a net residue for that food based on the ingredients' mass contribution to that food item. The following assumptions were made for the acute exposure assessments: For the acute analyses, tolerance-level residues were assumed for most food commodities with 2,4-D tolerances except the highest-field trial residue value was used for citrus commodities, and it was assumed that all of the crops included in the analysis were treated. One half of the average Level of Detection (LOD) from Pesticide Data Program (PDP) monitoring data was used as the milk exposure value because no milk sample contained detectable 2,4-D residues over several years of PDP. The PCT data were not used in the acute risk assessment.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used Lifeline and DEEM-FCID, Version 1.33. DEEM incorporates consumption data from USDA's CSFII, 1994–1996 and 1998. Lifeline uses food consumption data from the USDA's CSFII from 1994–1996 and 1998. Lifeline uses recipe files contained within the program to relate RACs to foods "as-eaten." Lifeline converts the RAC residues into food residues by randomly selecting a RAC residue value from the "user defined" residue distribution (created from the residue, PCT, and processing factors data), and calculating a net residue for that food based on the ingredients' mass contribution to that food item. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for food commodities with 2,4-D tolerances except averages of field trial data and processing study factors were used for small grains, citrus, and sugarcane sugar and molasses; percentage of crop treated information was used for most commodities; and the highest observed groundwater monitoring concentration (15 parts per billion (ppb)) in drinking water is used to calculate the aggregate risk. One half of the average LOD from PDP monitoring data was used as the milk exposure value because no milk sample contained detectable 2,4-D residues over several years of PDP.

iii. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) of FFDCA require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings:

Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group.

Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

TABLE 3.—PERCENT CROP TREATED (PCT) FOR REGISTERED 2,4-D USES

Crop	Acreage	PCT	Lbs./acre (ai)
Alfalfa	23,704,000	0.6	69,000
Almonds	583,000	10	70,000
Apples	477,000	36	250,000
Apricots	23,0008	8	3,000
Asparagus	77,000	15	20,000
Barley	5,914,000	43	1,290,000
Beans/peas, dry	2,133,000	3	30,000
Beans/peas, vegetable	677,000	1.2	8,000
Bluebernes	62,000	0.5	200
Canola/rapeseed	1,281,000	2	11,000
Cherries	105,000	24	30,000
Corn, field	75,241,000	12	3,660,000

TABLE 3.—PERCENT CROP TREATED (PCT) FOR REGISTERED 2,4-D USES—Continued

Crop	Acreage	PCT	Lbs./acre (ai)
Cotton	13,793,000	3	234,000
Cranberries	32,000	9	6,000
Fallow, Summer	22,879,000	10	2,003,000
Flax	143,000	9	7,000
Filberts	31,000	58	35,000
Grapefruit	165,000	19	1,100
Grapes	1,006,000	2	13,000
Hay, other	33,777,000	8	1,824,000
Lemons	72,000	1.5	1,100
Millet	318,000	23	35,000
Nectarines	34,000	10	1,000
Oats	4,036,000	19	380,000
Oranges	940,000	7	20,000
Pasture/rangeland	469,536	5	16,371,000
Peaches	158,000	12	25,000
Peanuts	1,416,000	4	30,000
Pears	70,000	14	15,000
Pecans	496,000	5	20,000
Pistachios	100,000	5	5,000
Potatoes	1,291,000	2	4,000
Prunes/plums	151,000	17	25,000
Rice	3,231,000	17	527,000
Rye	298,000	21	30,000
Seed crops	1,383,000	36	275,000
Sorghum	9,077,000	16	667,000
Soybeans	70,993,000	7	2,410,000
Strawberries	47,000	7	5,000
Sugarcane	939,000	53	490,000
Sunflowers	2,040,000	4	50,000
Sweet Corn	678,000	5	15,000
Walnuts	229,000	9	40,000
Wheat, Spring	18,903,000	4	50,000
Wheat, Winter	42,403,000	24	5,140,000
Wild rice	26,000	10	600

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five. EPA uses a maximum PCT for acute dietary risk analysis. The

maximum PCT figure is the single-maximum value reported overall from available Federal, State, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five.

The Agency believes that the three conditions listed Unit III.C.1.iii. have been met. With respect to Condition 1 of Unit III.C.1.iii. , PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3 of Unit III.C.1.iii., regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which 2,4-D may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for 2,4-D in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of 2,4-D.

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

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

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of 2,4-D for acute exposures are estimated to be 118 ppb for surface water. The EECs for chronic exposures are estimated to be 23 ppb for surface water. Based on actual monitoring of 2,4-D the acute and chronic exposures are 15 ppb for ground water.

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

2,4-D is currently registered for use on the following residential non-dietary sites: Turf. The risk assessment was conducted using the following residential exposure assumptions: Homeowners (or others) may be exposed to 2,4-D while treating their lawns. All homeowner-use products are available in liquid or granular form. 2,4-D is applied using hose-end sprayers, pump sprayers, ready-to-use sprayers, broadcast spreaders, belly grinders, and hand application, either before or after seasonal weed emergence, at a rate up to 1.5 lbs./ai. 2,4-D uses in the residential setting include applications to home lawns. The following scenarios were assessed for residential post application risks: Toddlers playing on treated turf, adults performing yard work on treated turf, and adults playing golf on treated turf.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 2,4-D and any other substances and 2,4-D does not appear to produce a toxic metabolite produced by other substances. EPA has also evaluated comments submitted that suggested there might be a common mechanism among 2,4-D and other named pesticides that cause brain effects. EPA concluded that the evidence did not support a finding of common mechanism for 2,4-D and the named pesticides. For the purposes of this tolerance action, therefore, EPA has not assumed that 2,4-D has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The toxicity database for 2,4-D includes acceptable developmental and reproductive toxicity studies. Developmental toxicity studies were conducted in both rats and rabbits for most 2,4-D forms. There is qualitative evidence of susceptibility in the rat developmental toxicity study with 2,4-D acid and DEA salt where fetal effects (skeletal abnormalities) were observed at a dose level that produced less severe

maternal toxicity (decreased body-weight gain and food consumption). There is no evidence of increased (quantitative or qualitative) susceptibility in the prenatal developmental toxicity study in rabbits or in the 2-generation reproduction study in rats on 2,4-D. Regarding the 2,4-D amine salt and ester forms, no evidence of increased susceptibility (quantitative or qualitative) was observed in the prenatal developmental toxicity study in rat and rabbits (except for 2,4-D DEA) dosed with any of the amine salts or esters of 2,4-D. There is evidence of increased susceptibility (qualitative) in the prenatal developmental study in rabbits for 2,4-D DEA salt. After establishing developmental toxicity endpoints to be used in the risk assessment with traditional uncertainty factors (10x for interspecies variability and 10x for intraspecies variability), the Agency has no residual concerns for the effects seen in the developmental toxicity studies.

3. *Conclusion.* EPA has concerns with regard to the completeness of the toxicity database. A developmental neurotoxicity (DNT) study in rats is required for 2,4-D. The Agency concluded that there is a concern for developmental neurotoxicity resulting from exposure to 2,4-D. There is evidence of neurotoxicity, including clinical signs such as ataxia and decreased motor activity in pregnant rabbits following dosing during gestation days 6-15 in studies on 2,4-D itself and 2,4-D amine salts and esters, and tremors in dogs that died on test following repeat exposure to 2,4-D. Incoordination and slight gait abnormalities (forepaw flexing or knuckling) were also observed following dosing in the acute neurotoxicity study with 2,4-D. There is also evidence of developmental toxicity, as discussed above. In addition, the Agency determined that a repeat two generation reproduction study using a new protocol is required to address concerns for endocrine disruption (thyroid and immunotoxicity measures). Examination of the existing database does not reveal a basis for concluding that aggregate exposure to 2,4-D will be safe for infants and children in the absence of the additional 10X FQPA safety factor. Therefore, the Agency determined that the 10X FQPA safety factor, in the form of a database uncertainty factor (UFDB), will be retained.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to 2,4-D will occupy 18% (DEEM) of the aPAD for the U.S. population, 43 % (Lifeline) of the aPAD for females 13–49 years old, and 31% (DEEM) of the aPAD for children 1–2 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to 2,4-D from food and drinking water will utilize 10% (DEEM) of the cPAD for the U.S. population, 24% (DEEM) of the cPAD for all Infants (< 1 year old), and 18% (DEEM) of the cPAD for children 1–2 years old. There are no residential uses for 2,4-D that result in chronic residential exposure to 2,4-D.

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

2,4-D is currently registered for use that could result in short-term residential exposure. Short-term aggregate risks were calculated only for females 13–49 and children 1–6 because these population subgroups have the highest exposure and are protective of the other subgroups. The short-term aggregate MOEs are presented in Table 4 of this unit and indicate that the short-term risks are not of concern because the MOEs equal or exceed the target MOE of 1,000.

TABLE 4.—AGGREGATE SHORT-TERM MOES INCLUDING TURF EXPOSURES FOR 2,4-D

Population subgroup	Turf application rate (lbs. (ae)/ai)	Chronic food exposure mg/kg/day)	Short-term turf exposure (mg/kg/day)	Chronic Estimated Drinking Water Concentration (EDWC) (µg/liter)	Drinking water exposure (mg/kg/day)	Aggregate exposure (mg/kg/day)	Aggregate MOE
Females 13–49	1.5	0.000195	0.024	15	0.00050	0.0247	1,000
Children 1–6	1.5	0.000424	0.021	15	0.0010	0.0224	1,100

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

Though residential exposure could occur with the use of 2,4-D, intermediate-term residential risks were not calculated for any of the residential scenarios because there are no intermediate term residential scenarios; residential turf application exposures are expected to be short-term in duration for broadcast treatments because the label allows only two broadcast treatments per year and because 2,4-D dissipates rapidly from the turf after application. The turf transferable residue studies indicated that the 2,4-D half life ranged from less than 1 day to 2.8 days.

5. *Aggregate cancer risk for U.S. population.* The aggregate cancer risk was not calculated for 2,4-D based on the lack of carcinogenicity in a rat carcinogenicity study and a mouse carcinogenicity study. The endpoint selected for cPAD is protective of the possible carcinogenic activity of 2,4-D.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to 2,4-D residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

The Codex Alimentarius Commission has established several maximum residue limits (MRLs) for residues of 2,4-D in/on various plant and animal commodities. No Codex MRLs have been established, however, for the crops

covered by this tolerance action: Hop, soybean, and wild rice.

C. Conditions

A developmental neurotoxicity study, a subchronic inhalation toxicity study, a repeat 2-generation reproduction study (using the new protocol) addressing concerns for endocrine disruption (thyroid and immunotoxicity measures), grape processing study, wheat hay field trials, and limited irrigated crop studies (sugar beet roots and tops and strawberries) are requested.

D. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing conducted on animals have absolutely no validity and are cruel to the test animals. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to 2,4-D, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. (See the **Federal Register** of January 7, 2005 (70 FR 1349, 1354) (FRL–7691–4) and the **Federal Register** of October 29, 2004 (69 FR 63083, 63096) (FRL–7681–9).

V. Conclusion

Therefore, the tolerance is established for residues of 2,4-D in or on hop at 0.05 ppm, soybean at 0.02 ppm, and wild rice at 0.1 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0038 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 26, 2005.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350,1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0038, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to:*opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 20, 2005.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.142 is amended by alphabetically adding commodities to the table in paragraph (a)(2) introductory text and removing and reserving paragraph (a)(11) to read as follows:

§ 180.142 2,4-D; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Hop	0.05
* * * * *	
Rice, wild	0.1
* * * * *	
Soybean	0.02
* * * * *	

* * * * *

[FR Doc. 05–14886 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0171; FRL–7720–3]

Lignosulfonates; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Agency is establishing 44 exemptions from the requirement of a tolerance for residues of various lignosulfonate chemicals in or on raw agricultural commodities when used as inert ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, or to animals under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This regulation eliminates the need to establish a maximum permissible level for residues of these lignosulfonate chemicals.

DATES: This regulation is effective July 27, 2005. Objections and requests for hearings must be received on or before September 26, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP–2005–0171. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St.,

Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of February 16, 2005 (70 FR 7912) (FRL–7691–9), EPA issued a proposed rule under section 408(e) of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170). The Agency proposed to establish 44 tolerance exemptions for residues of various lignosulfonate chemicals in or on raw agricultural commodities when used as inert ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, or to animals. The 22 specific chemicals are identified in the regulatory text.

One comment was received from a private citizen. The comment consisted of the following statement "I oppose and object to any use or sale of this product. I certainly find its use as a feed for animals to be highly dangerous to Americans." Attached to the comment was a news article critical of EPA's regulation of rat poisons. The Agency understands the commentor's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 409 of FFDCA, EPA is authorized to establish pesticide tolerances or exemptions after demonstrating that the pesticide meets the safety standard imposed by the statute. The commentor has not provided the Agency with specific rationale or additional information pertaining to the legal standards in section 409 of FFDCA for opposing the establishment of a tolerance exemption for these lignosulfonate chemicals. In the absence of any additional information of a factual nature, the Agency can not effectively respond to the commentor's disagreement with the Agency's decision. Additionally, EPA would note that this action applies to inert ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, or to animals, and not rat poisons.

No other comments were received.

Accordingly, based on the reasons set forth in the preamble to the proposed rule, EPA is establishing 44 new tolerance exemptions for lignosulfonate chemicals.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0171 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 26, 2005.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0171, to: Public Information and Records Integrity Branch,

Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Statutory and Executive Order Reviews

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 18, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§ 180.910 [Amended]

■ 2. Section 180.910 is amended by removing the following entries from the table: Ethoxylated lignosulfonic acid, sodium salt; lignosulfonate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; oxidized pine lignin, sodium salt; and pine lignin.

■ 3. Section 180.910 is amended by adding alphabetically the following entries to the table to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
* *	* *	* * *
Lignin (CAS Reg. No. 9005–53–2)		Surfactant, related adjuvants of surfactants
Lignin, alkali (CAS Reg. No. 8068–05–1)		Do.
Lignin, alkali, oxidized, sodium salt (CAS Reg. No. 68201–23–0).		Do.
Lignin alkali reaction products with disodium sulfite and formaldehyde (CAS Reg. No. 105859–97–0).		Do.
Lignin alkali reaction products with formaldehyde and sodium bisulfite (CAS Reg. No. 68512–35–6).		Do.
Lignosulfonic acid (CAS Reg. No. 8062–15–5)		Do.
Lignosulfonic acid, ammonium calcium salt (CAS Reg. No. 12710–04–2).		Do.
Lignosulfonic acid, ammonium magnesium salt (CAS Reg. No. 123175–37–1).		Do.
Lignosulfonic acid, ammonium salt (CAS Reg. No. 8061–53–8).		Do.
Lignosulfonic acid, ammonium sodium salt (CAS Reg. No. 166798–73–8).		Do.
Lignosulfonic acid, calcium magnesium salt (CAS Reg. No. 55598–86–2).		Do.
Lignosulfonic acid, calcium salt (CAS Reg. No. 8061–52–7)		Do.
Lignosulfonic acid, calcium sodium salt (CAS Reg. No. 37325–33–0).		Do.
Lignosulfonic acid, ethoxylated, sodium salt (CAS Reg. No. 68611–14–3).		Do.
Lignosulfonic acid, magnesium salt (CAS Reg. No. 8061–54–9).		Do.
Lignosulfonic acid, potassium salt (CAS Reg. No. 37314–65–1).		Do.
Lignosulfonic acid, sodium salt (CAS Reg. No. 8061–51–6)		Do.
Lignosulfonic acid, sodium salt; oxidized (CAS Reg. No. 68855–41–4).		Do.
Lignosulfonic acid, sodium salt, polymer with formaldehyde and phenol (CAS Reg. No. 37207–89–9).		Do.
Lignosulfonic acid, sodium salt, sulfomethylated (CAS Reg. No. 68512–34–5).		Do.
Lignosulfonic acid, zinc salt (CAS Reg. No. 57866–49–6)		Do.
* *	* *	* * *
Sulfite liquors and cooking liquors, spent, oxidized (CAS Reg. No. 68514–09–0).		Surfactant, related adjuvants of surfactants
* *	* *	* * *

* * * * *

§ 180.930 [Amended]

■ 4. Section 180.930 is amended by removing the following entries from the table: Lignosulfonate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; oxidized pine lignin, sodium salt; and pine lignin.

■ 5. Section 180.930 is amended by adding alphabetically the following entries to the table to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
* *	* *	* * *
Lignin (CAS Reg. No. 9005–53–2)		Surfactant, related adjuvants of surfactants
Lignin, alkali (CAS Reg. No. 8068–05–1)		Do.
Lignin, alkali, oxidized, sodium salt (CAS Reg. No. 68201–23–0).		Do.
Lignin alkali reaction products with disodium sulfite and formaldehyde (CAS Reg. No. 105859–97–0).		Do.
Lignin alkali reaction products with formaldehyde and sodium bisulfite (CAS Reg. No. 68512–35–6).		Do.
Lignosulfonic acid (CAS Reg. No. 8062–15–5)		Do.
Lignosulfonic acid, ammonium calcium salt (CAS Reg. No. 12710–04–2).		Do.
Lignosulfonic acid, ammonium magnesium salt (CAS Reg. No. 123175–37–1).		Do.

Inert ingredients	Limits	Uses
Lignosulfonic acid, ammonium salt (CAS Reg. No. 8061–53–8).		Do.
Lignosulfonic acid, ammonium sodium salt (CAS Reg. No. 166798–73–8).		Do.
Lignosulfonic acid, calcium magnesium salt (CAS Reg. No. 55598–86–2).		Do.
Lignosulfonic acid, calcium salt (CAS Reg. No. 8061–52–7) ..		Do.
Lignosulfonic acid, calcium sodium salt (CAS Reg. No. 37325–33–0).		Do.
Lignosulfonic acid, ethoxylated, sodium salt (CAS Reg. No. 68611–14–3).		Do.
Lignosulfonic acid, magnesium salt (CAS Reg. No. 8061–54–9).		Do.
Lignosulfonic acid, potassium salt (CAS Reg. No. 37314–65–1).		Do.
Lignosulfonic acid, sodium salt (CAS Reg. No. 8061–51–6) ...		Do.
Lignosulfonic acid, sodium salt, oxidized (CAS Reg. No. 68855–41–4).		Do.
Lignosulfonic acid, sodium salt, polymer with formaldehyde and phenol (CAS Reg. No. 37207–89–9).		Do.
Lignosulfonic acid, sodium salt, sulfomethylated (CAS Reg. No. 68512–34–5).		Do.
Lignosulfonic acid, zinc salt (CAS Reg. No. 57866–49–6)		Do.
* * * * * * *		
Sulfite liquors and cooking liquors, spent, oxidized (CAS Reg. No. 68514–09–0).		Surfactant, related adjuvants of surfactants
* * * * * * *		

* * * * *

[FR Doc. 05–14887 Filed 7–26–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0184; FRL–7725–5]

Pinoxaden; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of pinoxaden in or on barley and wheat. Syngenta Crop Protection, Inc., requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 27, 2005. Objections and requests for hearings must be received on or before September 26, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP–2005–0184. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

www.gpoaccess.gov/ecfr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at*http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of November 19, 2004 (69 FR 67731) (FRL–7686–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6817) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the herbicide pinoxaden, 8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7H-pyrazolo[1,2-d][1,4,5] oxadiazepin-9-yl 2,2-dimethylpropanoate, in or on wheat, grain at 0.70 parts per million (ppm), wheat, forage at 3.0 ppm, wheat, hay at 1.75 ppm, wheat, straw at 1.5 ppm, barley, grain at 0.70 ppm, barley, hay at 1.25 ppm, and barley, straw at 0.60 ppm. That notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

Based on the Agency's review the tolerances for pinoxaden are being revised to reflect the CAS chemical name. Additionally, the Agency's review of the residue chemistry data indicated that the tolerance levels needed to be raised as follows: Wheat, forage to 3.5 ppm; wheat, grain to 1.3 ppm; wheat, hay to 2.0 ppm; barley, grain to 0.9 ppm; barley, hay to 1.5 ppm; and barley, straw to 1.0 ppm. Finally, EPA concluded that tolerances were needed on barley, bran; cattle, fat; cattle, meat; cattle, meat byproducts; egg; milk; poultry, fat; poultry, meat; poultry, meat byproducts; and wheat, bran. The registrant did not propose tolerances for meat, milk, poultry, and egg (MMPE) commodities since feeding studies resulted in residues less than limit of quantitation (LOQ). However, the Agency determined that tolerances are needed on MMPE since the feeding studies were not conducted at ≥ 10X and the livestock metabolism studies indicated that residues are concentrated in some livestock tissues (liver and kidney). The tolerances for pinoxaden will be as follows:

1. The combined residues of the herbicide pinoxaden (8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7H-pyrazolo[1,2-d][1,4,5] oxadiazepin-9-yl 2,2-dimethylpropanoate), and its metabolites 8-(2,6-diethyl-4-methyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5]oxadiazepine-7,9-dione (M2), and free and conjugated forms of 8-(2,6-diethyl-4-hydroxymethyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5] oxadiazepine-7,9-dione (M4), and 4-(7,9-dioxo-hexahydro-pyrazolo[1,2-d] [1,4,5]oxadiazepin-8-yl)-3,5-diethyl-benzoic acid (M6), calculated as pinoxaden in/on barley, bran at 1.6 ppm; barley, grain at 0.9 ppm; barley, hay at 1.5 ppm; barley, straw at 1.0 ppm; egg at 0.06 ppm; poultry, fat at 0.06 ppm; poultry, meat at 0.06 ppm; poultry, meat byproducts at 0.06 ppm; wheat, bran at 3.0 ppm; wheat, forage at 3.5 ppm; wheat, grain at 1.3 ppm; wheat, hay at 2.0 ppm; and wheat, straw at 1.5 ppm.

2. The combined residues of pinoxaden,(8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7H-pyrazolo[1,2-d][1,4,5] oxadiazepin-9-yl 2,2-dimethylpropanoate), and its metabolites 8-(2,6-diethyl-4-methyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5]oxadiazepine-7,9-dione (M2), and free and conjugated forms of 8-(2,6-diethyl-4-hydroxymethyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5] oxadiazepine-7,9-dione (M4), calculated as pinoxaden, in/on cattle, fat at 0.04 ppm; cattle, meat at 0.04 ppm; cattle, meat byproducts at 0.04 ppm; and milk at 0.02 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA.

EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity—rat-gavage	NOAEL = 300/100 Male/Female (M/F) milligrams/kilogram/day (mg/kg/day) LOAEL = 300 mg/kg/day based on increased water consumption and urinary volume in females. A LOAEL was not observed in males

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

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity—rat-diet	NOAEL = 466/537 (M/F) mg/kg/day LOAEL = 900/965 (M/F) mg/kg/day based on decreased body weight and body weight gain and increased incidence of renal lesions in both sexes; decreased food consumption and increased water consumption in males; and increased urine volume in females
870.3100	13-Week oral toxicity—mice-gavage	NOAEL = 700 mg/kg/day LOAEL = 1,000 mg/kg/day based on increased incidence of piloerection and decreased body weight gain in both sexes, and increased incidence of renal tubular basophilia in males
870.3100	90–Day oral toxicity—mice-diet	NOAEL = 365 mg/kg/day in males. NOAEL not observed in females. LOAEL = 708.2/165.9 (M/F) mg/kg/day based on decreased body weight and body weight gain in females, and decreased food efficiency in males
870.3150	90–Day oral toxicity—non-rodents	NOAEL = 100 mg/kg/day LOAEL = 250 mg/kg/day based on clinical signs of toxicity fluid feces, (vomit, pale and thin appearance, decreased activity, dehydration, cold to touch, and regurgitation in both sexes, and mucus in feces in the males) and decreased body weights, body weight gains, and food consumption in both sexes
870.3200	28–Day dermal toxicity	NOAEL = 1,000 mg/kg/day (limit dose) LOAEL = was not observed
870.3700	Prenatal developmental toxicity—rabbit	*Maternal*: NOAEL = 30 mg/kg/day LOAEL = 100 mg/kg/day based on increased mortality, abortion, clinical signs of toxicity, and decreased body weights, body weight gains and food consumption *Developmental*: NOAEL = 30 mg/kg/day LOAEL = 100 mg/kg/day based on increased incidence of complete early litter resorption
870.3700	Prenatal developmental—rat	*Maternal*: NOAEL = 30 mg/kg/day LOAEL = 300 mg/kg/day based on decreased body weight gains and food consumption *Developmental*: NOAEL = 30 mg/kg/day LOAEL = 300 mg/kg/day based on delays in skeletal ossification in the skull and hind digits
870.3800	Reproduction and fertility effects	*Parental*: NOAEL = 250 mg/kg/day LOAEL = 500 mg/kg/day based on increased water consumption, renal tubular atrophy, and chronic nephropathy in both sexes, and increased incidence of renal pelvic dilatation in the males *Reproductive*: NOAEL = 500 mg/kg/day LOAEL = was not observed *Offspring*: NOAEL = 250 mg/kg/day LOAEL = 500 mg/kg/day based on decreased body weights and body weight gains in the F_1 pups, and decreased body weights in the F_2 males
870.4100	Chronic toxicity—dogs	NOAEL = 125 mg/kg/day LOAEL = was not observed
870.4200	Carcinogenicity—mice-diet	NOAEL = 216.5/181.2 (M/F) mg/kg/day LOAEL = was not observed
870.4200	Carcinogenicity—mice-gavage	Study could not be interpreted due to gavage errors and lung involvement.
870.4300	Chronic toxicity/Carcinogenicity—rats-gavage	NOAEL = 100 mg/kg/day LOAEL = 250 mg/kg/day based on mortality, clinical signs, and increased serum urea and creatinine in males, and decreased body weights and body weight gains, increased water consumption and incidence of urinalysis findings, kidney surface granulation, and microscopic renal lesions in both sexes
870.5100	*In vitro* bacterial gene mutation *S. typhimurium/E. coli*	No marked increases in the number of revertants were observed at any concentration in any strain in either trial. [negative]

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

Guideline No.	Study Type	Results
870.5300	*In vitro* mammalian gene mutation (L5178YTK$^{+/-}$)	No reproducible substantial (≥ 2x solvent controls) and/or concentration-dependent increases in mutant colonies per 10^6 cells were observed at any dose level in the presence or absence of S9. [negative]
870.5375	*In vitro* mammalian cytogenetics in V79 Chinese Hamster lung fibroblasts (2001)	Although there was not a clear dose-response and several of the increases in percent aberrant cells were within the historical control range (0.0–4.0%), there was sufficient reproducible evidence of a positive mutagenic effect in the presence and absence of S9. [positive]
870.5375	*In vitro* mammalian cytogenetics in V79 Chinese Hamster lung fibroblasts (2002)	There was an increase in the percent aberrant cells that exceeded the historical control range with/without S9 metabolic activation. [positive]
870.5395	*In vivo* mammalian cytogenetics micronucleus—mice	There were no marked increases observed in mean net nuclear grains (NNG) or percent cells in repair (NNG≥ 5) at 2 or 16 hours post-dosing compared to controls. [negative]
870.5550	Unscheduled DNA synthesis (UDS) in mammalian cells (2001)	There were no marked increases observed in the mean grains per nucleus or mean NNG in either trial. Negative for increased UDS up to limit dose. [negative]
870.5550	UDS in mammalian cells (2002)	There were no marked Increases observed in mean NNG or percent cells in repair (NNG≥5) at 2 or 16 hours post-dosing compared to controls. [negative]
870.6200	Acute neurotoxicity screening battery in rats-gavage	NOAEL = 2,000 mg/kg/day LOAEL = was not determined
870.6200	Subchronic neurotoxicity screening battery in rats-gavage	NOAEL = 500 mg/kg/day LOAEL = was not determined
870.7485	Metabolism—rat	Approximately 90% of the orally gavaged dose was absorbed from the gastrointestinal tract. Approximately, 90% of the absorbed dose was excreted in the urine and feces in 72 hours and excretion was nearly complete in 7 days. Excretion in the urine ranged from 59–78% and in feces 20–25%. Tissue distribution data indicated no significant accumulation in the body. Billiary excretion study did not indicate enterohepatic circulation. No parent compound was detected in the urine, feces or bile. Major metabolite in the urine and feces was the hydrolysis product M2. Major metabolites in the urine were M2 (65%–85%) and M4 (5–13%) and in the feces 50%–70%) and M4 (25%–35%) depending up on the dose. There were no sex related differences in the absorption, distribution, excretion or qualitative profile of the metabolites.
870.7600	*In vivo* dermal penetration—rat	Low dose = 4%, 14%, 18% at 4, 10, 24 hours Mid dose = 1%, 2%, 4% at 4, 10, 24 hours High dose = 17%, 30%, 36% at 4, 10, 24 hours

B. Toxicological Endpoints

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

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

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

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the

LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

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

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

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

Exposure scenario	Dose used in risk assessment, interspecies and intraspecies and any Traditional UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age)	NOAEL = 30 mg/kg/day UF = 100 Acute RfD = 0.30 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/ Special FQPA SF = 0.30 mg/kg/day	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on increased incidence of complete early litter resorption.
Acute dietary (General population including infants and children)	N/A	N/A	An endpoint of concern attributable to a single-dose effect was not identified in the database.
Chronic dietary (All populations)	NOAEL= 30 mg/kg/day UF = 100 Chronic RfD = 0.30 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = 0.30 mg/kg/day	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Incidental Oral Short-term (1–30 days)	NOAEL = 30 mg/kg/day	LOC for MOE = 100 (Residential includes FQPA SF)	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Incidental Oral Intermediate-term (1–6 months)	NOAEL = 30 mg/kg/day	LOC for MOE = 100 (Residential includes FQPA SF)	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Dermal Short-term (1–30 days)	NOAEL = 30 mg/kg/day (Dermal absorption rate = 40%)	LOC for MOE = 100 (Residential includes FQPA SF) LOC for MOE (occupational) = 100	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Dermal Intermediate-term (1– months)	NOAEL = 30 mg/kg/day (Dermal absorption rate = 40%)	LOC for MOE = 100 (Residential includes FQPA SF) LOC for MOE (occupational) = 100	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Dermal Long-term (> 6 months)	NOAEL = 30 mg/kg/day (Dermal absorption rate = 40%)	LOC for MOE = 100 (Residential includes FQPA SF) LOC for MOE (occupational) = 100	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.

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

Exposure scenario	Dose used in risk assessment, interspecies and intraspecies and any Traditional UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Short-term inhalation (1 to 30 days)	NOAEL = 30 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential includes FQPA SF) LOC for MOE (occupational) = 100	Developmental toxicity-rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Intermediate-term inhalation (1–6 months)	NOAEL = 30 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential includes FQPA SF) LOC for MOE (occupational)= 100	Developmental toxicity-rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Long-term inhalation (> 6 months)	NOAEL = 30 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential includes FQPA SF) LOC for MOE (occupational) = 100	Developmental toxicity—rabbit LOAEL = 100 mg/kg/day based on morbid condition in one rabbit (mortality), clinical signs of toxicity in a morbid rabbit, abortion, decreased body weights, body weight gains, and food consumption.
Cancer (Oral, dermal, inhalation)	Not likely to pose a cancer risk.		

Although an acceptable cancer study in rats was submitted, the dietary cancer study in the mouse was found to be unacceptable due to the failure to test at high enough doses. Nonetheless, based on the following weight-of-evidence, a repeat carcinogenicity study in mice is not required at this time:

- No evidence of carcinogenicity was observed in an acceptable/guideline carcinogenicity study in rats.
- The gavage carcinogenicity study in mice was conducted at doses as high as 750 mg/kg/day. No tumors were observed in other organs except adenomas/carcinomas in the lungs. However, the interpretation of the adenomas/carcinomas in the lungs was confounded by the gavage errors that may have introduced the dosing solution in to the trachea and lungs, and perhaps leading to lung tumors and excessive mortality.
- No tumors were seen in the mouse dietary carcinogenicity study, however, the dosing was considered to be inadequate due to the lack of significant systemic toxicity at doses up to 181.2 mg/kg/day (the study, performed under the Organization for Economic Cooperation and Development (OECD) and EPA guidelines, was terminated early for humanitarian reasons due to excessive decreases in body weight gain in the high-dose animals).
- In the 90–day feeding study in mice, pinoxaden was tested up to 7,000 ppm (1,311 mg/kg/day; limit dose), and did not produce any tumors or severe toxicity.
- Pinoxaden was considered to be non-mutagenic.

This evidence convinces EPA that repeating the dietary mouse cancer study is unlikely to provide additional useful information for the risk assessment, and that pinoxaden is not likely to pose a cancer risk.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No Tolerances have been established (40 CFR part 180) previously for the combined residues of pinoxaden on any commodities. Risk assessments were conducted by EPA to assess dietary exposures from pinoxaden in food as follows:

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

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For the acute analyses, tolerance-level residues were assumed for all food commodities with recommended pinoxaden tolerances, and it was assumed that all of the crops included in the analysis were treated. Percent crop treated (PCT) and anticipated residues were not used in the acute risk assessment.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994 –1996 and 1998 CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with recommended pinoxaden tolerances, and it was assumed that all of the crops included in the analysis were treated. The PCT and the anticipated residues were not used in the chronic risk assessment.

iii. *Cancer.* Because EPA concluded that pinoxaden is not likely to pose a cancer risk, a cancer exposure assessment was not conducted.

2. *Dietary exposure from drinking water.* Pinoxaden has never been registered in the United States so drinking water concentration estimates are made by reliance on simulation or

modeling taking into account data on the physical characteristics of pinoxaden.

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

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD.

To better evaluate aggregate risk associated with exposure through food and drinking water, OPP is no longer comparing EECs generated by water quality models with Drinking Water Levels of Comparison (DWLOC). Instead, OPP is now directly incorporating the actual water quality model output concentrations into the risk assessment. This method of incorporating water concentrations into our aggregate assessments relies on actual CSFII-reported drinking water consumptions and more appropriately reflects the full distribution of drinking water concentrations. This is further discussed in the aggregate risk section in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of pinoxaden for acute exposures are estimated to be 0.76 parts per billion (ppb) for surface water (90th percentile annual daily maximum) and 0.13 ppb for ground water. The EECs for chronic exposures are estimated to be 0.47 ppb for surface water (90th percentile annual mean) and 0.13 ppb for ground water.

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

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pinoxaden and any other substances and pinoxaden does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pinoxaden has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There are no concerns and no residual uncertainties with regard to pre- and/or postnatal toxicity based on the following reasons:

- There is no evidence of qualitative and/or quantitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure to pinoxaden.
- There is no evidence of increased qualitative and/or quantitative evidence of increased susceptibility to pinoxaden following prenatal exposure in a 2-generation reproduction study in rats.
- There is no evidence of increased susceptibility to pinoxaden following prenatal exposure in a 2-generation reproduction study in rats.

3. *Conclusion.* There is a complete toxicity database for pinoxaden and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Additionally, the data show no concerns for pre- or postnatal sensitivity. Accordingly, EPA concludes that it is safe for infants and children to remove the additional 10X FQPA safety factor.

E. Aggregate Risks and Determination of Safety

For pinoxaden, no residential uses are proposed. Therefore, aggregate risk will consist of exposure from food and drinking water sources. Acute and chronic aggregate risks were calculated.

To better evaluate aggregate risk associated with exposure through food and drinking water, OPP is no longer comparing EECs generated by water quality models with DWLOC. Instead, OPP is now directly incorporating the actual water quality model output concentrations into the risk assessment. This method of incorporating water concentrations into our aggregate assessments relies on actual CSFII-reported drinking water consumptions and more appropriately reflects the full distribution of drinking water concentrations.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to pinoxaden will occupy 1.5 % of the aPAD for females 13–49 years old. Drinking water was incorporated directly into the dietary

assessment using the annual peak concentration for surface water generated by the PRZM-EXAMS model as a high-end estimate (0.76 ppb; 90th percentile annual daily maximum), and therefore the aggregate exposure for food and water for females 13–49 is 1.5% of the aPAD.

An endpoint of concern attributable to a single-dose effect was not identified in the database for the general population, therefore, the only acute risk that pinoxaden poses is as a result of prenatal exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pinoxaden from food will utilize 0.9 % of the cPAD for the U.S. general population, and 2.1 % of the cPAD for children 1–2 years old, the highest exposed population subgroup. Drinking water was incorporated directly into the dietary assessment using the annual mean concentration for surface water generated by the PRZM-EXAMS model as a high-end estimate (0.47 ppb; 90th percentile annual mean), and therefore the aggregate exposure for food and water is 0.9% of the cPAD for the general population, and 2.1% of the cPAD for children 1–2 years old. There are no residential uses for pinoxaden that result in chronic residential exposure to pinoxaden.

3. *Aggregate cancer risk for U.S. population.* As explained in Unit III.B., EPA has concluded that exposure to pinoxaden is not likely to pose a cancer risk. Therefore, an aggregate cancer risk assessment was not conducted.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of pinoxaden and its metabolites.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (117–01) high performance liquid chromatography-mass spectrometry (HPLC-MS/MS) is available to enforce the tolerance expression for the combined residues of pinoxaden and M2 (as M2), and residues of M4 and M6 for plants. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

The proposed enforcement methodology (T001530–03) for livestock is adequate for the determination of two major pinoxaden metabolites, M4 and M6. Based on its similarities to the plant enforcement method, the Agency expects that the proposed livestock method will be adequate for quantification of pinoxaden and M2.

B. International Residue Limits

U.S. tolerances for pinoxaden have been harmonized with Canada on the following commodities: Barley, bran at 1.6 ppm; barley, grain at 0.9 ppm; cattle, fat at 0.04 ppm; cattle, meat at 0.04 ppm; cattle, meat byproduct at 0.04 ppm; egg at 0.06 ppm; milk at 0.02 ppm; poultry, fat at 0.06 ppm; poultry, meat at 0.06 ppm; poultry, meat byproduct at 0.06 ppm; wheat, bran at 3.0 ppm; and wheat, grain at 1.3 ppm.

In addition to the harmonized tolerances, the United States has established tolerances on the following commodities: Barley, hay at 1.5 ppm; barley, straw at 1.0 ppm; wheat, forage at 3.5 ppm; wheat, hay at 2.0 ppm; and wheat, straw at 1.5 ppm.

C. Conditions

The following are confirmatory data required as conditions of registration:

1. Additional storage stability data for wheat and barley processed fractions.

2. Additional validation data for pinoxaden and M2 residues in livestock commodities (ruminant and poultry).

V. Conclusion

Therefore, tolerances are established for:

1. The combined residues of pinoxaden (8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7H-pyrazolo[1,2-d][1,4,5] oxadiazepin-9-yl 2,2-dimethylpropanoate), and its metabolites 8-(2,6-diethyl-4-methyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1.4,5]oxadiazepine-7,9-dione (M2), and free and conjugated forms of 8-(2,6-diethyl-4-hydroxymethyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5] oxadiazepine-7,9-dione (M4), and 4-(7,9-dioxo-hexahydro-pyrazolo[1,2-d] [1,4,5]oxadiazepin-8-yl)-3,5-diethyl-benzoic acid (M6), calculated as pinoxaden in/on barley, bran at 1.6 ppm; barley, grain at 0.9 ppm; barley, hay at 1.5 ppm; barley, straw at 1.0 ppm; egg at 0.06 ppm; poultry, fat at 0.06 ppm; poultry, meat at 0.06 ppm; poultry, meat byproducts at 0.06 ppm; wheat, bran at 3.0 ppm; wheat, forage at 3.5 ppm; wheat, grain at 1.3 ppm; wheat, hay at 2.0 ppm; and wheat, straw at 1.5 ppm.

2. The combined residues of pinoxaden,(8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7H-pyrazolo[1,2-d][1,4,5] oxadiazepin-9-yl 2,2-dimethylpropanoate), and its metabolites 8-(2,6-diethyl-4-methyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5]oxadiazepine-7,9-dione (M2), and free and conjugated forms of 8-(2,6-diethyl-4-hydroxymethyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5] oxadiazepine-7,9-dione (M4), calculated as pinoxaden, in/on cattle, fat at 0.04 ppm; cattle, meat at 0.04 ppm; cattle, meat byproducts at 0.04 ppm; and milk at 0.02 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0184 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 26, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the

information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0184, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to:*opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 18, 2005.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.611 is added to read as follows:

§ 180.611 Pinoxaden; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of pinoxaden (8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7H-pyrazolo[1,2-d][1,4,5] oxadiazepin-9-yl 2,2-dimethylpropanoate), and its metabolites 8-(2,6-diethyl-4-methyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5]oxadiazepine-7,9-dione (M2), and free and conjugated forms of 8-(2,6-diethyl-4-hydroxymethyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5] oxadiazepine-7,9-dione (M4), and 4-(7,9-dioxo-hexahydro-pyrazolo[1,2-d] [1,4,5]oxadiazepin-8-yl)-3,5-diethyl-benzoic acid (M6), calculated as pinoxaden, in/on the following commodities:

Commodity	Parts per million
Barley, bran	1.6
Barley, grain	0.9
Barley, hay	1.5
Barley, straw	1.0
Egg	0.06
Poultry, fat	0.06
Poultry, meat	0.06
Poultry, meat byproducts	0.06
Wheat, bran	3.0
Wheat, forage	3.5
Wheat, grain	1.3
Wheat, hay	2.0
Wheat, straw	1.5

(2) For the combined residues of pinoxaden, 8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7H-pyrazolo[1,2-d][1,4,5] oxadiazepin-9-yl 2,2-dimethylpropanoate), and its metabolites M2, 8-(2,6-diethyl-4-methyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5]oxadiazepine-7,9-dione, and free and conjugated forms of M4, 8-(2,6-diethyl-4-hydroxymethyl-phenyl)-tetrahydro-pyrazolo[1,2-d][1,4,5] oxadiazepine-7,9-dione, calculated as pinoxaden, in/on the following commodities:

Commodity	Parts per million
Cattle, fat	0.04
Cattle, meat	0.04
Cattle, meat byproducts	0.04
Milk	0.02

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

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

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

[FR Doc. 05–14896 Filed 7–26–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 05–211; FCC 05–123]

Implementation of the Commercial Spectrum Enhancement Act

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: In order to implement the auction revenue requirement in Commercial Spectrum Enhancement Act (CSEA) for any auction of frequencies subject to CSEA, the Commission interprets the meaning of the term "total cash proceeds" as used in CSEA to mean winning bids net of any applicable bidding credit discounts.

DATES: Effective August 26, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. People with Disabilities: Contact the FCC to request materials in accessible formats (Braille, large print, electronics files, audio format, etc.) by e-mail at *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin or Gary Michaels, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Declaratory Ruling* in WT Docket No. 05–211 adopted June 9, 2005, and released June 14, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Declaratory Ruling is also available on the FCC's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-123A1.doc* or *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-123A1.pdf*. The Commission will send a copy of this Declaratory Ruling in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

1. CSEA establishes a mechanism to use spectrum auction proceeds to reimburse Federal agencies operating on "eligible frequencies" (the 216–220 MHz, 1432–1435 MHz, 1710–1755 MHz, and 2385–2390 MHz bands, and certain other frequency bands) that may be reallocated from Federal to non-Federal use, for the cost of relocating operations. CSEA requires that the "total cash proceeds" from any auction of eligible frequencies equal at least 110 percent of estimated relocation costs of eligible Federal entities. CSEA prohibits the Commission from concluding any auction of eligible frequencies that falls short of this revenue requirement. CSEA requires the Commission, if it is unable to conclude an auction for this reason, to cancel the auction, return any deposits from participating bidders held in escrow, and absolve such bidders from any obligation to bid in any subsequent reauction of the spectrum.

2. In order to implement CSEA's revenue requirement, the Commission must determine the meaning of the term "total cash proceeds" as used in the statute. For the following reasons, the Commission interprets "total cash proceeds" for purposes of CSEA to mean winning bids net of any applicable bidding credit discounts. Under the Commission's competitive bidding rules, winning bids in an auction do not necessarily translate into amounts actually owed by bidders. The discrepancy between gross and net winning bid amounts arises from the award of bidding credits—*i.e.*, discounts on gross winning bids—to eligible designated entities, new entrants into the broadcast marketplace, and winning bidders that undertake to serve previously underserved tribal lands. In this context, the plain language of the statute appears to refer to an auction's net winning bids rather than gross

winning bids. The word "cash" is defined as "money or its equivalent;" or "ready money" and "proceeds" is defined as "the money obtained from a commercial or fund-raising venture: yield."

3. In addition to the language of the statute, the purpose underlying the revenue requirement of CSEA supports a determination that "total cash proceeds" is based on winning bids net of bidding credits. Given that Congress's purpose was to provide a mechanism for making sufficient funds available to relocating Federal agencies, it is reasonable to assume that Congress did not intend the Commission, in determining whether the "total cash proceeds" requirement has been met, to count those portions of winning bids for which the bidder would receive credit and not have to pay. Accordingly, the Commission does not read CSEA to equate the amount of the gross winning bids with the total cash proceeds of the auction.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14841 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[WC Docket No. 04–36; FCC 05–116]

E911 Requirements for IP-Enabled Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces that the information collection requirements adopted in the IP-Enabled Services First Report and Order (Order) were approved in OMB No. 3060–1085 and will become effective on July 29, 2005, in 47 CFR 9.5.

DATES: The rule in 47 CFR 9.5, published at 70 FR 37273, June 29, 2005 is effective July 29, 2005.

Compliance Date: Compliance with the customer notification requirements in § 9.5(e) is required by July 29, 2005. The compliance letter required by § 9.5(f) must be submitted to the Commission no later than November 28, 2005. Compliance with the requirements in § 9.5(b) through (d) is not required until November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1686.

For additional information concerning the Paperwork Reduction Act information collection requirements, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: A summary of the IP-Enabled Services First Report and Order was published in the **Federal Register** on June 29, 2005, 70 FR 37273. The IP-Enabled Services First Report and Order adopted rules requiring providers of interconnected voice over Internet Protocol (VoIP) service—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the public switched telephone network—to supply enhanced 911 capabilities to all of their customers as a standard feature of the service, rather than as an optional enhancement. The summary stated that with the exception of rules requiring Office of Management and Budget (OMB) approval, the rules adopted in the IP-Enabled Services First Report and Order would become effective July 29, 2005. With regard to rules requiring OMB approval, the Commission stated that it would publish a document in the **Federal Register** announcing the effective date of these rules. The information collection requirements in § 9.5 have been approved by OMB. In a separate document published in this issue, the Commission has announced that OMB has approved the information collection requirements adopted in the IP-Enabled Services First Report and Order. With publication of the instant document in the **Federal Register**, all rules adopted in the IP-Enabled Services First Report and Order are effective July 29, 2005.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14842 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 01–309; FCC 05–122]

Hearing Aid-Compatible Telephones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission grants in part and denies in part petitions for reconsideration of the *Hearing Aid Compatibility Order*, which lifted the blanket exemption for digital wireless telephones under the Hearing Aid Compatibility Act of 1988 (HAC Act). The Commission's actions, as reflected in this document, further ensure that every American has access to the benefits of digital wireless telecommunications, including individuals with hearing disabilities.

DATES: Effective August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Andra Cunningham, *Andra.Cunningham@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–1630 or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Order on Reconsideration* FCC 05–122, adopted on June 9, 2005 and released on June 21, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. On August 14, 2003, the Commission released the *Hearing Aid Compatibility Order*, finding, among other things, that the statutory criteria to lift the exemption for wireless telephones had been met. Specifically, the Commission determined that continuation of Congress' exemption for wireless telephones would have an adverse effect on individuals with hearing disabilities, and that revoking the exemption was technologically feasible and in the public interest. The Commission further determined that compliance with hearing aid compatibility requirements "would not increase the costs of [wireless] phones to such an extent that they could not be successfully marketed."

2. Based upon these findings, the Commission established requirements for hearing aid compatibility of digital wireless phones. First, the Commission adopted the ANSI C63.19 performance levels as the applicable technical standard. Second, the Commission established specific, phased-in

deployment benchmarks for digital wireless handset manufacturers, wireless carriers and service providers offering digital wireless services. Third, the Commission implemented a framework for labeling and live, in-store consumer testing of digital wireless handsets, as well as an obligation to report on handset deployment progress. Fourth, the Commission adopted a *de minimis* exception, which relieves wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handsets in the United States from the hearing aid compatibility compliance obligations. Finally, consistent with the requirements set forth in the HAC Act, the Commission expanded the scope of its rules for enforcing wireline hearing aid compatibility to permit subscribers to digital wireless services to file informal complaints in the event that handset manufacturers or wireless service providers fail to comply with the hearing aid compatibility rules.

3. The Commission received four petitions for reconsideration in response to the *Hearing Aid Compatibility Order*. The petitions sought reconsideration, clarification, or both, of the Commission's decisions to: (a) Adopt the ANSI C63.19 technical standard for hearing aid compatibility; (b) establish a preliminary deployment benchmark exclusive to Tier I wireless carriers; (c) establish a fifty percent handset deployment benchmark; (d) require labeling and live, in-store consumer testing of digital wireless handset models; (e) impose compliance reporting obligations; (f) institute deployment benchmarks for wireless carriers employing a TDMA air interface; (g) adopt a *de minimis* exception for digital wireless carriers, service providers and handset manufacturers; and (h) delegate authority to enforce hearing aid compatibility of wireless phones to the states.

4. The *Order on Reconsideration*, that is the subject of this document, grants in part and denies in part the petitions for reconsideration of the *Hearing Aid Compatibility Order*. In the *Order on Reconsideration*, the Commission takes the following actions:

(a) We affirm the *Hearing Aid Compatibility Order* as follows:

- The American National Standards Institute (ANSI) standard, ANSI C63.19, "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19–2001," is an appropriate established technical standard. We also affirm the Commission's determination that ANSI C63.19 should not be transformed from a performance measurement standard to a build-to standard.
- We affirm the Commission's authority to establish the preliminary handset deployment benchmark specific to Tier I wireless carriers, and we modify the requirement in order to provide greater certainty while not adversely affecting hearing impaired individuals' access to compatible phones. Specifically, we modify § 20.19(c) of the Commission's rules on hearing aid compatible mobile handsets to require that, by September 16, 2005, each Tier I wireless carrier offering digital wireless services must make available to consumers, per air interface, four U3-rated handsets, or twenty-five percent of the total number of handsets it offers nationwide; and that, by September 16, 2006, each Tier I wireless carrier offering digital wireless services must make available to consumers, per air interface, five U3-rated handsets, or twenty-five percent of the total number of handsets it offers nationwide.
- We affirm the basis of the Commission's determination that, by February 18, 2008, fifty percent of all handsets offered by digital wireless carriers, service providers and handset manufacturers must meet the U3 hearing aid compatibility requirement for each air interface offered.
- We affirm the requirements established by the Commission for labeling and in-store consumer testing of digital wireless handsets. We also find that modifying the obligation to report on handset deployment progress, as suggested by some parties, would disserve our objective of having the information necessary to determine compliance with the hearing aid compatibility rules.

(b) We modify § 20.19(c) of the Commission's rules on hearing aid compatible mobile handsets in response to a petition from wireless carriers operating TDMA networks and overbuilding them to employ alternative air interfaces. These carriers will be considered compliant with the September 16, 2005, preliminary handset deployment benchmark if they: (1) Offer two hearing aid-compatible handset models to customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of the network, (2) are overbuilding (*i.e.*, replacing) their entire network, and (3) complete the overbuild by September 18, 2006.

(c) We clarify the *Hearing Aid Compatibility Order* with respect to the following points:

- The *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line.
- The Commission properly delegated authority to the states to enforce the rules governing the hearing aid compatibility of digital wireless handsets in cases where the states have adopted these rules and provide for enforcement. We clarify, however, that the Commission retains exclusive jurisdiction over the technical standards for hearing aid compatibility.

II. Procedural Matters

A. Paperwork Reduction Act Analysis

5. The document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. Therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

B. Final Regulatory Flexibility Certification

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Certification of the possible impact on small entities of the proposals in the *Order on Reconsideration*. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the *Hearing Aid Compatibility Notice*.

7. The instant *Order on Reconsideration* modifies § 20.19(c) of the Commission's rules on hearing-aid compatible mobile handsets in response to a petition from wireless carriers operating TDMA networks and overbuilding them to employ alternative air interfaces. These carriers will be considered compliant with the September 16, 2005, preliminary handset deployment benchmark if they: (1) Offer two hearing aid-compatible handset models to customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of the network, (2) are overbuilding (*i.e.*, replacing) their entire network, and (3) complete the overbuild by September 18, 2006.

8. Therefore, because we find the action taken in the instant *Order on Reconsideration amounts* to an exception and maintains the status quo for affected entities for a period of approximately one year, and that any

impact overall is positive, we certify that the action described will not result in a significant economic impact on a substantial number of small entities.

9. Further, we certify that our decision to modify the preliminary handset deployment benchmark for Tier I wireless carriers will not have a significant economic impact on a substantial number of small entities. Tier I wireless carriers are not small.

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

III. Ordering Clauses

11. Pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 610, this *Order on Reconsideration* is adopted.

12. It is further ordered that the amendment of the Commission's rules, 47 CFR part 20, as specified in Appendix B of the *Order on Reconsideration* are effective, August 26, 2005.

13. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by the Cellular Telecommunications and Internet Association is granted in part and denied in part to the extent set forth herein.

14. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by Verizon Wireless is granted in part and denied in part to the extent set forth herein.

15. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by Research in Motion Limited is granted to the extent set forth herein.

16. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by the TDMA Carriers (Public Service Cellular Inc., Missouri RSA No. 7 Limited Partnership dba Mid Missouri Cellular; Minnesota Southern Wireless Company dba Hickory Tech, Northwest Missouri Cellular Limited Partnership, Illinois Valley Cellular RSA 2–I Limited Partnership, Illinois Valley Cellular 2–II Limited Partnership and Illinois Valley RSA 2–III Limited Partnership) and Rural Telecommunications Group and is granted in part to the extent set forth herein.

17. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Order on Reconsideration* and the Final Regulatory Flexibility Certification to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 2. Section 20.19 is amended by adding paragraph (b)(4) and by revising paragraphs (c)(2) and (c)(3)(i) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(b) * * *

(4) All factual questions of whether a wireless phone meets the technical standard of this subsection shall be referred for resolution to Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

(c) * * *

(2) And each provider of public mobile radio services must:

(i)(A) Include in its handset offerings at least two handset models per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store; or

(B) In the event a provider of public mobile radio services is using a TDMA air interface and plans to overbuild (*i.e.*, replace) its network to employ alternative air interface(s), it must:

(*1*) Offer two handset models that comply with § 20.19(b)(1) by September 16, 2005, to its customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of its network, and make available in each retail store it owns or operates all of these handset models for consumers to test in the store;

(*2*) Overbuild (*i.e.*, replace) its entire network to employ alternative air interface(s), and

(*3*) Complete the overbuild by September 18, 2006; and

(ii) Ensure that at least 50 percent of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide.

(3) * * *

(i)(A) Include in its handset offerings four digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

(B) Include in its handset offerings five digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2006, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

* * * * *

[FR Doc. 05–14613 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AB63

Railroad Workplace Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On February 10, 2005, FRA published an interim final rule amending regulations on railroad workplace safety to clarify an

ambiguous provision concerning the circumstances under which life vests or buoyant work vests are required for bridge workers working over water. 70 FR 7047. As no comments were received in response to the notice of interim final rule, this document adopts the interim final rule as a permanent final rule.

DATES: *Effective Date:* This rule becomes effective July 27, 2005.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6320); or Anna Nassif, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6166).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, FRA published railroad workplace safety regulations in 49 CFR part 214. 57 FR 28127. Subsequent amendments to that regulation added Subpart C, Roadway Worker Protection, and Subpart D, On-Track Roadway Maintenance Machines and Hi-Rail Vehicles. 61 FR 65959 (December 16, 1996), 68 FR 44388 (July 28, 2003). Additional amendments have provided technical corrections and changes to improve the effectiveness of the regulation.

FRA subsequently received a request from the Norfolk Southern Railway Company (NS) to permit NS employees who are working on a bridge deck over water to work without a life vest or buoyant work vest under circumstances in which falls are effectively prevented. NS referred to factual situations under the regulation, where a bridge worker who was located 12 feet or more over the ground was prevented from falling by hand rails, walkways, or acceptable work procedures and was therefore not required to use a personal fall arrest system. However, if the same circumstances prevailed on a bridge over water, the bridge worker was required to wear a life vest or buoyant work vest even though the bridge worker over water may have had the same safety hand rails, walkways, or acceptable work procedures in place as the bridge worker had over dry land. FRA considered this request, and found that the situation addressed by NS was not limited to one railroad. FRA therefore considered it advisable to provide an industry-wide resolution by issuing a technical amendment to the regulation.

On February 10, 2005, FRA published an interim final rule amending section 214.107 to resolve this unintended inconsistency. 70 FR 7047. Written comments were due March 28, 2005; however, no comments were received, and the rule went into effect on April 11, 2005. The amendment now permits the exceptions in sub-paragraph (b)(2), and paragraphs (c) and (d) of § 214.103, which previously only applied to the use of personal fall arrest systems and safety nets over dry land, to also apply to the use of life vests or buoyant work vests while working over water. The amendment will have the effect, in a common example, of permitting a railroad track inspector, when on a bridge that is over water and equipped with effective handrails and walkways, to replace a joint bolt without having to wear a life vest or buoyant work vest, without the need to have a life preserver within ready access, and without the need for ring buoys and a boat or skiff in the water. The amendment should also have the beneficial effect of encouraging bridge owners to install effective fall prevention components on low bridges over water in order to improve labor efficiency.

Section-by-Section Analysis

No comments were received in response to the interim final rule. Accordingly, a section-by-section analysis is unnecessary. Please see the section-by-section analysis in the interim final rule at 70 FR 7049.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this rule will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This final rule clarifies existing requirements. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this final rule.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The rule meets the criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

This final rule will not have a substantial 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. Thus, in accordance with Executive Order 13132, preparation of a Federalism Assessment is not warranted.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Sec. 201. Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,700,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *" detailing the effect on State, local and tribal governments and the private sector. The rule published today does not include any mandates which will result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of a statement is not required.

List of Subjects in 49 CFR Part 214

Bridges, Fall arrest equipment, Incorporation by reference, Occupational safety and health, Personal protective equipment, Railroad employees, Railroad safety.

The Final Rule

In consideration of the foregoing, the interim final rule amending 49 CFR part

214, which was published at 70 FR 7047 on February 10, 2005, is adopted as a final rule without change.

Issued in Washington, DC on July 5, 2005.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 05–14756 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 072205C]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 24, 2005, through 1200 hrs, A.l.t., September 1, 2005.

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 third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA is 400 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005), for the period 1200 hrs, A.l.t., July 5, 2005, through 1200 hrs, A.l.t., September 1, 2005.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are all rockfish of the genera *Sebastes* and *Sebastolobus*, deep-water flatfish, rex sole, arrowtooth flounder, and sablefish.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

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 NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 22, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–14855 Filed 7–22–05; 3:27 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 072205B]

Fisheries of the Economic Exclusive Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for yellowfin sole in the Bering Sea and Aleutian Islands (BSAI). This action is necessary to allow the yellowfin sole fishery in the BSAI to resume.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 25, 2005, through 2400 hrs, A.l.t., December 31, 2005.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management 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.

NMFS closed directed fishing for yellowfin sole in the BSAI under § 679.21(d)(7)(i) on May 19, 2005 (70 FR 29458, May 23, 2005).

NMFS has determined that as of June 20, 2005 approximately 7,862 metric tons of yellowfin sole remain in the 2005 yellowfin sole TAC in the BSAI. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the yellowfin sole fishery to resume, NMFS is terminating the previous closure and is reopening directed fishing for yellowfin sole in the BSAI. The reopening is effective 1200 hrs, Alaska local time (A.l.t.), July 25, 2005, through 2400 hrs, A.l.t., December 31, 2005.

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 NMFS from responding to the most recent fisheries data in a timely fashion and would delay the delay the opening of the fishery, not allow the full utilization of the yellowfin sole TAC in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

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 § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: July 22, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–14854 Filed 7–22–05; 3:27 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 072205A]

Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of "other rockfish" in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of "other rockfish" in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other rockfish" 2005 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 22, 2005, until 2400 hrs, A.l.t., December 31, 2005.

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 CFR part 679.

The 2005 TAC of "other rockfish" in the Western Regulatory Area of the GOA is 40 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the "other rockfish" TAC in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of "other rockfish" in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

"Other rockfish" consists of all slope and demersal shelf rockfish.

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 NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of "other rockfish" in the Western Regulatory Area of the GOA.

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

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

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

Dated: July 22, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–14853 Filed 7–22–05; 3:27 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050421110–5192–02; I.D. 041505F]

RIN 0648–AT03

Pacific Halibut Fisheries; Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend the Pacific halibut regulations for waters in and off Alaska. This action is necessary to modify the Individual Fishing Quota (IFQ) Program and the Western Alaska Community Development Quota (CDQ) Program to allow quota share holders in International Pacific Halibut Commission (IPHC) Regulatory Area (Area) 4C to fish their Area 4C IFQ or CDQ in Area 4D. This action is intended to enhance harvesting opportunities for halibut by IFQ and CDQ fishermen and is necessary to promote the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ and CDQ Pacific halibut fisheries, consistent with the regulations and resource management objectives of the IPHC and the North Pacific Fishery Management Council (Council).

DATES: Effective on July 22, 2005.

ADDRESSES: Copies of the environmental assessment (EA), regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall, or from NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Bubba Cook, 907–586–7425 or *bubba.cook@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Pacific Halibut Management

Management of the Pacific halibut (*Hippoglossus stenolepis*) (halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the "Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada on March 2, 1953, and was amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Halibut Act.

Generally, the IPHC develops halibut fishery management regulations pursuant to the Convention and submits those regulations to the U.S. Secretary of State for approval. NMFS publishes approved IPHC regulations in the **Federal Register** as annual management measures. NMFS published the IPHC's current annual management measures on February 25, 2005 (70 FR 9242).

The Halibut Act also authorizes the Council to recommend halibut fishery regulations in and off Alaska that are in addition to, but not in conflict with, the approved IPHC regulations (Halibut Act, section 773(c)). Regulations recommended by the Council will be implemented only upon approval of the U.S. Secretary of Commerce (Secretary).

The IFQ and CDQ Fisheries

In December 1991, the Council adopted a limited access system for managing the halibut fishery in and off Alaska under authority of the Halibut Act. This limited access system included an IFQ Program for Areas 2C through 4D, and the CDQ Program for Areas 4B through 4E. The Council designed the IFQ and CDQ Programs to allocate specific harvesting privileges among U.S. fishermen and eligible western Alaska communities to resolve management and conservation problems associated with "open access" fishery management, and to promote the development of fishery-based economic opportunities in western Alaska. Acting on behalf of the Secretary, NMFS initially implemented the IFQ and CDQ Programs through regulations published in the **Federal Register** on November 9, 1993 (58 FR 59375). Fishing for halibut under these two programs began on March 15, 1995.

Each quota share (QS) issued under the IFQ Program represents a transferable harvest privilege, within specified limitations, which is converted annually into IFQ. Fishermen granted IFQs are authorized to harvest the amounts of halibut in the areas specified on an IFQ permit issued to the fishermen.

NMFS and the State of Alaska jointly manage the CDQ Program based on a program design developed by the Council. Currently, 65 communities are eligible to participate in the CDQ Program, representing about 27,000 western Alaska residents. These communities are located within 50 nautical miles of the Bering Sea coast or on an island in the Bering Sea and are predominantly populated by Alaska Natives. The eligible communities formed six non-profit corporations known as CDQ groups to manage and administer allocations, investments, and economic development projects. Allocations are administered by the State of Alaska in cooperation with NMFS according to the total catch established for each Area by the IPHC.

The Effect of this Action

This final rule amends the Area 4 Catch Sharing Plan (CSP) and existing regulations to allow Area 4C IFQ or CDQ holders to harvest all or part of their halibut IFQ or CDQ allocation in Area 4D. The current Area 4 CSP was developed by the Council to apportion the IPHC's halibut catch limit for a combined Area 4C-E as necessary to carry out the socioeconomic objectives of the IFQ and CDQ programs. The Area 4 CSP provides a framework for dividing the IPHC's annual halibut catch limit for a combined Area 4C-E among Areas 4C, 4D, and 4E. This action revises the Area 4 CSP and its implementing regulations to allow IFQ and CDQ holders that receive Area 4C halibut allocations the flexibility to harvest such halibut IFQ or CDQ either in Area 4C or in Area 4D.

The principal elements of this amendment are described and explained in detail in the preamble to the proposed rule (May 5, 2005; 70 FR 23829) and are not repeated here. This final rule is substantively the same as the proposed rule and . NMFS made no changes to the regulatory text provided in the proposed rule. Comments on the proposed rule were invited through June 6, 2005.

Response to Comments

NMFS received four letters of comment that contained four separate comments from three organizations and one individual. The following summarizes and responds to these comments.

Comment 1: The proposed rule appears to only allow Area 4C IFQ, but not Area 4C CDQ to be fished in Area 4D. This is inconsistent with the Council's motion.

Response: In December 2004, the Council recommended allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D. This recommendation was proposed by NMFS through amendments to the Area 4 CSP and its implementing regulations at 50 CFR part 679. The amendments to the Area 4 CSP provide the primary framework authority for the allowance for Area 4C CDQ holders to harvest their CDQ in Area 4D. The regulations found at § 679.42 impose additional limitations on the allowance for Area 4C IFQ holders to harvest their IFQ in Area 4D. Regulations at § 679.7 provide restrictions upon Area 4C IFQ and CDQ to ensure that an IFQ or CDQ holder's total quota allotment for both areas is not exceeded. Therefore, the proposed rule specifically contemplated allowing CDQ holders as well as IFQ holders to fish Area 4C quota in Area 4D consistent with Council intent.

Comment 2: The proposed rule unfairly allows Area 4C IFQ or CDQ holders to harvest their IFQ or CDQ in Area 4D without allowing Area 4D IFQ or CDQ holders to harvest their IFQ or CDQ in Area 4C.

Response: Halibut IFQ and CDQ fishermen in Area 4C have experienced a steady drop in catch rates since 1985. The drop is consistent among gear types and amounts to a decline in catch rates of greater than 70 percent over the past ten years. The reduced catch rates have consequently reduced the percentage of the total harvest of halibut by IFQ and CDQ fishermen in Area 4C.

Recent research conducted by the IPHC indicates localized depletion in Area 4C. Localized depletion results from concentrated fishing effort in a limited area that exceeds the sustainable level for fishing in that area. Although effort and catches of halibut have increased in Area 4C over the last 10 years as the catch limit has increased, catch per unit effort (CPUE) has declined steadily since commercial fishing began. Catches increased because fishing effort increased, offsetting the decline in CPUE. IPHC research shows that a comparison of CPUE with effort indicates a continuous pattern of increasing effort and decreasing CPUE. The IPHC suggests that further increased effort in Area 4C is unlikely to produce increased catch.

The preferred action selected by the Council authorizes fishermen to harvest their Area 4C IFQ or CDQ in Area 4D, which is a much larger regulatory area

with sufficient halibut biomass to accommodate the additional harvest. The CSP assigns 46.43 percent of the combined 4C-E catch to Area 4D, which is an amount equal to that allocated to Area 4C. However, for the same percentage, Area 4D has approximately ten times more fishing grounds, at 5,605 square nautical miles, than Area 4C, at 561 square nautical miles.

Additionally, CPUE in Area 4D consistently appears remarkably better than in Area 4C as indicated by the number of halibut landings compared to total harvest percentage of the IFQ and CDQ allocations by area. Fishermen in Area 4D harvested an average of 92 percent of the IFQ allocation for Area 4D over the past ten years, achieving 100 percent during 2003 and 2004. Fishermen also harvested an average of 89 percent of the Area 4D CDQ allocation over the past ten years, achieving 80 and 84 percent during 2003 and 2004, respectively. On average, Area 4D IFQ fishermen conducted only 32 percent of the IFQ landings that Area 4C IFQ fishermen conducted over the past ten years, inferring that less effort was required to achieve the full harvest of the 4D IFQ halibut allocation. Likewise, CDQ landings of halibut from Area 4D were only 19 percent of those from Area 4C over the past ten years, inferring that less effort was required to achieve the full harvest of the 4D CDQ harvest. Less effort was required to harvest IFQ and CDQ halibut allocation in Area 4D, indicating a higher CPUE in Area 4D than in Area 4C. Therefore, allowing Area 4D IFQ or CDQ holders to harvest their Area 4D IFQ or CDQ in Area 4C, where the CPUE is lower and localized depletion could be further exacerbated, would be counterproductive.

The Council briefly discussed an alternative that would have allowed Area 4D fishermen to harvest their IFQ and CDQ in Area 4C, in effect erasing the boundary line between Area 4C and Area 4D. However, the Council determined that the option would not achieve the goals of reducing fishing effort in Area 4C and protecting the small vessels that fish in nearshore waters of Area 4C from potential increased gear conflict and grounds preemption by Area 4D fishermen. For those reasons the Council did not pursue further analysis of that alternative or further consider allowing Area 4D IFQ or CDQ to be harvested in Area 4C.

Comment 3: If Area 4C IFQ and CDQ holders had not depleted their local stocks, they would not have a problem. Area 4C fishermen should change their methods for fishing within Area 4C rather than be allowed to deplete the adjacent fishery in Area 4D.

Response: The IPHC assesses the halibut resource in Areas 4C-E as a single stock unit. However, since 1998 the IPHC has annually implemented the measures specified in the Area 4 CSP to apportion the combined Area 4C-E catch limit independently among Areas 4C, 4D, and 4E. The combined catch limit is allocated as 46.43 percent to Area 4C, 46.43 percent to Area 4D, and 7.14 percent to Area 4E. NMFS bases the calculation of IFQ pounds on the combined catch limit established by the IPHC for each area. Total IFQ pounds for Area 4C-E are calculated by multiplying the catch limit established by the IPHC for the combined Area 4C-E by the respective percent allocation for Area 4C, 4D, and 4E. This action results in no change to the total catch limit for Areas 4C-E, the percent allocations of the total catch limit for each Area within Areas 4C-E, and subsequently the total IFQ allocation. Because the halibut resource is considered a single stock in Areas 4C-E and no change to the associated calculations for the Area 4C-E total catch results from this action, allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D subject to their existing quotas will not result in a net increase in halibut harvest in Area 4C-E.

In addition, allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D will not likely result in any localized depletion of Area 4D stocks because the geographical area of the Area 4D fishing grounds is much larger than in Area 4C. The IPHC notes that 46.43 percent of the entire Area 4C-E catch limit is allotted for only 5.1 percent of the total Area 4C-E fishing grounds located in Area 4C. The available fishing grounds in Area 4C consists of only 561 square nautical miles. The limited fishing grounds in Area 4C results in concentrated fishing effort in a relatively small fishing area. Conversely, the CSP assigns 46.43 percent of the combined 4C-E catch to Area 4D, which is an amount equal to that allocated to Area 4C. However, for the same catch percentage, Area 4D has approximately ten times more fishing grounds at 5,605 square nautical miles than Area 4C at 561 square nautical miles. Additionally, harvest records over the past ten years indicate that far less effort was required to achieve the full harvest of the 4D IFQ and CDQ harvest, thereby indicating a higher CPUE in Area 4D (see Response to Comment 2). Consequently, allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D will not likely transpose Area 4C's localized depletion problem to Area 4D because much larger fishing grounds and a higher CPUE exist in Area 4D.

Comment 4: We support NMFS and the Council in allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D and ask for speedy implementation of this action.

Response: NMFS notes this support.

Classification

This rule relieves a restriction by removing the prohibition preventing Area 4C IFQ and CDQ fishermen from fishing their quota in Area 4D and so, pursuant to 5 U.S.C. 553(d)(1), it is not subject to the 30-day delayed effectiveness provision of the APA. Current regulations prohibit harvesting halibut IFQ or CDQ in a regulatory area other than the area for which the quota is allocated. Halibut IFQ and CDQ allocated in a particular area may be harvested only in that same area, in accordance with biomass-based quotas, except that halibut CDQ allocated for Area 4D may be harvested in Area 4E. This rule would reduce fishing effort in Area 4C while continuing to allow Area 4C fishermen to fully harvest their IFQ or CDQ by eliminating the current restrictions prohibiting the harvest of halibut IFQ or CDQ in a regulatory area for which the quota is allocated and, therefore, redistributing fishing effort from Area 4C to Area 4D. Additionally, the need to implement these measures in a timely manner to allow for economic relief and promote safety in the Pribilof Islands constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. The Council requested this action to alleviate economic hardship in the Pribilof Islands resulting from poor halibut harvests in Area 4C in recent years. Due to ice cover and weather conditions in the Bering Sea, halibut IFQ and CDQ fishermen have a very narrow window in which to safely fish during the summer months. Therefore, this action must be implemented immediately upon filing with the Office of the **Federal Register** to provide IFQ and CDQ fishermen a reasonable opportunity to take advantage of favorable weather conditions in a limited fishing season.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Halibut Act. An RIR/IRFA for the proposed revisions to the Area 4 CSP and regulatory amendment describes the management

background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives (see **ADDRESSES**).

NMFS prepared an FRFA for this action that examines regulations regarding the legal harvest of halibut IFQ and CDQ in Convention waters in and off Alaska. The FRFA incorporates the IRFA and a summary of the analysis completed to support this action. This analysis evaluates the small entity impacts of an amendment to the Area 4 CSP and its implementing regulations affecting IFQ and CDQ fishing which has the potential to result in a significant impact on a substantial number of small entities, as defined under the Regulatory Flexibility Act. The FRFA addresses the requirements of the Regulatory Flexibility Act at section 604(a).

The entities regulated by this action are those entities that harvest halibut in Areas 4C and 4D. These entities include the six CDQ groups, and the halibut longline catcher vessels and catcher/processor vessels in these areas whose owners or hired captains hold halibut QS/IFQ or are contracted by CDQ groups that hold QS/CDQ. This action may directly affect all six CDQ groups, which represent 65 western Alaska communities with a total 2000 population of about 27,000, which receive halibut CDQ in halibut Areas 4C. This action may also directly affect 63 persons who hold more than 4 million QS units in Area 4C in 2004.

The purpose and need for this action is to: (1) reduce fishing effort within Area 4C, thereby alleviating localized depletion; (2) increase human health and safety of the small boat halibut IFQ and CDQ fishery near St. Paul and St. George by reducing competition with larger vessels that may harvest their IFQ in either Area 4C or 4D; and (3) assist Area 4C IFQ holders in harvesting their full IFQ and CDQ allocations by increasing the area of available fishing grounds.

The IRFA prepared for the preferred alternative was described in the classification section of the preamble to the proposed rule. The public comment period ended June 6, 2005. No comments were received on the IRFA.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

The Council analyzed two alternatives for this action. These alternatives included a no action alternative and the selected preferred alternative. Under Alternative 1, the no action alternative, the status quo would be maintained and Area 4C IFQ and CDQ holders would not be able to harvest their quota outside Area 4C. Alternative 2 , the preferred alternative, would allow Area 4C IFQ or CDQ holders to harvest all or part of such IFQ or CDQ in Area 4D. The Council determined that Alternative 1 failed to meet the purpose and need of this action stated above. The preferred alternative will achieve the Council's desired goals and the purpose and need of this action by revising the Area 4 CSP and IFQ and CDQ regulations to allow Area 4C IFQ or CDQ holders to harvest all or part of their Area 4C IFQ or CDQ in Area 4D.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Alaska Regional Office (see **ADDRESSES**), and the guide (i.e., permit holder letter) will be sent to all holders of permits for the Pacific Halibut IFQ and CDQ fisheries in Area 4. The guide and this final rule are available upon request and on the Alaska Region website at *http://www.fakr.noaa.gov/*.

List of Subjects in 50 CFR Part 679

Alaska, Determinations and appeals, Fisheries, Recordkeeping and reporting requirements.

Dated: July 21, 2005.

James W. Balsiger

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

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f). 1801 *et seq.*; 1851 note; 3631 *et seq*

■ 2. In § 679.7, paragraph (f)(4) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(4) Except as provided in § 679.40(d), retain IFQ or CDQ halibut or IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ, applicable to the vessel category and IFQ or CDQ regulatory area(s) in which the vessel is deploying fixed gear, and that is currently held by all IFQ or CDQ card holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and § 679.5.

* * * * *

■ 3. In § 679.42, paragraph (a)(1) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except:

(i) Notwithstanding § 679.4(d)(1), § 679.7(f)(4) and (f)(11), § 679.40(b)(1), (c)(3), and (e), from July 22, 2005 to November 15, 2005, all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

(ii) For the year 2006 and subsequent annual IFQ fishing seasons, all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

* * * * *

[FR Doc. 05–14852 Filed 7–22–05; 3:27 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 143
Wednesday, July 27, 2005

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD36

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Miscellaneous Vendor-Related Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the WIC Program to clarify issues that have arisen subsequent to the publication of the WIC Food Delivery Systems Final Rule on December 29, 2000, and to strengthen further the requirements for State vendor management and infant formula cost-containment systems. The rule contains provisions that would prohibit a State agency from requiring an infant formula manufacturer to provide free formula, services, or other items in its infant formula cost-containment bid solicitation and contract; require that a State agency provide an abbreviated administrative review when a vendor receives a WIC civil money penalty as a result of a Food Stamp Program (FSP) disqualification; and expand the types of vendor information that a State agency may release for general program purposes.

DATES: To be assured of consideration, written comments must be postmarked on or before November 25, 2005.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA. 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.
- Web site: Go to *http://www.fns.usda.gov/wic*. Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- E-Mail: Send comments to *WICHQ-SFPD@fns.usda.gov*. Include Docket ID Number 0584–AD36, Miscellaneous Vendor-Related Provisions Proposed Rule, in the subject line of the message.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

FNS also plans to make the comments publicly available by posting a copy of all comments on the FNS Web site at *http://www.fns.usda.gov/wic*.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Chief of the Policy and Program Development Branch, Supplemental Food Programs Division, at the address indicated above or at (703) 305–2746, during regular business hours (8:30 a.m.–5 p.m., Monday through Friday).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Roberto Salazar, Administrator, Food and Nutrition Service (FNS), has certified that this rule would not have a significant economic impact on a substantial number of small entities. This rule would modify language used in WIC infant formula rebate solicitations and contracts, as well as in vendor agreements. The effect of these changes would fall primarily on State agencies. Vendors authorized by the WIC Program to provide supplemental foods, some of which are small entities, could also be affected. However, the impact on small entities is expected to be minimal.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the FNS generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the following three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting this rule, we consulted with State agencies at various times. Because the WIC Program is a State-administered, federally funded program, our regional offices have formal and informal discussions with State agencies on an ongoing basis regarding program implementation and policy issues. This arrangement allows State agencies to raise questions and provide comments that form the basis for discretionary decisions in this and other WIC Program rules. We have also received oral and written requests for policy guidance on the implications of the Food Delivery Systems Final Rule from State agencies that deliver WIC services. These questions have helped us make the rule responsive to concerns of State agencies.

Nature of Concerns and the Need To Issue This Rule

The rule addresses the need to assure the soundness of infant formula rebate solicitations and contracts. With limited exceptions, all State agencies must continuously operate a cost containment system for infant formula. Some have also established similar cost containment measures for other supplemental foods, such as infant juice and cereal. As a result of these systems, State agencies receive over $1.5 billion annually in rebates on infant formula and other supplemental foods purchased by WIC participants. The rebates that State agencies receive allow them to maintain, and in some cases expand, program participation.

Infant formula manufacturers have questioned the inclusion of requirements to provide free formula, services, or other items in infant formula bid solicitations. Receipt of free formula reduces the amount of formula that the State agency potentially could purchase under rebate contracts and may lower the level of rebate bids received. A lower rebate could lead to a reduction in the number of eligible persons that the WIC Program is able to serve. This rule would modify the requirements for rebate solicitations and contracts to address this issue and thereby promote the viability of infant formula cost containment systems.

The rule also would address two issues affecting WIC vendors. First, State agencies have questioned the need to offer a full administrative review to vendors who receive a WIC civil money penalty as a result of FSP disqualification. State agencies are required to impose a civil money penalty when they determine that an authorized vendor that has been disqualified from the FSP is needed to ensure participant access to supplemental foods. In responding to this issue, the rule seeks to assure a vendor's right to due process while encouraging the most cost-effective use of State agency resources.

In addition, while implementing the WIC Food Delivery Systems Final Rule, State agencies have sought approval to release basic vendor information that the rule designates as confidential. This proposed rule seeks to accommodate State agency requests to release such information, while preserving the overall confidentiality of vendor information.

Extent to Which We Will Meet Those Concerns

The rule would substantially resolve the vendor management problems State agencies have identified. It increases a State agency's flexibility in conducting appeals of a civil money penalty imposed in lieu of reciprocal disqualification from the WIC Program, and in disclosing vendor information as part of sound program management. It also supports the integrity of State agency infant formula rebate systems by eliminating gratis provisions in infant formula cost-containment contracts.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with Departmental Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts this rule might have on minorities, women, and persons with disabilities. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits State and local government agencies that administer the WIC Program from engaging in actions that discriminate based on race, color, national origin, sex, age or disability. Regulations at 7 CFR 246.8 specifically state that Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a and 15b) and FNS instructions ensure that no person shall on the grounds of race, color, national origin, age, sex, or disability be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program.

Discrimination in any aspect of program administration is prohibited by these regulations, Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a, and 15b), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accordance with 7 CFR part 15. Where State agencies have options, and they choose to implement a particular provision, they must implement it in such a way that it complies with the regulations at 7 CFR 246.8.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains no new information collection requirements that are subject to OMB approval. The existing recordkeeping and reporting requirements, which were approved under OMB control number 0584–0043, will not change as a result of this rule.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background on Vendor-Related Provisions

On December 29, 2000, the WIC Food Delivery Systems Final Rule as published at 65 FR 83248, made major amendments to the WIC Program regulations in response to an increasing concern on the part of FNS, States, the

Office of the Inspector General, and Congressional reviewers that the WIC Program was vulnerable to abuse by vendors and participants. It was also believed that WIC could serve additional participants at no additional cost by eliminating the abuse. The WIC Food Delivery Systems Final Rule responded to this concern by providing detailed standards for effective vendor management systems, including mandatory selection criteria, training requirements, high-risk vendor identification criteria, and vendor monitoring requirements. As WIC State agencies consistently apply these standards, program accountability and efficiency in food delivery should increase.

FNS postponed the implementation date of the rule from February 27, 2002, to October 1, 2002, to give State agencies additional time to modify policies, procedures, and management information systems and to notify vendors and others affected by impending changes. Since that time, FNS has provided technical assistance and clarifications to State agencies regarding the rule's intent and requirements.

This proposed regulation responds to vendor management issues that have arisen subsequent to the publication of the WIC Food Delivery Systems Final Rule. The limited provisions of this proposed rule are consistent with the objectives of the WIC Food Delivery Systems Final Rule. They promote sound vendor management practices and seek to maximize the funds available to State agencies for providing supplemental foods.

Background on Infant Formula Cost Containment

In response to rising food costs in the 1980's and the desire to use their food grants more efficiently, several WIC State agencies initiated infant formula rebate systems. At the time, infant formula expenditures represented almost 40 percent of all WIC food costs, making infant formula rebates an important cost-containment strategy. Rebate savings amounted to just over $30 million in fiscal year 1988 and grew to about $1.5 billion in fiscal year 2003. These rebate savings are a critical component of the WIC Program, allowing an additional two million participants (nearly one out of every four participants) to be served. Without these savings, millions of low-income women, infants and children would not have the advantage of nutritious supplemental foods, nutrition education, and health care referrals provided by the WIC Program.

Building on the success of voluntary State infant formula rebate systems, Public Law 100–460, the Department's fiscal year 1989 appropriations act, required all WIC State agencies (except Indian State agencies with participation levels under 1,000) to explore the feasibility of cost-containment measures for infant formula and implement such measures where feasible. As a result of this mandatory legislative requirement, WIC State agencies with participation levels over 1,000 implemented infant formula cost-containment measures, primarily infant formula rebate systems.

The passage of the Child Nutrition and WIC Reauthorization Act of 1989 (section 123(a)(6) of Pub. L. 101–147) made this cost-containment requirement a permanent program feature. As a result, section 17(h)(8)(A) of the Child Nutrition Act of 1966 (CNA), as amended (42 U.S.C. 1786(h)(8)(A)), requires WIC State agencies to implement a competitive bidding system for the procurement of infant formula, or an alternate infant formula cost-containment measure that yields savings equal to or greater than savings generated by a competitive bidding system.

Over time, infant formula cost-containment systems have changed considerably. Current rebate regulations were last updated through an interim rule published on August 23, 2000, at 65 FR 51213, which addressed a number of contracting issues and bid evaluation requirements. This proposed rule further strengthens the bid solicitation and contracting process for infant formula cost-containment systems.

Gratis Provisions in Infant Formula Rebate Solicitations and Contracts (7 CFR 246.16a(j)(4))

Over the past several years the Department has noticed an increase in the quantity of sample infant formula required in infant formula rebate solicitations and contracts. The Department is concerned not only with the increased quantity of sample infant formula required in rebate contracts, but also with contract requirements for other gratis items, such as educational materials, conference support, and supplies. Gratis provisions could have the effect of reducing rebate savings not only to individual State agencies, but also to the WIC Program nationally.

Historically the Department has discouraged the inclusion of gratis provisions in infant formula rebate contracts, including requirements for free units of infant formula. We believe that such stipulations generate lower rebate bids, primarily because such extras are not "free". Therefore, the proposed regulations at 7 CFR 246.16a(j)(4) would prohibit State agencies from issuing rebate bid solicitations or entering into rebate contracts that contain provisions requiring bidders to provide gratis products and services, such as sample infant formula.

State agencies that provide sample infant formula to infants in limited situations, such as when trying to determine the specific infant formula to use to address a particular medical condition, may purchase reasonable quantities of sample formula for this purpose with WIC food funds.

Abbreviated Administrative Reviews (7 CFR 246.18(a)(1)(ii))

The Department proposes to require a State agency to offer an abbreviated administrative review when a vendor appeals a WIC civil money penalty (CMP) imposed in lieu of a disqualification that stems from a FSP disqualification. Section 17(n) of the CNA and regulations at 7 CFR 246.12(l)(1)(vii) require a WIC State agency to disqualify a vendor who has been disqualified from the FSP, unless participant access would be jeopardized. The disqualification is not subject to administrative or judicial review under the WIC Program. If the State agency determines that the vendor is needed to ensure participant access to supplemental foods, the State agency must impose a CMP in lieu of a disqualification as provided in WIC regulations at 7 CFR 246.12(l)(1)(ix). Under regulations at 7 CFR 246.18(a)(1)(i), the imposition of a CMP in lieu of disqualification is subject to a full administrative review.

The Department believes that a CMP imposed in lieu of a reciprocal disqualification does not warrant a full administrative review. Rather, such action should be subject to an abbreviated administrative review because at issue are two factual questions only, namely, whether the vendor has been disqualified from the FSP and whether the State agency correctly calculated the amount of the CMP. Answers to these questions can easily be established within the context of an abbreviated review; thus, the expenditure of time and resources required to conduct a full administrative review is unwarranted. Offering an abbreviated review would be the more cost-effective means of honoring the vendor's due process protections.

In addition to its cost-effectiveness, an abbreviated administrative review for a CMP based on a reciprocal WIC disqualification is consistent with the adverse actions for which WIC

regulations currently allow abbreviated reviews. Regulations at 7 CFR 246.18(a)(1)(ii) identify adverse actions that are subject to abbreviated administrative reviews. This section specifies that the State agency must provide abbreviated administrative reviews to vendors who appeal a WIC disqualification that is based on a FSP CMP for hardship, as well as a WIC disqualification or CMP based on a mandatory sanction imposed by another WIC State agency. Imposition of a CMP in lieu of a reciprocal disqualification is similar to these adverse actions for which a State agency must provide an abbreviated review. Under the proposed revision, a State agency would retain the option to provide a full administrative review as stated in regulations at 7 CFR 246.18(a)(1)(ii).

Confidentiality of Vendor Information (7 CFR 246.26(e))

Regulations at 7 CFR 246.26(e) restrict the use or disclosure of information that individually identifies a vendor, except for the vendor's name, address and authorization status, to persons directly connected with the administration or enforcement of WIC or FSP; persons directly connected with the administration or enforcement of any Federal or State law; or vendors who are subject to an adverse action.

This rule proposes to amend the regulations at 7 CFR 246.26(e) to expand the types of vendor information allowed for general release that would not be subject to confidentiality restrictions. This additional information would include a vendor's telephone number, Web site and e-mail address, WIC identification number, and store type (*e.g.*, retail, commissary, pharmacy, etc.). Allowing WIC State agencies to provide participants with vendors' telephone numbers and Web site and/or email addresses would assist participants with locating authorized vendors in their neighborhood or local service area. Knowing a vendor's store type also would enable participants to determine where to transact their food instruments.

The proposed rule would also allow WIC State agencies to issue public notices of vendor disqualifications (including the length of disqualification and the reason for the disqualification) and to provide the information to authorized vendors and program participants. The FSP, which has such authority and periodically issues public notices on retailer disqualifications, has found that disclosing this information serves as a strong deterrent to retailer fraud and abuse. The Department believes that issuing public notices of WIC vendor disqualifications would deter vendor fraud and abuse in the WIC Program as well. Publicizing this information also would alert program participants when the WIC Program no longer authorizes a particular vendor.

The Department considers this amendment to regulations at 7 CFR 246.26(e) to be in the best interests of the Program. Notwithstanding this change, the Department continues to believe that limiting the use and disclosure of confidential vendor information encourages vendors to provide the information that State agencies need in order to authorize and monitor vendors and to maintain effective investigative techniques.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.16a:

a. Amend paragraph (j)(2) by removing the word "or" at the end of the paragraph;

b. Amend paragraph (j)(3) by removing the period at the end of the paragraph and adding in its place a semicolon followed by the word "or"; and

c. Add paragraph (j)(4).

The addition reads as follows:

§ 246.16a Infant formula cost containment.

* * * * *

(j) * * *

(4) Require infant formula manufacturers to provide gratis infant formula, services, or other items.

* * * * *

3. In § 246.18, add a new paragraph (a)(1)(ii)(I) to read as follows:

§ 246.18 Administrative review of State agency actions.

(a) * * *

(1) * * *

(ii) * * *

(I) A civil money penalty imposed in lieu of disqualification based on a Food Stamp Program disqualification (§ 246.12(l)(i)(vii)).

* * * * *

§ 246.26 [Amended]

4. In § 246.26, amend the first sentence of the introductory text of paragraph (e) by removing the words "and authorization status" and by adding, in their place, the words ", telephone number, website/email address, authorization status, WIC identification number, and disqualification information (including the length of the disqualification and the reason for the disqualification)."

Dated: July 20, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–14873 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–166–A72; DA–05–01–A]

Milk in the Mideast Marketing Area; Tentative Partial Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative partial decision adopts on an interim final and emergency basis proposals that would amend certain features of the pooling standards of the Mideast milk marketing order. Specifically, this decision will: (1) Prohibit the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide equalization pool administered by another government entity; (2) lower the diversion limit standards; and (3) increase the performance standards for supply plants. A separate decision will be issued that will address proposals to deter the de-pooling of milk, adopt transportation credits and clarify the *Producer* definition of the order. This decision requires determining if producers approve the issuance of the amended order on an interim basis.

DATES: Comments should be submitted on or before September 26, 2005.

ADDRESSES: Comments (6 copies) should be filed with the Hearing Clerk, STOP 9200—Room 1031, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–9200. You may send your comments by the electronic process available at the Federal e-Rulemaking portal: *http://*

www.regulations.gov or by submitting comments to *amsdairycomments@usda.gov*. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This tentative partial decision proposes to adopt amendments which would prohibit the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide pool administered by another government entity. Additionally, this decision proposes to adopt amendments that would increase supply plant shipping standards and lower diversion limits.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. If adopted, the proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During March 2005, the month during which the hearing occurred, there were 9,767 dairy producers pooled on, and 36 handlers regulated by, the Mideast order. Approximately 9,212 producers, or 94.3 percent, were considered small businesses based on the above criteria. On the processing side, approximately 26 handlers, or 72.2 percent, were considered small businesses.

The adoption of the proposed pooling standards serve to revise established criteria that determine those producers, producer milk and plants that have a reasonable association with and are consistently serving the fluid needs of the Mideast milk marketing area. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, record keeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This tentative partial decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports from all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap or conflict with any existing Federal rules.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Prior Documents in This Proceeding

Amendment to Public Hearing on Proposed Rulemaking: Issued March 1, 2005; published March 3, 2005 (70 FR 10337).

Notice of Hearing: Issued February 14, 2005; published February 17, 2005 (70 FR 8043).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative partial decision with respect to the proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Mideast marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of

marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1031–Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by September 26, 2005. Six (6) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. While no evidence was received that specifically addressed these issues, some of the evidence encompassed entities of various sizes.

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Mideast marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Wooster, Ohio, on March 7–10, 2005, pursuant to a notice of hearing issued February 14, 2005, published February 17, 2005 (70 FR 8043), and an amendment to the hearing notice issued March 1, 2005, published March 3, 2005 (70 FR 10337).

The material issues on the record of the hearing relate to:

1. Pooling Standards
   A. Standards for *Producer Milk*.
   a. Simultaneous pooling of milk on the order and on a marketwide pool administered by another government entity.
   b. Diversion Limit Standards.
   B. Supply Plant Performance Standards.
2. Determination as to whether emergency marketing conditions exist that warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

This tentative partial decision specifically addresses proposals, published in the hearing notice as Proposals 1 and 2, along with a portion of Proposal 3, seeking to change the performance standards and producer milk provisions of the order. The portion of Proposal 3, that would provide a definition of "temporary loss of Grade A approval", Proposals 4–8, that would establish provisions to deter the "de-pooling" of milk, and Proposal 9 that would establish transportation credits will be addressed in a separate decision. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards

A. Standards for Producer Milk

Three proposals were presented at the hearing that would amend certain features of the *Producer milk* provision of the Mideast order. A proposal, published in the hearing notice as Proposal 1, seeking to eliminate the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide equalization pool administered by another government entity, commonly referred to as "double dipping," should be adopted immediately. Additionally, a portion of a proposal published in the hearing notice as Proposal 2, seeking to seasonally adjust the percentage of total receipts a pool plant could divert to nonpool plants to 50 percent for the months of August through February and to 60 percent for the months of March through July should be adopted immediately. Proposal 3, which sought to adjust the number of days of the milk production of a producer that must be physically received at a Mideast order pool plant before being eligible for diversion to a nonpool plant, commonly referred to as "touching base", was abandoned at the hearing and will no longer be referenced in this proceeding.

Proponents contend that milk has been simultaneously pooled on the Mideast order and on a marketwide pool administered by another government entity since January of 2000, and although no milk is currently simultaneously pooled on the Mideast order and a marketwide pool administered by another government entity, the possibility exists and provisions should be adopted to eliminate its occurrence. Additionally, proponents contend that inadequate limits on the amount of milk that pool plants can divert to non-pool plants is allowing large volumes of milk to be pooled on the Mideast order that does not demonstrate a reliable and consistent service to the fluid milk needs of the order.

The Mideast order currently does not prohibit the simultaneous pooling of the same milk on the order and on a marketwide equalization pool operated by another government entity. Although no milk is currently simultaneously pooled on the Mideast order and a marketwide equalization pool operated by another government entity, the situation has occurred in the past.

The current *Producer milk* provision of the Mideast order considers the milk of a dairy farmer to be producer milk when the milk has been delivered to a pool plant of the order. As a condition for pooling the milk of a producer diverted to a nonpool plant on the Mideast order, a dairy farmer must ship two days' milk production to a pool plant during each of the months of December through July. This standard is applicable only if two days' milk production was not shipped to a Mideast pool plant in each of the previous months of August through November. A producer must also deliver two days' milk production to a pool plant during the months of August through November in order for the milk diverted to nonpool plants to be pooled. A pool handler may not divert more than 60 percent of its total receipts to a nonpool plant during the months of August through February and no more than 70 percent of its total receipts during the months of March through July.

Proposals 1 and 2 were submitted by Dairy Farmers of America (DFA), Michigan Milk Producers Association (MMPA), Dairylea Cooperative Inc. (Dairylea) and the National Farmers Organization (NFO). DFA is a member owned Capper-Volstead cooperative of 13,500 farms that produce milk in 49 states. MMPA is a member owned Capper-Volstead cooperative of 1,350 farms producing milk in four states. Dairylea is a member owned Capper-Volstead cooperative of 2,400 farms producing milk in seven states. NFO is a member owned Capper-Volstead cooperative with over 1,500 members in 18 states. Hereinafter, this decision will refer to DFA, MMPA, Dairylea and NFO collectively as the "Cooperatives."

A witness appearing on behalf of the Cooperatives testified that adoption of Proposal 1 would eliminate the potential for the same milk to be simultaneously pooled on the Mideast Federal milk order and on a marketwide pool administered by another government entity. The witness referred to this practice as "double dipping" and as a practice resulting in disorderly marketing conditions. The witness noted that regulatory action has been taken in the Northeast, Central, Upper Midwest, Pacific Northwest and Arizona-Las Vegas Federal milk marketing orders to prohibit the practice. The witness testified that little milk is currently associated with the

Mideast marketing order that is simultaneously pooled by another government entity, but should be prohibited in the same manner as in other Federal milk marketing order areas. The Cooperatives noted in their post-hearing briefs that no opposition to adoption of Proposal 1 was received at the hearing.

A witness appearing on behalf of Dean Foods (Dean) testified in support of Proposal 1. Dean Foods owns and operates several distributing plants regulated by the Mideast order. The witness testified that double dipping should be prohibited in the Mideast order in the same manner as in other Federal orders. In their post-hearing brief, Dean added that if the ability to simultaneously pool milk is eliminated, the wording of the order language should be similar to the order language used to prohibit simultaneous pooling in the Central and Upper Midwest orders.

Continental Dairy Products (Continental) noted support for adoption of Proposal 1 in their post-hearing brief. Continental is a member owned Capper-Volstead cooperative that pools milk on the Mideast order. Continental was of the opinion that double dipping should be prohibited for the Mideast marketing area as it has been in other Federal milk marketing orders.

A witness appeared on behalf of the Cooperatives in support of the portion of Proposal 2 that would lower the diversion limit standards. The witness was of the opinion that current diversion limit standards are inadequate and have resulted in milk pooled on the order which does not demonstrate regular and consistent performance in supplying the Class I needs of the marketing area. The witness cited market administrator data showing that during the months of January through February and August through December of 2004, many pool distributing plants and cooperative handlers diverted more than 50 percent of their total milk receipts to nonpool plants. Adoption of the portion of Proposal 2 to limit diversions to no more than 50 percent of total milk receipts in August through February and 60 percent in March through July for distributing plants and cooperative handlers would increase shipments to distributing plants and raise returns for Mideast producers, the witness noted.

A witness for MMPA appeared on behalf of the Cooperatives in support of the portion of Proposal 2 that would lower diversion limit standards. The witness was of the opinion that an adjustment to the diversion limit standards will serve to decrease market reserves and increase proceeds for producers servicing the needs of the fluid market on a regular and consistent basis.

Several independent and cooperative member dairy farmers whose milk is pooled in the Mideast order also testified in support of the portion of Proposal 2 that would adjust diversion limit standards. Most were of the opinion that adjusting diversion limit standards will serve to more adequately identify the milk that is serving the needs of the Mideast order fluid market.

A witness appearing on behalf of Prairie Farms Dairy (Prairie Farms) testified that they were not in support of, nor in opposition to, adoption of the portion of Proposal 2 that would adjust diversion limits. Prairie Farms is a member owned Capper-Volstead cooperative that pools milk on the Mideast order.

A witness appeared on behalf of White Eagle Cooperative Federation (White Eagle) and "constituent members" in opposition to the portion of Proposal 2 that would lower diversion limit standards. The members of White Eagle Cooperative Federation include White Eagle Cooperative Association, Alto Dairy Cooperative, Scioto Cooperative, and Erie Cooperative Association. White Eagle Cooperative Federation also identified Superior Dairy, United Dairy, Family Dairies USA, Dairy Support Inc., Guggisberg Cheese and Brewster Cheese as constituent members.

The White Eagle witness testified that lowering diversion limit standards will decrease the volume of milk that manufacturing plants can pool, and will remove milk located in Wisconsin, Illinois, Minnesota and Iowa from pooling on the Mideast order. The witness was of the opinion that when the volume of milk pooled in manufacturing uses is decreased, producer milk that supplies manufacturing plants can face decreased returns. In their post-hearing brief White Eagle reiterated that lowering diversion limit standards will decrease returns to producers whose milk is marketed through White Eagle.

A consultant witness provided additional testimony on behalf of White Eagle in opposition to lowering the diversion limit standards of the order. The witness testified that reducing the diversion limit standards would disadvantage small cooperatives that pool milk on the Mideast order. The witness was of the opinion that lowering the diversion limit standards would increase the market power of large cooperatives and milk processors over small cooperatives and milk processors.

The consultant White Eagle witness relied on Market Administrator data to demonstrate the effects of a 10 percent reduction in the diversion limit standards for the period of 2003–2004. The witness stated that if the proposed diversion limit standards had been effective for the month of October 2004, the total volume of milk pooled in the Mideast market would have been reduced by 4.1 percent. The witness hypothesized that the reduction in milk volume pooled would have increased the PPD by about 2 cents per hundredweight (cwt.) for milk remaining pooled, but would have decreased the relative PPD by about $0.73 per cwt. on the milk that was not able to be pooled because of lowered diversion limit standards. The witness noted that the majority of the milk not pooled would have been milk usually pooled by small cooperatives. Accordingly, the witness was of the opinion that lowering the diversion limit standards of the Mideast order should not be adopted until additional analysis is done on the possible negative effects on small cooperatives and processors.

B. Supply Plant Performance Standards

Several proposed changes to the supply plant pooling provisions of the Mideast order, contained in Proposal 2, should also be adopted immediately. The lack of adequate performance standards in the current supply plant pooling provisions allow large volumes of milk to be pooled on the order that do not demonstrate a regular service to the Class I needs of the market causing an unwarranted decrease in the order's blend price.

Specifically, the following amendments should be adopted immediately: (1) Increasing supply plant performance standards for § 1033.7(c) by 10 percentage points, from 30 percent to 40 percent, for all months, (2) increasing performance standards for supply plants operated by a cooperative association under § 1033.7(d) by five percentage points, from 30 percent to 35 percent, for the month of August, and by 10 percentage points, from 30 percent to 40 percent, for the months of September through November, and (3) increasing performance standards for a supply plant with a marketing agreement with a cooperative under § 1033.7(e) by 10 percentage points, from 35 percent to 45 percent, for the months of August through November.

Currently, the Mideast order provides that a supply plant must ship 30 percent of its total monthly receipts to a pool

distributing plant in order for the plant and all of the receipts of the plant to be pooled for the month. This same standard applies to supply plants owned and operated by a cooperative association. A supply plant operated under a marketing agreement with a cooperative, however, must ship 35 percent of total receipts to a pool distributing plant in every month of the year in order for the plant and all the receipts of the plant to be pooled.

A witness appeared on behalf of the Cooperatives in support of the portion of Proposal 2 that raises the performance standards for supply plants. The Cooperatives witness was of the opinion that supply plant performance standards are inadequate and in need of review and adjustment. Current supply plant performance standards, the witness testified, allow for more milk to be associated with the Mideast pool than is needed. Relying on market administrator data, the witness noted that the projected Class I utilization of the Mideast order of 58.9 percent, specified during Federal order reform, had only been achieved in one month since January 2000. The witness stressed that the Mideast order has ample reserve milk supplies located within the marketing area, but that milk located outside of the marketing area that is being pooled on the order is lowering the proceeds of producers who are consistently serving the fluid needs of the market.

The Cooperatives witness was of the opinion that increasing supply plant performance standards will provide greater incentive to deliver local milk supplies to the Class I market than the current standards. The witness was of the opinion that returns to producers are increased the shorter the distance milk must travel to distributing plants because transportation costs are lower.

The Cooperatives witness testified that the costs of transporting and procuring milk for Class I use is not being borne equally by all producers whose milk is pooled on the order even though Class I returns are shared by all. The witness added that increasing supply plant performance standards would prevent milk that does not service the fluid needs of the market from sharing in the additional proceeds generated from fluid sales in the marketing area.

The Cooperatives witness relied on market administrator data which showed an increase in the volume of milk pooled on the Mideast order from states outside the marketing area including Illinois, Iowa, Minnesota and Wisconsin. The witness testified that although the volume of milk pooled from states outside of the Mideast marketing area has increased, the volume of milk pooled from states within the marketing area has remained constant. The witness added that the increase in the volume of milk pooled from states outside of the marketing area has not resulted in increased volumes of milk shipped to the order's pool distributing plants. When milk that does not service the needs of the Mideast fluid market is pooled from areas outside the states comprising the Mideast marketing area, the witness stressed, the blend price received by Mideast order producers who regularly demonstrate service to the fluid market is lowered.

The Cooperatives witness relied on market administrator data to illustrate that supply-demand relationships for milk in five different regions of the Mideast marketing area—Northern Ohio, Southern Ohio, Michigan, Indiana and Pennsylvania indicate that there is sufficient locally produced milk to meet the needs of the fluid market. According to the witness, only in the Southern Ohio/Southern Indiana region do total Class I sales exceed the total amount of milk locally supplied. The witness attributed the deficit local milk supply in Southern Ohio/Southern Indiana to local milk being shipped to the Appalachian milk marketing area.

The Cooperatives witness was also of the opinion that a "hard" 40 percent standard on cooperative owned supply plant shipments to distributing plants during the fall months is superior to using the "rolling annual average" method currently provided by the order. The witness added that if a cooperative owned supply plant shipped 40 percent of its total receipts to distributing plants during the fall months, the "rolling annual average" method could be used during the remainder of the year.

The Cooperatives witness testified that the performance standards for supply plants in the Mideast order were increased as a result of a previous Federal order hearing in 2001, but was of the opinion that the market is in need of further refinement. The witness emphasized that while there is a seasonal need for supplemental milk across certain regions of the Mideast market, the current standards allow far more milk to associate with the market than is reasonably warranted. The witness added that increasing supply plant performance standards will increase returns for Mideast dairy farmers who do regularly and consistently service the needs of the fluid market.

A witness appearing on behalf of Dean was also in support of increasing supply plant performance standards. Dean testified at the hearing, and reiterated in their post-hearing brief, that increasing supply plant performance standards will serve to better identify the milk that demonstrates a consistent ability to service the fluid milk needs of the market.

In their post-hearing brief, Dean proposed a modification to Proposal 2 regarding cooperative owned supply plants. Specifically, Dean suggested that a cooperative owned supply plant should be located within the geographic boundaries of the Mideast marketing area and that qualifying shipments to distributing plants or nonpool plants must be classified as Class I.

A witness from MMPA appearing on behalf of the Cooperatives modified a portion of Proposal 2 at the hearing. The witness testified that Proposal 2 should increase the performance standards for a cooperative owned supply plant by 5 percentage points, from 30 to 35 percent of total receipts, for the month of August, and by 10 percentage points, from 30 to 40 percent of total receipts for the months of September through November. The witness was of the opinion that an increase in performance standards are needed in order to ensure that the proceeds generated from Class I sales are shared among those who regularly supply the needs of the fluid market.

The MMPA witness testified that their cooperative exceeded the current 30 percent performance standard (from 35 percent to 41 percent of total receipts) during the preceding months of August through November. The MMPA witness testified that they are in support of a "hard" performance standard during the August through November period, rather than the use of the annual rolling average provision currently provided for in all months by the order for cooperative owned supply plants. The witness also noted that if market conditions warrant a higher degree of performance, the Market Administrator has the authority to increase the performance standard.

Several independent and cooperative member dairy farmers whose milk is pooled in the Mideast order also testified in support of increasing supply plant performance standards. Most were of the opinion that increasing supply plant performance standards will more adequately identify what milk is consistently serving the needs of the Mideast fluid market.

A witness appeared on behalf of Smith Dairy in general support of any proposal that would serve to address the reduction of producer pay prices in the

Mideast order and any proposals that will better identify milk that provides service to the Mideast fluid market. Smith Dairy operates two distributing plants regulated by the Mideast order that are primarily supplied by independent dairy farmers.

A witness appearing on behalf of White Eagle testified in opposition to increasing supply plant performance standards at the hearing and reiterated this position in their post-hearing brief. White Eagle is of the opinion that increasing supply plant shipping standards will displace milk from outside of the geographic boundaries of the Mideast marketing area that has historically supplied the milk needs of the Mideast market.

Discussion/Findings

The record of this proceeding finds that several amendments to the pooling standards of the Mideast order should be adopted immediately to better identify the milk of producers that should share in the order's marketwide pool proceeds and to establish more appropriate performance measures for providing regular and consistent service in meeting the market's fluid needs. Currently, milk located outside the Mideast marketing area that does not demonstrate regular and consistent performance in supplying the needs of the Class I market is able to qualify for pooling on the Mideast order and share in the increased revenues arising from Class I sales in the marketing area. The vast majority of this milk is pooled on the order at low classified use-values and in turn lowers the blend price to those producers who regularly and consistently supply the Class I needs of the Mideast market. Such milk is not demonstrating a reasonable level of performance in servicing the Class I market to receive the additional revenue arising from Class I use of the Mideast marketing area and therefore should not be pooled.

The pooling standards of all Federal milk marketing orders, including the Mideast order, are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and to provide the criteria for identifying the milk of those producers who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the Mideast order are represented in the *Pool Plant*, *Producer*, and the *Producer milk* provisions of the order and are performance based. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and provide the criteria for determining the producer milk that has demonstrated reasonable measures of service to the Class I market and thereby should share in the marketwide distribution of pool proceeds.

Pooling standards that are performance based provide the only viable method for determining those eligible to share in the marketwide pool. It is primarily the additional revenue generated from the higher-valued Class I use of milk that adds additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the returns arising from higher-valued Class I sales.

Pooling standards are needed to identify the milk of those producers who are providing regular and consistent service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns to those producers who actually incur the costs of servicing the fluid needs of the market.

Pool plant standards, specifically standards that provide for the pooling of milk through supply plants, need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk is pooled, regardless of utilization, receives the order's blend price. When the pooling provisions of the order result in pooling milk that cannot reasonably be considered as regularly and consistently serving the fluid needs of the market, it is appropriate to re-examine those standards.

The geographic boundaries of the Mideast order are not intended to limit or define which producers, which milk of those producers, or which handlers should enjoy the benefits of being pooled on the order. What is important and fundamental to all Federal orders, including the Mideast order, is the proper identification of those producers, the milk of those producers, and handlers that should share in the proceeds arising from Class I sales in the marketing area. The Mideast order's current pooling standards, specifically supply plant performance standards and diversion limit standards for producer milk do not reasonably accomplish this fundamental objective.

Since the 1960's, the Federal milk order program has recognized the harm and disorder that results to both producers and handlers when the same milk of a producer is simultaneously pooled on more than one Federal order, commonly referred to as "double-dipping". In the past, this situation caused price differences between producers and gave rise to competitive equity issues. The need to prevent "double-dipping" became critically important as distribution areas expanded and orders merged.

When the same milk can be simultaneously pooled on a marketwide equalization pool operated by a government entity and on a Federal milk marketing order, it has the same undesirable outcomes as pooling the same milk on two Federal orders which was corrected many years ago. The Mideast order recently has experienced "double-dipping" and it is clear that the Mideast order should be amended to prevent the ability to pool the same milk on the order and on a marketwide equalization pool operated by another government entity. This action is consistent with other recent Federal order amendatory actions regarding the simultaneous pooling of the same milk on a Federal order and on other government operated programs.

The hearing record clearly indicates that the milk of producers that does not regularly and consistently service the needs of the fluid market is able to pool on and receive the Mideast order's blend price. Inadequate diversion limit standards are allowing large volumes of milk to be diverted to non-pool manufacturing plants located far from the marketing area; and inadequate supply plant performance standards also enable milk which has insufficient physical association with the market and which does not demonstrate regular and consistent service to the Class I needs of the marketing area to be pooled on the Mideast order.

The Federal milk order system has consistently recognized that there is a cost incurred by producers in servicing an order's Class I market, and the order's blend price is the compensation to producers for performing such services. The amended pooling provisions will ensure that milk seeking to be pooled and receive the order's blend price will regularly and consistently service the marketing area's Class I needs. Consequently, the adopted pooling provisions will ensure the more equitable sharing of revenue generated from Class I sales among the appropriate producers.

Accordingly, supply plant performance standards should be increased by 10 percentage points, from 30 percent to 40 percent of total receipts, for all months; cooperative owned supply plant performance

standards should be increased by 10 percentage points, from 30 percent to 40 percent of total receipts, for the months of September through November.

Additionally, cooperative owned supply plant performance standards for the month of August should be increased by five percentage points, from 30 percent to 35 percent of total receipts, as proposed in MMPA's modification of Proposal 2. These standards will be met using the "rolling annual average" standard during December through July and the "hard" standard during August through November as proposed in Proposal 2. Also, as suggested by Dean in their post-hearing brief, a cooperative owned supply plant must be located in the marketing area. Limiting a cooperative owned supply plant to only those that are located within the marketing area is consistent with other pooling conveniences afforded to other supply plants. For example, system pooling of supply plants that regularly and consistently perform in supplying the Class I needs of the marketing area are a legitimate reserve supply source of milk and are restricted to supply plants located within the marketing area. Qualifying shipments, as already specified in the order, may only include shipments of Class I milk to distributing plants or non-pool plants.

Performance standards for a supply plant with a marketing agreement with a cooperative should be increased by 10 percentage points, from 35 percent to 45 percent of total receipts, for the months of August through November.

Changes are necessary in the standards of the amount of milk that can be diverted from pool plants to nonpool plants to ensure that milk pooled on the order is part of the legitimate reserve supply of Class I handlers. The hearing record evidence clearly reveals that large volumes of milk that are not part of the legitimate reserve supply of the pooling handler can be reported as diverted milk by the pooling handler and receive the order's blend price.

Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk when not needed for fluid use. However, it is necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process. Associating more milk than is actually part of the legitimate reserve supply of the pooling handler unnecessarily reduces the potential blend price paid to dairy farmers who regularly and consistently service the market's Class I needs. Without reasonable diversion limit provisions, the order's performance standards are weakened and give rise to disorderly marketing conditions. Accordingly, diversion limit standards for pool plants should be lowered by ten percentage points, from 60 percent to 50 percent for the months of August through February, and from 70 percent to 60 percent for the months of March through July.

3. Determination of Emergency Marketing Conditions

Evidence presented at the hearing and in post-hearing briefs establishes that current pooling standards of the Mideast order are inadequate and are eroding the blend price received by producers who are regularly and consistently serving the Class I needs of the Mideast marketing area and should be amended on an emergency basis. The unwarranted erosion of the blend price stems from inadequate supply plant standards and the lack of appropriate limits on diversions of milk. Additionally, the ability of a handler to pool the same milk on the Mideast Federal milk order and on a marketwide equalization pool administered by another government entity serves to potentially further erode the order's blend price.

Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision is being omitted. The record clearly establishes a basis as noted above for amending the order on an interim basis and the opportunity to file written exceptions to the proposed amended order remains.

In view of these findings, an interim final rule amending the order will be issued as soon as the procedures are completed to determine the approval of producers.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreement and order:

(a) The interim marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents—an Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the order regulating the handling of milk in the Mideast marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire tentative partial decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of March, 2005 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Mideast marketing area is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were

engaged in the production of milk for sale within the aforesaid marketing area.

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Mideast marketing area is approved by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be March, 2005.

The agent of the Department to conduct such referendum is hereby designated to be David Z. Walker, Market Administrator.

List of Subjects in 7 CFR Part 1033

Milk Marketing order.

Dated: July 21, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

Interim Order Amending the Order Regulating the Handling of Milk in the Mideast Marketing Area

This interim order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR part 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1033—MILK IN THE MIDEAST AREA

1. Section 1033.7 is amended by:

(a) Revising paragraph (c) introductory text.

(b) Revising the introductory text to paragraph (d).

(c) Revising paragraph (d)(2).

(d) Revising paragraph (e)(1).

The revisions read as follows:

§ 1033.7 Pool plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1000.9(c), as reported in § 1033.30(a), is not less than 40 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

* * * * *

(d) A plant located in the marketing area and operated by a cooperative association if, during the months of December through July 30 percent, during the month of August 35 percent and during the months of September through November 40 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s) and classified as Class I. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) * * *

(2) The 30 percent delivery requirement for the months of December through July may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month.

* * * * *

(e) * * *

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the months of August through November is not less than 45 percent and during the months of December through July is not less than 35 percent;

* * * * *

2. Section 1033.13 is amended by:

(a) Revising paragraph (d)(4).

(b) Adding paragraph (e).

The revisions read as follows:

§ 1033.13 Producer milk.

* * * * *

(d) * * *

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 50 percent in each of the months of August through February and 60 percent in each of the months of March through July.

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan imposed under the authority of another government entity.

Marketing Agreement Regulating the Handling of Milk in the Mideast Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions

referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1033.1 to 1033.86 all inclusive, of the order regulating the handling of milk in the Mideast marketing area (7 CFR part 1033) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of __, 2005, ___ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 05–14769 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21968; Directorate Identifier 2005–NM–077–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757–200, –200CB, and –300 series airplanes. This proposed AD would require repetitive detailed inspections for proper functioning of the girt bar leaf springs for the escape slides at passenger doors 1, 2, and 4, and corrective actions if necessary. This proposed AD is prompted by a report that the escape slides failed to deploy correctly during an operator's tests of the escape slides. We are proposing this AD to prevent escape slides from disengaging from the airplane during deployment or in use, which could result in injuries to passengers or flightcrew.

DATES: We must receive comments on this proposed AD by September 12, 2005.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21968; the directorate identifier for this docket is 2005–NM–077–AD.

FOR FURTHER INFORMATION CONTACT: David Crotty, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6422; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–21968; Directorate Identifier 2005–NM–077–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that the escape slides failed to deploy correctly during an operator's tests on Boeing Model 757–200, –200CB, and –300 series airplanes. Further examination showed that the girt bar, which attaches the deployed escape slide to the airplane floor, did not stay attached to the floor fitting. When an escape slide is being deployed, sliders on the forward and aft ends of the girt bar engage with the floor fittings and are held in place by leaf springs. The airplane manufacturer and operators have found that it is possible for the leaf

springs to be deformed and damaged in service, and that deformed or damaged leaf springs may not keep the girt bar sliders engaged with the floor fittings. This condition, if not corrected, could cause escape slides to disengage from the airplane during deployment or in use, which could result in injuries to passengers or flightcrew.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–52–0085, dated March 24, 2005 (for Boeing Model 757–200 and –200CB series airplanes); and Boeing Special Attention Service Bulletin 757–52–0086, dated March 24, 2005 (for Boeing Model 757–300 series airplanes). The service bulletins describe procedures for doing repetitive detailed inspections for discrepancies of the leaf springs. Discrepancies include inadequate spring retention force and inadequate girt bar slider engagement dimensions. For airplanes on which an inspection shows an engagement dimension of less than 0.37 inch, the service bulletins describe procedures for corrective action. The corrective action is replacing the leaf spring or the girt bar assembly with new parts, and doing girt bar assembly adjustments and testing. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and the Service Bulletins."

Difference Between the Proposed AD and the Service Bulletins

The service bulletins specify that operators may accomplish certain actions in accordance with the Boeing 757 Airplane Maintenance Manual (AMM), the Boeing 757 Component Maintenance Manual (CMM), or an "approved equivalent procedure." However, for actions in Part 1—"Inspection" of the Accomplishment Instructions of the applicable service bulletin, this proposed AD would require operators to accomplish the actions in accordance with the applicable chapter of the AMM or CMM specified in the applicable service bulletin. An "approved equivalent procedure" may be used only if it is approved as an alternative method of compliance in accordance with paragraph (h) of this proposed AD.

Costs of Compliance

There are about 944 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 632 airplanes of U.S. registry. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $82,160, or $130 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify that the 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. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–21968; Directorate Identifier 2005–NM–077–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 12, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200 and –200CB series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–52–0085, dated March 24, 2005; and Boeing Model 757–300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–52–0086, dated March 24, 2005.

Unsafe Condition

(d) This AD was prompted by a report that the escape slides failed to deploy correctly during an operator's tests of the escape slides. We are issuing this AD to prevent escape slides from disengaging from the airplane during deployment or in use, which could result in injuries to passengers or flightcrew.

Compliance

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

Detailed Inspection and Corrective Actions

(f) Within 24 months after the effective date of this AD: Do a detailed inspection for inadequate spring retention force and inadequate girt bar slider dimensions of the girt bar leaf springs for the escape slides at passenger doors 1, 2, and 4; and do any applicable corrective actions before further flight. Do all the actions in accordance with the Accomplishment Instructions of the applicable service bulletin in paragraph (f)(1) or (f)(2) of this AD, except as provided by paragraph (g) of this AD. Repeat the

inspection thereafter at intervals not to exceed 24 months, or after each maintenance task where removal of and installation of the girt bar is necessary, whichever occurs earlier.

(1) For Boeing Model 757–200 and –200CB series airplanes: Boeing Special Attention Service Bulletin 757–52–0085, dated March 24, 2005.

(2) For Boeing Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–52–0086, dated March 24, 2005.

Equivalent Procedures

(g) Where Part 1—"Inspection" of the applicable service bulletin in paragraph (f)(1) or (f)(2) of this AD specifies that actions may be accomplished in accordance with an "approved equivalent procedure": The corrective actions must be accomplished in accordance with the chapter of the Boeing 757 Airplane Maintenance Manual (AMM) or Boeing 757 Component Maintenance Manual (CMM) specified in the applicable service bulletin.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on July 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14790 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–076]

RIN 1625–AA08

Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the "Sunset Lake Hydrofest", a marine event to be held September 24 and 25, 2005, on the waters of Sunset Lake, Wildwood Crest, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Sunset Lake during the event.

DATES: Comments and related material must reach the Coast Guard on or before August 26, 2005.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–076), 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.

In order to provide notice and an opportunity to comment before issuing an effective rule, we are providing a shorter than normal comment period. A 30-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments because the regulations have a narrow, local application, and there will be local notifications in addition to the **Federal Register** publication such as press releases, marine information broadcasts, and the Local Notice to Mariners.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 24 and 25, 2005, the Sunset Lake Hydrofest Association will sponsor the "Sunset Lake Hydrofest", on the waters of Sunset Lake near Wildwood Crest, New Jersey. The event will consist of approximately 100 inboard hydroplanes, Jersey Speed Skiffs and flat-bottom ski boats racing in heats counter-clockwise around an oval racecourse. A fleet of approximately 100 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of Sunset Lake. The temporary special local regulations would be enforced from 8:30 a.m. to 5:30 p.m. on September 24 and 25, 2005, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Sunset Lake during the event, the effect of this regulation would not be

significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Sunset Lake by navigating around the regulated area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Sunset Lake during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic could pass safely around the proposed regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the

Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary *§ 100.35–T05–076* to read as follows:

§ 100.35–T05–076, Sunset Lake, Wildwood Crest, NJ.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

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

(3) *Participant* includes all vessels participating in the Sunset Lake Hydrofest under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(4) *Regulated area* includes all waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N. All coordinates reference Datum: NAD 1983.

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

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

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

(ii) Proceed as directed by any Official Patrol.

(iii) Unless otherwise directed by the Official Patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Enforcement period.* This section will be enforced from 8:30 a.m. to 5:30 p.m. on September 24 and 25, 2005.

Dated: July 2, 2005.

L.L. Hereth,

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

[FR Doc. 05–14755 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–075]

RIN 1625–AA08

Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the "Cambridge Offshore Challenge", a marine event to be held over the waters of the Choptank River at Cambridge, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Choptank River during the event.

DATES: Comments and related material must reach the Coast Guard on or before August 26, 2005.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–075), 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.

In order to provide notice and an opportunity to comment before issuing an effective rule, we are providing a shorter than normal comment period. A 30-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments because the regulations have a narrow, local application, and there will be local notifications in addition to the **Federal Register** publication such as press releases, marine information broadcasts, and the Local Notice to Mariners.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 25, 2005, the Chesapeake Bay Powerboat Association will sponsor the "2005 Cambridge Offshore Challenge", on the waters of the Choptank River at Cambridge, Maryland. The event will consist of approximately 40 offshore powerboats conducting high-speed competitive races between the Route 50 Bridge and Oystershell Point, MD. A fleet of approximately 250 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic

will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Choptank River. The temporary special local regulations will be enforced from 9:30 a.m. to 5:30 p.m. on September 25, 2005, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the Choptank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Choptank River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have

determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary *§ 100.35–T05–075* to read as follows:

§ 100.35–T05–075 Choptank River, Cambridge, MD.

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

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

(3) *Participant* includes all vessels participating in the 2005 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Regulated area* includes all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD. All coordinates reference Datum: NAD 1983.

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

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

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

(ii) Proceed as directed by any Official Patrol.

(iii) Unless otherwise directed by the Official Patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Enforcement period.* This section will be enforced from 9:30 a.m. to 5:30 p.m. on September 25, 2005.

Dated: July 2, 2005.

L.L. Hereth,

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

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AC20

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[W0–610–411H12–24 1A]

RIN 1004–AD59

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations

AGENCIES: U.S. Forest Service, Agriculture; Bureau of Land Management, Interior.

ACTION: Joint proposed rule.

SUMMARY: This proposed rule would revise existing Onshore Oil and Gas Order Number 1, which was published in the October 21, 1983, edition of the **Federal Register**. The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage tribe) onshore oil and gas leases, including leases where the surface is managed by the U.S. Forest Service (FS). It also covers most approvals necessary for subsequent well operations, including abandonment. The revision is necessary due to provisions of the 1987 Federal Onshore Oil and Gas Leasing Reform Act (Reform Act), legal opinions, court cases since the Order was issued, and other policy and procedural changes. The revised Order would address the submittal of a complete Application for Permit to Drill or Deepen package (APD), including a Drilling Plan, Surface Use Plan of Operations, evidence of bond coverage and Operator Certification.

DATES: Send your comments to reach the Bureau of Land Management (BLM) on or before August 26, 2005. The BLM and the FS will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, VA 22153.

Hand Delivery: 1620 L Street, NW., Suite 401, Washington, DC 20036.

E-mail: *comments_washington@blm.gov.* Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James Burd at (202) 452–5017 or Ian Senio at (202) 452–5049 at BLM or Barry Burkhardt at (801) 625–5157 at the Forest Service. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I File Comments?

You may submit your comments by any one of several methods:

- You may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD59.
- You may deliver comments to 1620 L Street NW., Suite 401, Washington, DC 20036.
- You may e-mail your comment to: *comments_washington@blm.gov* (Include "Attn: AD59" in the subject line).

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior and the FS may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Others Submit?

BLM intends to post all comments on the internet. If you are requesting that your comment remain confidential, do not send us your comment at the direct internet address or the e-mail address because we immediately post all comments we receive on the internet. Also, comments, including names and street addresses of respondents, will be available for public review at the address listed under "**ADDRESSES:** Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The regulations at 43 Code of Federal Regulations (CFR) part 3160, Onshore Oil and Gas Operations, in section 3164.1 provide for the issuance of Onshore Oil and Gas Orders to "implement and supplement" the regulations in part 3160. Also, 36 CFR 228.105 provides for the issuance of FS Onshore Orders or for the co-signing of Orders with BLM. Although they are not codified in the CFR, all onshore orders are issued using notice and comment rulemaking and, when issued in final form, apply nationwide to all Federal and Indian (except the Osage Tribe) onshore oil and gas leases. The table in 43 CFR 3164.1(b) lists existing Orders. This proposed rule would revise existing Onshore Oil and Gas Order Number 1 (the Order) which supplements primarily 43 CFR 3162.3 and 3162.5. 43 CFR 3162.3 covers conduct of operations, applications to drill on a lease, subsequent well operations, other miscellaneous lease operations, and abandonment. Section 3162.5 covers environmental and safety obligations. The FS would adopt the Order which would supplement 36 CFR part 228 subpart E. The existing Order has been in effect since November 21, 1983. For further information, see the October 21, 1983 **Federal Register** at 48 FR 48916.

III. Discussion of the Proposed Rule

There are four primary reasons the Order is being revised:

1. The 1987 Reform Act, which amended the Mineral leasing Act, 30 U.S.C. 181 *et seq.*, included two significant changes affecting APD processing on Federal leases. The first important change is the addition of a provision for public notification of a proposed action before APD approval or substantial modification of the terms of a Federal lease.

The second important change the Act made is the assignment of authority to the FS to approve and regulate the surface disturbing activity associated with oil and gas wells on National Forest System (NFS) lands. Where NFS lands are involved, a Surface Use Plan of Operations, included in an APD, is now approved by the FS. The FS also approves surface disturbing aspects of related and subsequent operations. The FS has actively participated in this revision, and is a cosigner of this Order. The Order would apply to FS review of oil and gas surface operations.

2. In response to protests to two Resource Management Plans in April 1988, the Office of the Solicitor of the Department of the Interior issued two memorandums related to oil and gas issues. The first and most far-reaching (issued by the Associate Solicitor, Energy and Resources on April 1, 1988, titled "Legal Responsibilities of BLM for Oil and Gas Leasing and Operations on Split Estate Lands"), concerned BLM responsibilities on Federal leases overlain by private surface (split-estate). In this memorandum the Solicitor's Office opined that the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA) require BLM to regulate exploration, development, and abandonment on Federal leases on split-estate lands in essentially the same manner as a lease overlain by Federal surface. The memorandum also stated that while a private owner's wishes should be considered in decisions, they do not overrule requirements of these statutes and their implementing regulations.

The second memorandum (issued by the Assistant Solicitor, Onshore Minerals, Division of Energy and Resources on April 4, 1988, titled "Legal Responsibilities of BLM for Oil and Gas Leasing and Operations under the National Historic Preservation Act") lays out in more detail BLM's responsibilities under NHPA, elucidating further the discussion on cultural resources in the first opinion.

The pertinent requirements of existing Order Number 1 do not fully conform to the memorandums issued by the Solicitor's Office in 1988.

3. The existing Order does not adequately address BLM Rights-of-Way or FS Special Use Authorizations which are often required for off-lease facilities or those activities outside of lands committed to a unitized area. This has led to confusion and delays on the part

of both the agencies and industry. Under the existing Order, APD approval is often delayed pending completion and approval of a Right-of-Way or Special Use Authorization. We intend for the proposal to eliminate or reduce this delay. The proposed rule provides for early identification of any needed Right-of-Way or Special Use Authorization, allows for conducting a single environmental analysis for the APD and Right-of-Way or Special Use Authorization, and permits concurrent approval of the Right-of-Way or Special Use Authorization with the APD. On NFS lands, the FS will approve off-lease activities directly related to the drilling and production of the well as part of the Surface Use Plan of Operations instead of through issuing a separate Special Use Authorization. Please specifically comment on the provisions in the proposal (see proposed Section V. Rights-of-Way (R/W) "Special Use Authorization (SUA)) that would expedite Right-of-Way or Special Use Authorization approvals. We are interested in suggestions of other methods BLM and the FS could incorporate to expedite approval of energy projects.

4. Existing Order Number 1 is over 20 years old. Conditions, regulations, policies, procedures, and requirements have been altered, added, and eliminated since the Order was issued. BLM is in the process of reviewing field office practices and the preliminary findings from that review were considered in the proposed revisions to the Order. BLM has reorganized the Order to follow the review and approval process and the processing timeframes for each step are now in one section. Also, split estate operations are discussed in more detail.

BLM encourages operators to employ best management practices when they develop their APDs. Best management practices are innovative, dynamic, and economically feasible mitigation measures applied on a site-specific basis to reduce, prevent, or avoid adverse environmental or social impacts. BLM field offices incorporate appropriate best management practices into proposed APDs and associated on and off-lease Rights-of-Way approvals after required NEPA evaluation. They can then be included in approved APDs as Conditions of Approval. Typical best management practices can currently be found on BLM's Web site at *http://www.blm.gov/nhp/300/wo310/O&G/Ops/operations.html.*

The following chart explains the major changes between the existing Order and the proposed Order.

Existing order	Proposed order	Substantive changes
Introduction	I. Introduction A. Authority	The proposed rule would add a discussion of the authority for issuing Orders and the requirements of the Federal Onshore Oil and Gas Leasing Reform Act. The rule would eliminate the discussion of summary information related to other sections in this Order because they are redundant of this proposed section.
I. Accountability	IV. General Operating Requirements.	The rule would revise the accountability items and special situations in the existing Order and move them to Section IV. General Requirements.
None	I.B. Purpose	The rule would add a new section describing the purpose of the Order.
None	I.C. Scope	The rule would add a short section describing the extent to which the Order applies.
None	II. Definitions	The rule would add a section that defines key terms to ensure consistent understanding of the terms. Terms that are defined in other regulations or Orders are not repeated here. The rule defines the meaning of "Complete APD" for clarification and to ensure consistent application of these terms. Please see the more detailed discussion below. The rule would also add a definition of the new "Master Development Plan." Utilizing a Master Development Plan would provide for environmental analysis and approval of field development or multiple proposed wells as a single approval. "Days" are defined as calendar days. The existing Order uses both "business days" and "calendar days."
II. Special Situations	IV. General Operating Requirements.	The rule would amend the accountability items and special situations in the existing Order and move them to Section IV. General Requirements.
A. Surveying and Staking III. Drilling Operations	III.E. 1. Surveying, Staking, and Inventories.	The rule would move the Surveying and Staking provisions to Section III.E. and include new information related to more current surveying technology. Maps would be required in both paper and electronic geospatial database format. The rule also contains a provision that the operator make an effort to obtain approval from the surface owner before entering private lands. This provision does not require approval before entry, only a good faith effort to obtain approval.
B. Material to be Filed 1. Notice of Staking 2. Application for Permit to Drill	None III.F. Notice of Staking	The information in existing Section III.A. would be incorporated into proposed Sections III.E. Required Components of a Complete APD Package and III.F. Notice of Staking option is retained.
C. Conferences and Inspections D. Processing Time Frames	III.C.2. Processing	The requirements for, and scheduling of, onsite inspections and the overall processing timeframes would be incorporated into a new section on processing. The new section would consolidate all references to processing issues into one section.
E. Cultural Resources Clearance F. Threatened and Endangered Species Clearance and Other Critical Environmental Concerns	IV. General Operating Requirements.	Information pertaining to cultural resources, threatened and endangered species, watershed protection, and safety would be moved to Section IV. General Operating Requirements.

Existing order	Proposed order	Substantive changes
G. Components of a Complete Application for Permit to Drill.	III.E. Components of a Complete ADP Package.	Some of the information contained in the first subsections of existing Section III.G. would be moved into the Drilling Plan (*i.e.*, item 3.e.) in the proposed Order and duplication eliminated. The requirements would be unchanged.
IV. Subsequent Operations	VIII. Subsequent Operations/Sundry Notice.	The rule would delete language in the existing Order that addresses well conversions because it would be addressed in Section IX. of the proposed Order.
A. Production Facilities	None	The rule would incorporate information relative to production facilities into other sections.
B. Other Operations	VIII.A. Surface Disturbing Operations.	The rule would make minor editorial changes especially to incorporate FS approval of subsequent surface disturbing activities.
C. Emergency Repairs	VIII.B. Emergency Repairs	There would be no substantive change to these provisions.
D. Environmental Review	None	The rule would delete this section since the information would be covered in proposed Section III.C.2. Processing.
V. Well-Abandonment	XI. Abandonment	The rule would divide this section into two subsections; A) Plugging and B) Reclamation. The rule would also incorporate additional information and make clearer the reclamation subsection.
None	V. Rights-of-Way (R/W)—Special Use Authorization (SUA).	The rule would add this section to explain when the BLM or FS may require a Right-of-Way or Special Use Authorization and how these authorizations would be incorporated into the APD approval process.
VI. Water Well Conversion	IX. Well Conversions	The rule would add a paragraph to address conversion to a class II injection well and would clarify the process to convert a well to a water well.
VII. Privately Owned Surface A. Federal oil and gas leases B. Indian oil and gas cases	VI. Operating on Lands with Private/State Surface and Federal or Indian Oil and Gas. VII. Leases for Indian Oil and Gas	This section would change the provisions regarding compensation to surface owners to that which is required by the authority that granted the surface patent. It would incorporate the latest policy requiring a statement from the operator regarding whether or not there is surface owner agreement. If the operator cannot reach an agreement with the surface owner, the operator must provide a bond for the benefit of the surface owner. The bond must must be sufficient to compensate the surface owner in an amount established by the original land patent or statute authorizing the patent.
VIII. Reports and Activities Required After Well Completion.	None.	
	X. Variances	The rule would move the the requirements to submit completion or recompletion reports to Section IV. General Requirements.
	XII. Appeal Procedures The rule would add a new section to explain how an operator may request a variance from a requirement of the Order or a waiver, exemption, or modification of a lease stipulation and appeals from denials of those requests.. The rule would add a new section to identify the various appeal processes and the timeframes associated with certain FS appeals. This section would also clarify that the incorporation of a FS approved Surface Use Plan of Operations into the approval of an APD is not subject to protest to BLM or appeal to IBLA..	

Discussion of Major Changes

Definition of Complete APD

The most significant change in the proposed rule is that it would eliminate the term "Technically and Administratively Complete" and replace it with a clear definition of "Complete APD." This new definition is consistent with the common practice in many field offices and would require all field offices to adopt the same convention. The new definition would bring needed consistency to the approval process. BLM previously considered defining Administratively and Technically complete separately, but decided to abandon this distinction because of the difficulty in separating the two concepts and in potential delays that might be caused in processing APDs in certain circumstances.

The Reform Act requires each APD (except on Indian lands) to be posted for public review for 30 days. BLM, and the Surface Managing Entity if appropriate, will post the required parts of the APD immediately after receiving the application, therefore the 30 days will commence immediately after the APD or Notice of Staking is filed. No decision can be made before the end of the 30 day posting period. This is not a change to existing practice. When possible, a copy will be posted electronically on the internet.

Under the proposed process, BLM would review the APD package, consult with FS if appropriate, and within 10

days of the filing determine if the package contains all the documents and information sufficient and necessary for processing. If the APD package did not contain the minimum documentation and information, BLM or the FS would notify the operator about the deficiencies. If an incomplete package were to contain sufficient information to continue processing, BLM or the FS would process the package to the point where continued processing would either be impractical or impossible without additional information. Generally, a "complete" determination would follow after the applicant submits any additional material.

Under the proposal, within 10 days of receiving an APD package or a Notice of Staking, BLM will establish a future date for an onsite inspection. Under the existing Order, the onsite is held within 15 days of filing. Under this proposal, BLM and/or the FS would hold the onsite inspection as soon as practical after filing. Providing more flexibility in scheduling the onsite inspection will allow BLM to take into account weather conditions and the availability of the operator and agency staff, as well as the surface owner if split estate is involved. It is both agencies' intent to hold the onsite as soon as possible and normally within 15 days after filing. The agencies recognize that conducting this event so soon after filing may be difficult, but we consider it, nevertheless, desirable and necessary.

The proposal makes BLM, rather than the operator, responsible for inviting surface owners to participate in onsite inspections.

BLM would initiate the review of the APD package as soon as practical after filing by the operator. Some deficiencies are difficult to detect and may not be evident until the onsite inspection. Therefore, a determination of completeness may be delayed beyond 10 days after filing. Under this proposed Order, BLM may notify the operator of any remaining deficiencies and any other changes necessary within 7 days after the onsite inspection.

The operator is encouraged to respond to BLM requests for additional information or to correct deficiencies within 45 days of the request. Faster response times by the operator will help to expedite the review process. BLM envisions that the operator may be asked for additional information on more than one occasion. The technical review of the APD package is made by many different specialists. In an effort to expedite the approval process, BLM will not wait to compile a complete list of all deficiencies in a particular application. Instead, BLM will provide requests for additional information to the operator as soon as BLM or FS staff identifies a specific deficiency. Waiting to notify the operator of separate issues may unnecessarily slow the approval process.

Under the proposed Order, after the operator provides all requested information, BLM would determine if the package is complete, that is, that the data submitted is accurate, complete, meets BLM standards where applicable, and fully describes the proposed action. A complete package must contain the information listed in 43 CFR 3162.3–1 and 43 CFR 3164.1, as appropriate, and the information this Order would require. A complete application does not include a cultural or wildlife inventory, NEPA documentation, or other materials that are not requirements of the sections cited above or in this Order. It is the policy of BLM and FS to begin the NEPA analysis and other inventories as soon as sufficient information is present to support the work.

It is the intent of BLM and the FS to process APDs within 30 days after the APD package is complete. However, other regulatory requirements, such as those in the NEPA, NHPA, and ESA, may result in further delay. Neither BLM nor the FS can make a final decision on any APD or Surface Use Plan of Operations until these regulatory requirements are completed. Compliance in some cases may depend on actions taken by other agencies over which BLM and the FS have no administrative control. Therefore, neither BLM nor the FS can commit to processing all APDs within a given time, but intend to process all APDs within the minimum time necessary to meet all regulatory requirements. This is consistent with existing policy and practice. The existing Order, effective in 1983, says that "the 30-day time frame for completion of the APD process may sometimes be exceeded where it is necessary to prepare an EA. * * *" BLM did not routinely prepare EAs for each APD in 1983 because they were categorically excluded from NEPA analysis until 1992. We now conduct some form of NEPA analysis for all submitted APD packages. In addition, since the 1983 Order, NHPA and ESA requirements have become more extensive. With these added regulatory requirements, it is not realistic for BLM to commit to processing all APDs in 30 days.

Drilling and Surface Use Plans

This proposal would make specific changes to the drilling and surface use plans as follows:

The former 8-point Drilling Program (also referred to as the Subsurface Use Plan) would be replaced with a 9-point Drilling Plan. This proposal would expand the required description in the existing Order addressing the anticipated casing program, and add a new requirement to the Drilling Plan to address the type and amount of cement operators propose to use in setting each casing string.

We would replace the former 13-point Surface Use Program (or Plan) with a 12-point Surface Use Plan of Operations. We would remove the former point 13 of the Surface Use Plan of Operations "Operator Certification" and make it a separate component of the APD package. This change makes it clear that the Operator Certification covers the entire APD package and not just the Surface Use Plan of Operations.

The 13-point Surface Use Plan is currently codified in Forest Service Regulations at 36 CFR 228 Subpart E, Appendix A. Under this rule, Appendix A would be deleted. Although it would not be codified in 36 CFR, section III.E. of the proposed Order would apply to surface use operations on NFS lands. That proposed section defines the components of a complete Surface Use Plan of Operations or Master Development Plan. The rule would also revise 36 CFR 228.105(a)(1) to direct operators to submit surface use plans or Master Development Plans in accordance with the proposed Order, or other applicable onshore orders.

Master Development Plans

This proposal would establish a new approval process for multiple well proposals called a Master Development Plan. This process would be used by an operator to submit plans for field development or a multiple well program in lieu of several individual APDs.

These proposals could be addressed in a single NEPA analysis and approval. This process would facilitate the consideration of cumulative effects early in the process and enable broad application of identified mitigation measures, while minimizing or significantly reducing the cumulative timeframe for approval. We also anticipate that this approval will lead to better planning of field development which will minimize adverse environmental impacts.

The proposed rule envisions the APD as an application for a proposed action that is impacted by other analytical requirements such as the NHPA and the ESA. The documents other statutes require are not part of a complete APD package. This proposal also explains the approval process for certain subsequent

well operations. The revised Order would describe the relationship between the APD package and any application for an associated BLM Right-of-Way or FS Special Use Authorization that may be required. This Order would replace the 1983 Order incorporated by the FS into its oil and gas regulations.

Bonding

This proposal would also clarify that BLM authority to require additional bond in 43 CFR 3104.5 applies to off-lease facilities required to further development of the lease, such as the large impoundments being created in Wyoming for produced water from Federal and nonfederal coalbed natural gas wells. BLM is obligated by the Reform Act to require sufficient bond to insure "the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease" 30 U.S.C. 226(g). An Assistant Solicitor's memorandum of July 19, 2004, concluded that BLM has the authority to require additional bond for such facilities and that the current regulation does not limit BLM to increasing the required amount of an existing bond. Accordingly, the proposal does not represent a change in the regulatory scheme.

Provisions in the final Order will supersede any inconsistent provisions of existing regulations, inasmuch as they will constitute a later exercise of Administrative Procedure Act rulemaking. To the maximum extent practical, we will identify such inconsistencies and include conforming amendments to titles 36 or 43, or both, of the CFR in the final rule.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget (OMB) under Executive Order 12866. OMB makes the final determination under the Executive Order. These proposed regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The revisions this rule would make to the Order primarily involve changes to BLM and FS administrative processes. For example, changes to the term "Administratively and Technically Complete" only pertain to the process BLM and the FS would use to review APD packages and would not have any significant economic impact. Other changes, such as the proposal to add a provision for the use of a Master Development Plan, may improve processing and predictability of operations due to better advance planning of field development. Clarifying that our authority to require additional bond applies to off-lease facilities would have no economic impact since BLM already has the authority under the existing regulatory scheme to require this bond. Also, as a result of more clear rules, operators will have a better understanding of BLM and FS requirements, processes, and timelines leading to reduction in delays in processing and possible administrative cost savings for BLM, the FS, and operators.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. For the purposes of this analysis, we will assume that all entities (all lessees and operators) that may be impacted by these regulations are small entities.

The rule principally deals with the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage tribe) onshore oil and gas leases. These changes are not significantly different from the existing Order and primarily consist of changes to BLM and FS administrative processes that would not significantly impact operators or lessees. As a result of more clear rules, operators will have a better understanding of BLM and FS requirements, processes, and timelines leading to a reduction in delays in processing and some administrative cost savings for BLM, the FS, and operators. Therefore, BLM and the FS have determined that under the RFA this proposed rule would not have a significant economic impact on a substantial number of small entities.

The use of best management practices in conditions of approval for a permit to drill is not new. BLM currently uses them as conditions of approval and therefore this provision will have no economic impact on small entities.

The bonding provision in the rule would not impact small entities since the provisions merely reflect existing authority. As stated earlier, an Assistant Solicitor's opinion of July 19, 2004, concluded that BLM has the authority to require additional bond for such facilities and that the current regulation does not limit BLM to increasing the required amount of an existing bond. Accordingly, the proposal does not represent a change in the regulatory scheme.

Small Business Regulatory Enforcement Fairness Act

These proposed regulations are not a "major rule" as defined at 5 U.S.C. 804(2). For the reasons stated in the RFA discussion, this proposed rule would not have an annual effect on the economy greater than $100 million; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would 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.

Unfunded Mandates Reform Act

These proposed regulations do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on state, local, or tribal governments or the private sector. This proposed rule would primarily involve changes to BLM's and the FS's administrative processes that would not have any significant effect monetarily, or otherwise, on the entities listed. Therefore, BLM and the FS are not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. This proposed rule has no potential to effect property rights as the changes it would make to

existing procedures primarily involve changes to BLM's and the FS's administrative processes. Therefore, the Department of the Interior and the Department of Agriculture have determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposal will not have any effect on any of the items listed. As stated above, the rule principally deals with the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage tribe) onshore oil and gas leases. In other words, the rule affects the relationship between operators, lessees, and BLM and the FS and would not impact states. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

BLM approves proposed operations on all Indian (except Osage) onshore oil and gas leases and agreements. BLM has begun consultation on the proposed revisions to the Order and will continue to consult with Tribes during the formal comment period on the rule.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have reviewed these regulations to eliminate drafting errors and ambiguity. They have been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification. Drafting the regulations in clear language and working closely with legal counsel assists in all of these areas.

Paperwork Reduction Act

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the OMB for review. The OMB approved the information collection requirements under Control Number 1004–0137, which expires on March 31, 2007.

National Environmental Policy Act

BLM and the FS have prepared an environmental assessment (EA) and have found that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the NEPA, 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

The proposed revisions to Order 1 would not impact the environment significantly. For the most part, the revisions would involve changes to BLM's and the FS's administrative processes. For example, replacing the term "Administratively and Technically Complete" with the term "Complete APD" only changes the process BLM would use to review APD packages and would not have any impact on the environment whatsoever. Other changes, such as the proposal to add provisions for the use of a Master Development Plan, may actually provide improved environmental protection due to better advance planning of field development. The use of best management practices can lead to reduced environmental damage. Also, the procedural and clarifying changes would have no meaningful impact of any kind on the physical or economic environment. Any environmental effects of APDs on Federal lands are analyzed on a case-by-case basis.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM has determined that the proposed rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule would clarify the administrative processes involved in approving an APD and more clearly lay out the timeline for processing applications. It is not clear to what extent clarification of the rules will save BLM, the FS, or operators administrative cost, but we anticipate that the cost savings will be minimal, as will any direct effects on the energy supply, distribution or use.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?
2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Authors

The principal authors of this rule are: James Burd of the BLM Washington Office; Bo Brown of the BLM Alaska State Office; Brian Pruiett of the BLM Buffalo, Wyoming Field Office; Gary Stephens of the BLM New Mexico State Office; Hank Szymanski of the BLM Colorado State Office; Howard Clevinger of the BLM Vernal, Utah Field Office; Roy Swalling of the Montana State Office; and Barry Burkhardt of the FS Intermountain Regional Office, Ogden, Utah, and assisted by the staff of BLM's Regulatory Affairs Group and the Department of the Interior's Office of the Solicitor.

List of Subjects

36 CFR Part 228

Environmental protection; Mines; National forests; Oil and gas exploration; Public lands-mineral resources; Public lands-rights-of-way; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

43 CFR part 3160

Administrative practice and procedure; Government contracts; Indians-lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands-

mineral resources; Reporting and recordkeeping requirements.

36 CFR Chapter II

For the reasons set out in the joint preamble, the FS proposes to amend 36 CFR part 228 as follows:

PART 228—MINERALS

1. The authority citation for part 228 continues to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 681, as amended (30 U.S.C. 601); 61 Stat. 914, as amended (30 U.S.C. 352); 69 Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

2. Revise § 228.105(a)(1) to read as follows:

§ 228.105 Issuance of onshore orders and notices to lessees.

(a) * * *

(1) Operators shall submit surface use plans of operations or Master Development Plans in accordance with the applicable Onshore Oil and Gas Order. Approval of a Master Development Plan constitutes approval of any surface use plan of operations submitted as a part of, or consistent with, the approved Master Development Plan.

* * * * *

3. Revise § 228.107(c) to read as follows:

§ 228.107 Review of surface use plan of operations.

* * * * *

(c) The authorized Forest officer will give public notice of the decision on a plan and include in that notice whether the decision may be appealed under the applicable Forest Service appeal procedures.

* * * * *

Appendix A to Subpart E of Part 228 [Removed]

4. Remove Appendix A to Subpart E of Part 228.

Dated: August 26, 2004.

Sally D. Collins,

Acting Chief, USDA—Forest Service.

Editorial Note: This document was received at the Office of the Federal Register on July 13, 2005.

43 CFR Chapter II

For the reasons set out in the joint preamble, the Bureau of Land Management proposes to amend 43 CFR part 3160 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

2. Amend § 3164.1(b) by revising the first entry in the chart as follows:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1.	Approval of operations ...	[insert 60 days after date of publication of final rule]	70 FR * * *	NTL–6

* * * * *

Appendix—Text of Oil and Gas Onshore Order

Note —This appendix will not appear in the BLM regulations in 43 Code of Federal Regulations.

Dated: August 26, 2004.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

Editorial Note: This document was received at the Office of the Federal Register on July 13, 2005.

The following Order would be implemented by the BLM and FS, but will not be codified in the Code of Federal Regulations.

Onshore Oil and Gas Order Number 1

Approval of Operations

Onshore Oil and Gas Order Number 1

Approval of Operations

I. Introduction

A. Authority

The Secretaries of the Interior and Agriculture have authority under various Federal and Indian mineral leasing laws, as defined in 30 U.S.C. 1702, to manage oil and gas operations. The Secretary of the Interior has delegated this authority to the BLM, which has issued onshore oil and gas operating regulations codified at part 3160 of Title 43 of the Code of Federal Regulations. The operating regulations at 43 CFR 3164.1 authorize BLM's Director to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations. The section also states that all such Orders are binding on the operator(s) of Federal and Indian onshore oil and gas leases (except the Osage Tribe). For leases on Indian lands, the delegation to BLM appears at 25 CFR parts 211, 212, 213, 225, and 227.

The Secretary of Agriculture has authority under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203) (Leasing Reform Act) to regulate surface disturbing activities on NFS lands. This authority has been delegated to the FS. Its regulatory authority is at Title 36 CFR, Chapter II, including, but not limited to, part 228 Subpart E, part 251 Subpart B, and part 261. Section 228.105 of 36 CFR authorizes the Chief of the FS to issue, or cosign with the Director, BLM, Onshore Oil and Gas Orders necessary to implement and supplement the operating regulations. The FS is responsible only for approving and administering surface disturbing activities on NFS lands and appeals related to FS decisions or approvals.

B. Purpose

The purpose of this Order is to state the application requirements for the approval of all proposed oil and gas and service wells, certain subsequent well operations, and abandonment.

C. Scope

This Order applies to all onshore leases of Federal and Indian oil and gas (except those of the Osage Tribe), and Federally-approved

unit or communitization agreements. It also applies to Indian Mineral Development Act agreements. References in this Order to leases means unit or communitization agreements, as applicable.

II. Definitions

As used in this Order, the following definitions apply:

Blooie Line means a discharge line used in conjunction with a rotating head in drilling operations when air or gas is used as the circulating medium.

Complete APD means that BLM and the Surface Managing Entity, if appropriate, have determined that the information in the APD package is accurate and addresses all BLM requirements. The APD package must contain:

- A completed Form 3160–3 (Application for Permit to Drill or Reenter) (see 43 CFR 3162.3–1(d)),
- A well plat certified by a registered surveyor with a surveyor's original stamp (see Section III.E.1. of this Order),
- A Drilling Plan (see 43 CFR 3162.3–1(d) and Section III.E.2. of this Order),
- A Surface Use Plan of Operations (see 43 CFR 3162.3–1(d) and Section III.E.3. of this Order),
- Evidence of bond coverage (see 43 CFR 3162.3–1(d) and Section III.E.5. of this Order),
- Operator certification (see Section III.E.6. of this Order),
- An original signature, which may be an electronic signature that meets BLM standards (see Section III.E.6. of this Order), and
- Other information that may be required by Order or Notice (see 43 CFR 3162.3–1(d)(4)).

All maps and plats required as part of the APD must be submitted in both hard copy and geospatial database formats. BLM or the Surface Managing Entity, as appropriate, will review the APD package and determine that all information in the drilling plan, the surface use plan of operations, bonding requirements, and other information that BLM may require (43 CFR 3162.3–1(d)(4)), including the well location plat and geospatial databases, completely describe the proposed action. A complete APD is not defined to include cultural, wildlife, or other inventories that may be required or an environmental assessment or environmental impact statement that may be required by the NEPA.

Condition of Approval (COA) means a site-specific requirement included in an approved APD or Sundry Notice that may limit or amend the specific actions proposed by the operator. Conditions of Approval minimize, mitigate, or prevent impacts to public lands or other resources. Best management practices may be incorporated as a Condition of Approval.

Days means all calendar days including holidays.

Drilling Plan means those documents an operator submits as part of an APD package or as a supplement to an approved plan of operations detailing the proposed drilling operations and containing the information required by 43 CFR 3160 and applicable Orders.

Emergency Repairs means actions necessary to correct an unforeseen problem that could cause or threaten immediate substantial adverse impact on public health and safety or the environment.

Geospatial Database means a set of georeferenced computer data that contains both spatial and attribute data. The spatial data defines the geometry of the object and the attribute data defines all other characteristics.

Indian lands means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation.

Indian Oil and Gas means any oil and gas interest of an Indian tribe or on allotted lands where the interest is held in trust by the United States or is subject to Federal restrictions against alienation. It does not include minerals subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539), but does include oil and gas on lands administered by the United States under section 14(g) of Public Law 92–203, as amended.

Master Development Plan means information common to multiple planned wells, including drilling plans, surface use plans of operations, and plans for future production.

National Forest System Lands means those Federal lands administered by the U.S. Forest Service, such as the National Forests and the National Grasslands.

Onsite Inspection means an inspection of the proposed drill pad, access road, flowline route, and any associated Right-of-Way or Special Use Authorization needed for support facilities, conducted before the approval of the APD or Surface Use Plan of Operations and construction activities.

Reclamation means returning disturbed land as near to its predisturbed condition as is reasonably practical.

Split Estate means lands where the surface is owned by an entity or person other than the owner of the Federal or Indian oil and gas.

Surface Managing Entity means any Federal or state agency having jurisdiction over the surface, or a private owner of the surface, overlying Federal or Indian oil and gas.

Variance means an approved alternative to a provision or standard of an Order, Notice to Lessee, or other requirement (see 43 CFR 3101.1–4).

III. Application for Permit To Drill (APD)

An Application for Permit to Drill or Reenter (APD), on Form 3160–3, is required for each proposed well, and for reentry and deepening of existing wells (including disposal and service wells), to develop an onshore lease for Federal or Indian oil and gas.

A. Where To File

The operator must file an APD, Sundry Notice, or other required document in the BLM field office having jurisdiction over the lands described in the application. As an alternative to filing in a local BLM office, an operator may file an APD using BLM's electronic commerce application for oil and gas permitting and reporting. Contact the local BLM field office for details before using the electronic commerce application.

B. Early Notification

The operator should contact BLM and any applicable Surface Managing Entity, including all private surface owners, to request an initial planning conference as soon as the operator has identified a potential area of development. Early notification is voluntary, but it allows the involved Surface Managing Entity to apprise the prospective operator of any unusual conditions on the lease area. Early notification also provides both the Surface Managing Entity and the prospective operator with the earliest possible identification of time-sensitive requirements and determination of potential areas of conflict. The prospective operator should have a map of the proposed project available for Surface Managing Entity review to determine if a cultural or wildlife inventory or other information may be required.

C. APD Posting and Processing

1. Posting

The Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, as amended, requires BLM and the Federal Surface Managing Entity, if other than BLM, to provide at least 30 days public notice before BLM or the FS may approve an APD or Master Development Plan on a Federal oil and gas lease. Posting is not required for Indian leases.

BLM will post the APD notice in an area of the BLM field office having jurisdiction that is readily accessible to the public and, when possible, electronically on the internet. If the surface is managed by a Federal agency other than BLM, that agency also is required to post the notice for 30 days. The posted notice is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral development has been requested. BLM or the FS will not post confidential information.

If the operator subsequently moves the proposed location of the well, reposting of the proposal for an additional 30-day period may be necessary if BLM or the FS determines that the change is significant.

2. Processing

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans.

(a) Within 10 days of receiving an APD package, BLM, in consultation with the FS, if appropriate, will notify the operator as to whether or not the APD is complete and will request additional information and correction of any deficiencies if necessary. If there is enough information to begin processing the APD package, BLM and the FS will do so up to the point that missing information or uncorrected deficiencies renders further processing impractical or impossible. The operator has 45 days after receiving notice from BLM to provide any additional information requested or the APD may be returned to the operator.

(b) Within 10 days of receiving the APD package, BLM, in coordination with the operator and Surface Managing Entity (including, in the case of split estate, the private surface owners), if appropriate, will schedule a future date for the onsite inspection unless the onsite inspection was held as part of the Notice of Staking (see Section III.F. of this Order). The onsite inspection will be held as soon as practicable based on schedules and weather conditions. Within 7 days of the onsite inspection, BLM, and the FS if appropriate, will notify the operator that the APD is complete or that additional information is required to make the APD complete.

The operator has 45 days after receiving notice from BLM or the FS to submit additional information or correct deficiencies noted during or after the onsite inspection. BLM may return the APD without taking action if any additional information is not received or deficiencies are not corrected within that period. Within 7 days of receiving requested information, BLM will notify the operator if the APD is complete.

(c) Once the APD or the Master Development Plan is complete, BLM and the FS will expeditiously review and process the APD or Master Development Plan. Neither BLM nor the FS can make a final decision on any APD, Master Development Plan, or Surface Use Plan of Operations until the regulatory requirements of the Endangered Species Act, the National Historic Preservation Act, and the National Environmental Policy Act have been satisfied.

(d) For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to the current applicable FS appeal procedures and may take up to 105 days from the date of the decision before that decision can be implemented.

BLM does not approve Surface Use Plans of Operations for National Forest Service lands. The FS notifies BLM of its Surface Use Plan of Operations approval and BLM proceeds with its APD review.

D. Valid Period of Approved APD

1. An APD approval is valid for 1 year from the date that it is approved, or until lease expiration, whichever occurs sooner. Lease suspension will not extend the 1 year APD approval period. If the operator submits a written request before the expiration of the original approval, BLM in coordination with the FS, as appropriate, may extend the APD's validity for up to 1 additional year.

2. If no drilling occurs during the original or extended periods, the APD expires. If the operator later decides to drill a well, it must submit a new APD package for approval. The operator cannot start drilling operations if the APD has expired. The operator is responsible for reclaiming any surface disturbance that resulted from its actions, even if a well was not drilled.

E. Components of a Complete APD Package

Best management practices help to minimize the footprint of energy development. The BLM has developed a best management practices policy that includes smart, up-front planning and good implementation to reduce short- and long-term environmental impacts to public and private resources. Best management practices are voluntary unless they have been analyzed as mitigation measures in the NEPA process for a plan of development, APD, right-of-way, or other related facility and included as a Condition of Approval for an APD. Operators are encouraged to incorporate best management practices into their APDs because they can result in reduced processing times and appeals, protests, and litigation.

An APD package must include a completed Form 3160–3 and the following information that technical specialists of the appropriate agency will review to determine its technical adequacy:

1. Surveying, Staking, and Inventories

(a) Surveying, staking, and inventories are necessary casual uses, typically involving negligible surface disturbance, and may be done without advance approval from the Surface Managing Entity, except for:

- Lands administered by the Department of Defense,
- Other lands used for military purposes,
- Indian lands, or
- Where more than negligible surface disturbance is likely to occur.

No entry on private lands for surveying, staking, and inventories should occur without the operator first making an effort to obtain approval from the surface owner. Also, operators are encouraged to notify BLM or FS, as appropriate, before entering the lands.

Typical off-road vehicular use, when conducted in conjunction with these activities, will not cause the activity to be considered more than casual use because it is a necessary action for obtaining a permit for a regulated activity.

Operators must include in the APD package a well location plat prepared by a registered surveyor depicting the proposed location of the well and identifying the points of control and datum used to establish the section lines or metes and bounds. The purpose of this plat is to ensure that operations are within the boundaries of the lease/agreement and that the depiction of these operations is accurately recorded both as to location (latitude and longitude) and in relation to the surrounding lease/agreement boundaries (public land survey corner and boundary ties). The registered surveyor should coordinate with the cadastral survey section of the appropriate BLM State Office, particularly where the lands have not been surveyed under the Rectangular Survey System.

The plat and geospatial database must describe the location of operations in:

- Geographical coordinates referenced to the National Spatial Reference System, North American Datum 1983, and
- In feet and direction from the nearest two adjacent section lines, or, if not within the Rectangular Survey System, the nearest two adjacent property lines, generated from BLM's current Geographic Coordinate Data Base.

The surveyor who prepared the plat must sign it, certifying that the location has been staked on the ground as shown on the plat.

(b) The operator is responsible for making access arrangements with the appropriate Surface Managing Entity (other than BLM and FS) before surveying, staking, conducting inventories, or for other purposes. On allotted Indian lands, the operator must contact the appropriate Area Office of the Bureau of Indian Affairs (BIA) to make access arrangements.

(c) Staking of the proposed drill pad must include:

- The well location,
- Two 200-foot (61-meter) directional reference stakes,
- The exterior pad dimensions,
- The reserve pit,
- Cuts and fills,
- Outer limits of the area to be disturbed (catch points), and
- Any off-location facilities.

All surface disturbances that will result from construction of ancillary facilities must also be staked. Proposed new roads require centerline flagging with stakes clearly visible from one to the next. In rugged terrain, cut and fill staking and/or slopestaking of proposed new access roads and locations for ancillary facilities may be necessary, as determined by BLM or the FS.

(d) The onsite inspection will not occur until the required surveying and staking is complete, and any new access road(s) have been flagged, unless a variance is first granted under Section X. of this Order.

2. Drilling Plan

With each copy of Form 3160–3 the operator must submit to BLM either a Drilling Plan or reference a previously approved field-wide drilling plan. These plans must be in sufficient detail to permit a complete appraisal of the technical adequacy of, and environmental effects associated with, the proposed project. The Drilling Plan must adhere to the provisions and standards of Onshore Oil and Gas Order Number 2 (see 53 FR 46790) (Order 2) and, if applicable, Onshore Oil and Gas Order Number 6 (see 55 FR 48958) (Order 6), and must include the following information:

a. Names and estimated tops of all geologic groups, formations, members, or zones.

b. Estimated depth and thickness of formations, members, or zones potentially containing usable water, oil, gas, or prospectively valuable deposits of other minerals that the operator expects to encounter, and the operator's plans for protecting such resources.

c. The operator's minimum specifications for blowout prevention equipment and diverter systems to be used, including size, pressure rating, configuration, and the testing procedure and frequency. Blowout prevention equipment must meet the minimum standards outlined in Order 2.

d. The operator's proposed casing program, including size, grade, weight, type of thread and coupling, the setting depth of each string, and its condition. The operator must include the minimum design criteria, including casing loading assumptions and corresponding safety factors for burst, collapse, and tensions (body yield, and joint

strength). The operator must also include the lengths and setting depth of each casing when a tapered casing string is proposed. The hole size for each section of hole drilled must be included. Special casing designs such as the use of coiled tubing or expandable casing may necessitate additional information.

e. The estimated amount and type(s) of cement expected to be used in the setting of each casing string. If stage cementing will be used, provide the setting depth of the stage tool(s) and amount and type of cement, including additives, to be used for each stage. Provide the yield of each cement slurry and the expected top of cement, with excess, for each cemented string or stage.

f. Type and characteristics of the proposed circulating medium or mediums proposed for the drilling of each well bore section, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the circulating system. The operator must submit the following information when air or gas drilling is proposed:

- Length, size, and location of the blooie line, including the gas ignition and dust suppression systems,
- Location and capacity of the compressor equipment, including safety devices, the distance from the well bore, and location on the drill site, and
- Anticipated amounts, types, and other characteristics as defined in this Section, of the stand-by mud or kill fluid and associated circulating equipment.

g. The testing, logging, and coring procedures proposed, including drill stem testing procedures, equipment, and safety measures.

h. The expected bottom-hole pressure and any anticipated abnormal pressures, temperatures, or potential hazards that the operator expects to encounter, such as lost circulation and hydrogen sulfide (see Onshore Oil and Gas Order Number 6 (55 FR 48958) for information on hydrogen sulfide operations). A description of the operator's plans for mitigating such hazards must be included.

i. Any other facets of the proposed operation that the operator would like BLM to consider in reviewing the application. Examples include, but are not limited to:

- For directional wells include proposed directional design, plan view and vertical section in true vertical and measured depths,
- Horizontal drilling, and
- Coil tubing operations.

3. Surface Use Plan of Operations

With each copy of Form 3160–3, the operator must submit to BLM a Surface Use Plan of Operations. The Surface Use Plan of Operations must:

- Describe the access road(s) and drill pad, the construction methods that the operator plans to use, and the proposed means for containment and disposal of all waste materials,
- Provide for safe operations, adequate protection of surface resources, groundwater, and other environmental components,
- Include adequate measures for stabilization and reclamation of disturbed lands, and
- Where the surface is privately owned, include a certification of surface owner agreement or an adequate bond, as described in Section VI. of this Order.

The Surface Use Plan of Operations must describe any best management practices the operator plans to use or is required to use.

All maps that are included in the Surface Use Plan of Operations must be of a scale no smaller than 1:24,000, unless otherwise stated below. Geospatial vector and raster data must include appropriate attributes and metadata. Georeferenced raster images must be from the same source as hardcopy plats and maps submitted in the APD package.

Maps, plats, and narrative descriptions must include the following:

a. Existing Roads: The operator must submit a legible map such as a highway or county road, United States Geological Survey (USGS) topographic, Alaska Borough, or other such map that shows the proposed well site and access route to the proposed well in relation to a town, village, or other locatable public access point.

(1) The operator must improve or maintain existing roads in a condition the same as or better than before operations began. The operator must provide any plans for improvement and/or maintenance of existing roads. The information provided by the operator for construction and use of roads will be used by BLM for any Right-of-Way application, as described in Section V. of this Order. The operator may use existing terrain and two-track trails, where appropriate, to assure environmental protection. The operator should consider using best management practices in improving or maintaining existing roads.

(2) The operator may use existing roads under the jurisdiction of the FS for access if they meet the transportation objectives of the FS. When access involves the use of existing roads, the FS may require that the operator contribute to road maintenance. This is usually authorized by a Special Use Authorization or a joint road use agreement. The FS will charge the operator a pro rata share of the costs of road maintenance and improvement, based upon the anticipated use of the road.

Information required by the paragraphs that follow that relate to the Surface Use Plan of Operations also may be shown on this map, if appropriately labeled, or on a separate plat or map.

b. New or Reconstructed Access Roads. The operator must identify on a map or plat all permanent and temporary access roads that it plans to construct or reconstruct in connection with the drilling of the proposed well. Locations of all existing and proposed road structures (culverts, bridges, low water crossings, etc.) must be shown. The proposed route to the proposed drill site must be shown, including distances from the point where the access route exits established roads. All permanent and temporary access roads must be located and designed to meet the applicable standards of the appropriate Surface Managing Entity, and be consistent with the needs of the operator. Final route location may be made by the Surface Managing Entity at the time of the onsite inspection or during approval of the APD. The operator should consider using best management practices in designing road construction.

The operator must design roads based upon the class or type of road, the safety requirements, traffic characteristics, environmental conditions, and the vehicles the road is expected to carry. The operator must describe for all road construction or reconstruction:

- Road width,
- Maximum grade,
- Crown design,
- Turnouts,
- Drainage and ditch design,
- On and off site erosion control,
- Re-vegetation of disturbed areas,
- Location and size of culverts and/or bridges,
- Fence cuts and/or cattleguards,
- Major cuts and fills,
- Source and storage sites of topsoil, and
- Type of surfacing materials, if any will be used.

c. Location of Existing Wells: The operator must include a map or plat and geospatial database that includes all known wells, regardless of status, within a 1-mile radius of the proposed location.

d. Location of Existing and/or Proposed Production Facilities: The operator must include a plat diagram and geospatial database of facilities planned either on or off the well pad that shows, to the extent known or anticipated, the location of all production facilities and lines likely to be installed if the well is successfully completed for production.

The map and geospatial database must show and differentiate between proposed and existing flow lines, overhead and buried power lines, and water lines. If facilities will be located on the well pad, the information should be consistent with the layout provided in item i. of this Section.

The operator must show the dimensions of the facility layouts for all new construction. This information may be used by BLM or the FS for Right-of-Way or Special Use Authorization application information, as specified in Section V. of this Order.

If the operator has not developed information regarding production facilities, it may defer submission of that information until a production well is completed, in which case the operator will follow the procedures in Section VIII. of this Order. However, for purposes of NEPA analysis, BLM will need a reasonable estimate of the facilities to be employed.

e. Location and Types of Water Supply: Information concerning water supply, such as rivers, creeks, springs, lakes, ponds, and wells, may be shown by quarter-quarter section on a map or plat, or may be described in writing. The operator must identify the source, access route, and transportation method for all water anticipated for use in drilling the proposed well. The operator must describe any newly constructed or reconstructed access roads crossing Federal or Indian lands that are needed to haul the water as provided in item b. of this Section. The operator must indicate if it plans to drill a water supply well on the lease and, if so, the operator must describe the location,

construction details, and expected production requirements, including a description of how water will be transported and procedures for well abandonment.

f. Construction Materials: The operator must state the character and intended use of all construction materials, such as sand, gravel, stone, and soil material. If these materials are Federally-owned, the proposed source must be shown on a quarter-quarter section either of a map or plat, or in a written description. See 43 CFR 3602.33 for additional guidance.

The affected Surface Managing Entity or private or Indian mineral materials owner must be contacted and agreement reached on the use of mineral materials before those mineral materials are used.

g. Methods for Handling Waste: The Surface Use Plan of Operations must contain a written description of the methods and locations proposed for safe containment and disposal of each type of waste material (*e.g.*, cuttings, garbage, salts, chemicals, sewage, etc.) that results from drilling the proposed well. Likewise, the narrative must include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations. The operator must describe plans for the construction and lining, if necessary, of the reserve pit.

h. Ancillary Facilities: The operator must identify the location and construction methods and materials for all anticipated ancillary facilities such as camps, airstrips, and staging areas on a map or plat. The operator must stake on the ground the approximate center of proposed camps and the centerline of airstrips. If the ancillary facilities are located off-lease, depending on Surface Managing Entity policy, BLM or the FS may require the operator to obtain an additional authorization, such as a Right-of-Way or Special Use Authorization.

i. Well Site Layout: The plat and geospatial database must have an arrow indicating the north direction. Plats and geospatial database with cuts and fills must be surveyed, designed, drawn, digitized, and certified by licensed professional surveyors or engineers. The operator must submit a plat of a scale of not less than 1 inch = 50 feet showing:

- The proposed drill pad,
- Reserve pit/blooie line/flare pit location,
- Access road entry points and their approximate location with respect to topographic features, along with cross section diagrams of the drill pad, and
- The reserve pit showing all cuts and fills and the relation to topography.

The plat and geospatial database must also include the approximate proposed location and orientation of the:

- Drilling rig,
- Dikes and ditches to be constructed, and
- Topsoil and/or spoil material stockpiles.

j. Plans for Surface Reclamation: The operator must submit a plan for the surface reclamation or stabilization of all disturbed areas. This plan must address interim (during production) reclamation for the area of the well pad not needed for production, as well as final abandonment of the well location. Such plans must include, as appropriate:

- Configuration of the reshaped topography,
- Drainage systems,
- Segregation of spoil materials,
- Surface manipulations,
- Back fill requirements.
- Proposals for pit/sump closures,
- Redistribution of topsoil,
- Soil treatments,
- Seeding or other steps to reestablish vegetation,
- Weed control, and
- Practices necessary to reclaim all disturbed areas, including any access roads and pipelines.

The operator may amend this reclamation plan at the time of abandonment. Further details for reclamation are contained in Section XI. of this Order.

k. Surface Ownership: The operator must indicate the surface ownership at the well location, and of all lands crossed by roads that the operator plans to construct or upgrade, including, if known, the name of the agency or owner, phone number, and address.

Other Information: The operator must include other information required by applicable orders and notices (43 CFR 3162.3–1(d)–(4)). When an integrated pest management program is needed for weed or insect control, the operator must coordinate plans with state or local management agencies and include the pest management program in the Surface Use Plan of Operations. BLM also encourages the operator to submit any additional information that may be helpful in processing the application.

4. Master Development Plans

An operator may elect to submit a Master Development Plan addressing two or more APDs that share a common drilling plan, Surface Use Plan of Operations, and plans for future development and production. Submitting a Master Development Plan facilitates early planning, orderly development, and the cumulative effects analysis for all the APDs expected in a developing field. Approval of a Master Development Plan constitutes approval of all of the APDs submitted with the Plan. Processing of a Master Development Plan follows the processes in Section III.C.2. of this Order. After the Master Development Plan is approved, subsequent APDs can reference the Master Development Plan in future applications. Therefore, an approved Master Development Plan results in timelier processing of subsequent APDs. Each subsequent proposed well must have a survey plat and an APD (Form 3160–3) that references the Master Development Plan and any specific variations for that well.

5. Bonding

(a) Most bonding needs for oil and gas operations on Federal leases are discussed in 43 CFR subpart 3104. The operator must obtain a bond in its own name as principal, or a bond in the name of the lessee or sublessee. If the operator uses the lessee's or sublessee's bond, the operator must furnish a rider (consent of surety and principal) that includes the operator under the coverage of the bond. The operator must specify on the APD, Form 3160–3, the type of bond and bond number under which the operations will be conducted.

For Indian oil and gas, the appropriate provisions at 25 CFR part 200, Subchapter I, govern bonding.

Under the regulations at 43 CFR 3104.5 and 36 CFR 228.109, BLM or the FS may require additional bond coverage for specific APDs. Other factors that BLM or the FS may consider include:

- History of previous violations,
- Location and depth of wells,
- The total number of wells involved,
- The age and production capability of the field, and
- Unique environmental issues.

These bonds may be in addition to any statewide, nationwide, or separate lease bond already applicable to the lease. In determining the bond amount, BLM may consider impacts of activities on both Federal and nonfederal lands required to develop the lease that impact lands, waters, and other resources off the lease.

Separate bonds may be required for associated Rights-of-Way and/or Special Use Authorizations that authorize activities not covered by the approved APD.

(b) On Federal leases, operators may request a phased release of an individual lease bond. BLM will grant this reduction only if the operator:

- Has satisfied the terms and conditions in the plan for surface reclamation for that particular operation, and
- No longer has any down-hole liability.

If appropriate, BLM may reduce the bond in the amount requested by the appropriate Surface Managing Entity. The FS also may reduce bonds it requires (but not BLM-required bonds). BLM and the FS will base the amount of the bond reduction on a calculation of the sum that is sufficient to cover the remaining operations and abandonment, including reclamation, as authorized by the Surface Use Plan of Operations.

6. Operator Certification

The operator must include its name, address, and telephone number, and the same information for its field representative, in the APD package. The following certification must carry the operator's original signature or meet BLM standards for electronic commerce:

I hereby certify that I, or someone under my direct supervision, have inspected the drill site and access route proposed herein; that I am familiar with the conditions which currently exist; that I have full knowledge of state and Federal laws applicable to this operation; that the statements made in this APD package are, to the best of my knowledge, true and correct; and that the work associated with the operations proposed herein will be performed in conformity with this APD package and the terms and conditions under which it is approved. I also certify that I, or the company I represent, am responsible for the operations conducted under this application. Bond coverage is provided under BLM/BIA bond # . These statements are subject to the provisions of 18 U.S.C. 1001 for the filing of false statements.

Executed this day of , 20 .

Name

Position Title

Address

Telephone

Field representative (if not above signatory).

Address (if different from above).

Telephone (if different from above).

Agents not directly employed by the operator must submit a letter from the operator authorizing that agent to act or file this application on their behalf.

F. Notice of Staking Option

Before filing an APD or Master Development Plan, the operator may file a Notice of Staking with BLM. The purpose of the Notice of Staking is to provide the operator with an opportunity to gather information to better address site-specific resource concerns before preparing the APD package. This may expedite approval of the APD. Attachment I, Sample Format for Notice of Staking, provides the information for the Notice of Staking option.

For Federal lands managed by other Surface Managing Entities, BLM will provide a copy of the Notice of Staking to the appropriate Surface Managing Entity office. In Alaska, when a subsistence stipulation is part of the lease, the operator must also send a copy of the Notice of Staking to the appropriate Borough and/or Native Regional or Village Corporation.

Within 10 days of receiving the Notice of Staking, BLM or the FS will review it for completeness and schedule a date for the onsite inspection. The onsite inspection will be conducted as soon as weather and other conditions permit. The operator must complete staking of the proposed drill pad and ancillary facilities, and flagging of new or reconstructed access routes, before the onsite inspection. The staking must include a center stake for the proposed well, two reference stakes, and a flagged access road centerline. Staking activities are considered casual use unless the particular activity is likely to cause more than negligible disturbance or damage. Off-road vehicular use is casual use unless, in a particular case, it is likely to cause more than negligible disturbance or damage. Before APD approval, the operator must submit a complete survey as described in Section III. E. of this Order.

If the surface is privately owned, the operator must furnish the name, address, and telephone number of the surface owner if known. The BLM will invite the surface owner to participate in the onsite inspection. Within 7 days of the onsite inspection, all parties, including the Surface Management Entity, will jointly develop a list of resource concerns that the operator must address in the APD. Surface owner concerns will be considered to the extent practical within the law. Failure to submit an APD within 60 days of the onsite inspection will result in the Notice of Staking being returned to the operator.

G. Approval of APDs

(a)(1) Except for NFS lands, BLM has the lead responsibility for completing the environmental review process.

(2) BLM cannot approve an APD or Master Development Plan until it complies with certain other laws and regulations including NEPA, the National Historic Preservation Act, and the Endangered Species Act. BLM must document that the needed reviews have been adequately conducted. In some cases, operators conduct these reviews, but BLM remains responsible for their scope and content and makes its own evaluation of the environmental issues, as required by 40 CFR 1506.5(b).

(3) The approved APD will contain Conditions of Approval that reflect necessary mitigation measures, if necessary.

(4) BLM will establish the terms and Conditions of Approval for both the APD and any associated Right-of-Way when the application is approved.

(b) For NFS lands, the FS will establish the terms and Conditions of Approval for both the Surface Use Plan of Operations and any associated Surface Use Authorization.

After the FS notifies BLM it has approved a Surface Use Plan of Operations on NFS lands, BLM must approve the APD before the operator may begin any surface-disturbing activity. BLM will not approve an APD until it is complete.

(c) On Indian lands, BIA has responsibility for approving Rights-of-Way. In these cases, the BLM will be a cooperating or co-lead agency for NEPA compliance.

The responsible agency will incorporate any mitigation requirements, identified through the APD review and associated NEPA and related analyses, as Conditions of Approval to the APD. In accordance with 43 CFR 3101.1–2 and 36 CFR 228.107, the BLM or the FS may require reasonable mitigation measures to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights.

IV. General Operating Requirements

Operator Responsibilities

In the APD package, the operator must describe or show, as set forth in this Order, the procedures, equipment, and materials to be used in the proposed operations. The operator must conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform with currently available technology and practice. While compliance with certain statutes, such as NEPA, the National Historic Preservation Act, and the Endangered Species Act, are Federal responsibilities, the operator may choose to conduct inventories and provide other supporting documentation to meet these requirements. The inventories and other work may require entering the lease and adjacent lands before approval of the APD. As in Staking and Surveying, the operator is urged to contact the Surface Managing Entity before entry upon the lands for these purposes.

The operator can not commence either drilling operations or preliminary construction activities before BLM's approval of the APD. Operators are responsible for their contractor's and subcontractor's compliance with the requirements of the approved APD and/or plan. Drilling without approval or causing surface disturbance without approval is a violation of 43 CFR 3162.3–1(c) and is subject to an immediate daily assessment under 43 CFR 3163.1(b)(2).

The operator must comply with the provisions of the approved APD, and applicable laws, regulations, Orders, and notices to lessees, including, but not limited to, those that address:

a. *Cultural and Historic Resources.* If historic or archaeological materials are uncovered during construction, the operator must immediately stop work that might further disturb such materials, and contact BLM and, if appropriate, the FS or other Surface Managing Entity. BLM or the FS will inform the operator within 7 days as to whether the materials appear eligible for listing on the National Register of Historic Places.

The operator is responsible for recording the location of any historic or archaeological resource that is discovered as a result of the operator's actions, even if the operator decides to relocate operations to avoid further costs to mitigate the site. The operator also is responsible for stabilizing the exposed cultural material if the operator created an unstable condition that must be addressed immediately. BLM, the FS, or other appropriate Surface Managing Entity will assume responsibility for further work related to the historic or archaeological site.

If the operator does not relocate, the operator is responsible for mitigation and stabilization costs and BLM, the FS, or appropriate Surface Managing Entity will provide technical and procedural guidelines for conducting mitigation. The operator may resume construction when BLM or the FS verifies that the operator has completed the required mitigation. Relocation of activities may subject the proposal to additional environmental review. Therefore, if the presence of such sites is suspected, the operator may want to submit alternate locations for advance approval before starting construction.

b. *Endangered Species Act.* To comply with the Endangered Species Act , as amended (16 U.S.C. 1531, *et seq.*), and its implementing regulations (50 CFR part 402), the operator must conduct all operations to avoid jeopardizing protected fisheries, wildlife, plants, and their habitats.

c. *Watershed Protection.* Except as otherwise provided in an approved Surface Use Plan of Operations, the operator must not conduct operations in areas subject to mass soil movement, riparian areas, floodplains, lakeshores, and/or wetlands. The operator also must take measures to minimize or prevent erosion and sediment production. Such measures may include, but are not limited to:

- Avoiding steep slopes and excessive land clearing when siting structures, facilities, and other improvements, and
- Temporarily suspending operations when frozen ground, thawing, or other weather-related conditions would cause otherwise avoidable or excessive impacts.

d. *Safety Measures.* The operator must maintain structures, facilities, improvements, and equipment in a safe condition in accordance with the approved APD. The operator must also take appropriate measures as specified in Orders and Notices to Lessees

and Operators to protect the public from any hazardous conditions resulting from operations.

In the event of an emergency, the operator may take immediate action without prior Surface Managing Entity approval to safeguard life or to prevent significant environmental degradation. BLM or the FS must receive notification of the emergency situation and the remedial action taken by the operator as soon as possible, but not later than 24 hours after the emergency occurred. If the emergency involves surface resources on Surface Managing Entity lands, the operator must notify the Surface Managing Entity within 24 hours. Upon conclusion of the emergency, BLM or the FS, where appropriate, will review the incident and take appropriate action. If the emergency only affected drilling operations and had no surface impacts, only BLM must be notified.

(e) *Completion Reports.* Within 30 days after the well completion, the lessee or operator must submit to BLM two copies of Form 3160–4, Well Completion or Recompletion Report and Log. Well logs may be submitted to BLM in an electronic format such as ".LAS" format. Surface and bottom hole locations must be in latitude and longitude.

V. Rights-of-Way and Special Use Authorizations

BLM or the FS will notify the operator of any additional Rights-of-Way, Special Use Authorizations, licenses, or other permits that are needed for roads and support facilities for drilling or off-lease access. This will normally occur at the time the operator submits the APD or Notice of Staking package, or Sundry Notice, or during the onsite inspection.

BLM or the FS, as appropriate, will approve or accept on-lease activities that are associated with actions proposed in the APD or Sundry Notice and that will occur on the lease as part of the APD or Sundry Notice. These actions do not require a Right-of-Way or Special Use Authorization. For pipeline Rights-of-Way crossing lands under the jurisdiction of two or more Federal Surface Managing Entities, except lands in the NPS or Indian lands, applications should be submitted to BLM. Refer to 43 CFR parts 2800 and 2880 for guidance on BLM Right-of-Ways and 36 CFR part 251 for guidance on FS Special Use Authorizations.

A. Rights-of-Way (BLM). For BLM lands, the APD package may serve as the supporting document for the Right-of-Way application in lieu of a Right-of-Way plan of development. Any additional information, specified in 43 CFR parts 2800 and 2880, will be required in order to process the Right-of-Way.

BLM will notify the operator within 10 days of receipt of a Notice of Staking, APD, or other notification if any parts of the project require a Right-of-Way. This information may be submitted by the operator with the APD package if the Notice of Staking option has been used.

B. Special Use Authorizations (FS) (36 CFR 251 Subpart B). On NFS lands, uses directly related to the drilling and production of a well (*e.g.*, an access road off-lease or crew camp, or connecting pipeline to a gathering system), will be incorporated into the approved Surface Use Plan of Operations, rather than a separate Special Use Authorization. When a Special Use Authorization is required, the Surface Use Plan of Operations may serve as the application for the Special Use Authorization if the facility for which a Special Use Authorization is required is adequately described. Conditions regulating the authorized use may be imposed to protect the public interest, to ensure compatibility with other NFS lands programs and activities, and to comply with directions provided in the Forest Land and Resources Management Plan. The Special Use Authorization requires payment of an annual fee in advance, commensurate with the fair market value of the rights or privileges authorized, except where otherwise authorized by statute or regulation. A Special Use Authorization will include terms and conditions (36 CFR 251.56) and may require a specific reclamation plan or incorporate applicable parts of the Surface Use Plan of Operations reclamation plan by reference.

VI. Operating on Lands With Private/State Surface and Federal or Indian Oil and Gas

When authorizing lease operations on split estate lands where the surface is not Federally-owned and the oil and gas is Federal or Indian, BLM must comply with NEPA, the National Historic Preservation Act, the Endangered Species Act, and related Federal statutes. For split estate lands within FS administrative boundaries, BLM has the lead responsibility, unless there is a local BLM/FS agreement that gives the FS this responsibility. For any split estate involving Indian lands, refer to Section VII.B. of this Order.

The operator must make a good faith effort to notify the private surface owner before entry and obtain an access agreement from the surface owner. The access agreement may include terms or conditions of use, be a wavier, or an agreement for compensation. The operator must certify to BLM that (1) it made a good faith effort to notify the surface owner before entry and (2) that an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed. If no agreement was reached, the operator must submit an adequate bond to BLM for the benefit of the surface owner sufficient to pay for loss or damages, such as loss of or damage to agriculture, other tangible improvements, or structures, as required by the specific statutory authority under which the surface was patented or the terms of the lease. The minimum acceptable bond amount is $1,000.

Surface owners have the right to appeal the sufficiency of the bond. Before the approval of the APD, BLM will make a good faith effort to contact the surface owner to assure that they understand their rights of appeal.

The operator must describe the terms of the Surface Owner Agreement, if one was obtained, in sufficient detail in the Surface Use Plan of Operations to enable BLM to evaluate impacts to adjacent off-site Federal and Indian lands and resources and prepare the necessary NEPA documentation. BLM will make the final determination of appropriate surface use requirements. In doing so, BLM will carefully consider the views of the surface owner and the effect on the surface owner's use of the surface before implementing mitigation measures. The operator must submit the name, address, and phone number of the surface owner, if known. BLM will invite the surface owner to the onsite inspection to assure that their concerns are considered. Surface owner concerns will be considered to the extent that they are consistent with Federal land management policy.

VII. Leases for Indian Oil and Gas

A. Approval of Operations

BLM will process APDs, Master Development Plans, and Sundry Notices on Indian tribal and allotted oil and gas leases and Indian Mineral Development Act mineral agreements in a manner similar to Federal leases. However, the approval procedures, including environmental and archaeological clearance procedures, may vary between Reservations depending on tribal ordinances. For processing such applications, BLM considers the tribe to be the Surface Managing Entity for tribal lands and the BIA to be the Surface Managing Entity for allotted lands. Operators are responsible for obtaining any special use or access permits from appropriate BIA and tribal offices. BLM is not required to post for public inspection APDs for minerals subject to Indian leases or agreements.

B. Surface Use

Where the wellsite and/or access road is proposed on Indian lands, the operator is responsible for entering into a surface use agreement with the Indian tribe or the BIA on behalf of the individual Indian owners. This agreement must specify the requirements for protection of surface resources, mitigation, and reclamation of disturbed areas. The BIA (25 CFR 211.4, 212.4 and 225.4), the tribe, and BLM will develop the Conditions of Approval .

VIII. Subsequent Operations and Sundry Notices

Subsequent operations must follow 43 CFR part 3160, applicable lease stipulations, and APD Conditions of Approval.

A. Surface Disturbing Operations

Lessees and operators must submit for BLM or FS approval, an amendment to the approved APD on Form 3160–5 before:

- Undertaking any subsequent new construction outside the approved area of operations, or
- Reconstructing, or altering existing facilities including, but not limited to, roads, emergency pits, firewalls, flowlines, or other production facilities on any lease that will result in additional surface disturbance.

If, at the time the original APD was filed, the lessee or operator elected to defer submitting information under Section III.E.3.d. (Location of Existing and/or Proposed Facilities) of this Order, the lessee or operator must supply this information before construction and installation of the facilities. BLM, in consultation with any other involved Surface Managing Entity, may

require a field inspection before approving the proposal. The lessee or operator may not begin construction until BLM approves the proposed plan in writing.

B. Emergency Repairs

Lessees or operators may undertake emergency repairs without prior approval if they promptly notify BLM. Lessees or operators must submit sufficient information to BLM or the FS to permit a proper evaluation of any:

- Resulting surface disturbing activities, or
- Planned accommodations necessary to mitigate potential adverse environmental effects.

IX. Well Conversions

(a) Conversion to an Injection Well

When subsequent operations will result in a well being converted to a Class II injection well (*i.e.*, for disposal of produced water, oil and gas production enhancement, or underground storage of hydrocarbons), the operator must file with the appropriate BLM office and the Surface Managing Entity a Sundry Notice, Notice of Intent to Convert to Injection on Form 3160–5. BLM, and the Surface Managing Entity, if appropriate, will review the information to ensure its technical and administrative adequacy. Following the review, BLM, and the Surface Managing Entity, where applicable, will decide upon the approval or disapproval of the application based upon relevant laws and regulations and the circumstances (*e.g.*, well used for lease or non-lease operations, surface ownership, and protection of subsurface mineral ownership). BLM will determine if a Right-of-Way or Special Use Authorization and additional bonding are necessary and notify the operator.

(b) Conversion to a Water Supply Well

In cases where the Surface Managing Entity desires to acquire an oil and gas well and convert it to a water supply well or acquire a water supply well that was drilled by the operator to support lease operations, the Surface Managing Entity must inform the appropriate BLM office of its intent before the approval of the APD in the case of a dry hole and no later than the time a Notice of Intent to Abandon is submitted for a depleted production well. The operator must abandon the well according to BLM instructions, and must complete the surface cleanup and reclamation, in conjunction with the approved APD, Surface Use Plan of Operations, or Notice of Intent to Abandon, if BLM or the FS require it. The Surface Managing Entity must reach agreement with the operator as to the satisfactory completion of reclamation operations before BLM will approve any abandonment or reclamation. BLM approval of the partial abandonment under this section, completion of any required reclamation operations, and the signed release agreement will relieve the operator of further obligation for the well.

X. Variances

The operator may make a written request to the agency with jurisdiction to request a variance from this Order. The operator may include the request in the APD package. A variance from the requirements of this Order does not constitute a variance to provisions of other regulations, laws, or orders. When BLM is the decision maker on a request for a variance, the decision whether to grant or deny the variance request is entirely within BLM's discretion. The decision is not subject to administrative appeals either to the State Director or pursuant to 43 CFR part 4.

An operator may also request that BLM waive, except or modify a lease stipulation for a Federal lease. An exception is a one-time waiver. In the case of Federal leases, a request to waive, except or modify a stipulation should also include information demonstrating that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or that the proposed operation would not cause unacceptable impacts.

When the waiver, exception or modification is substantial, the proposed waiver, exception or modification is subject to public review for thirty days. Prior to such public review, the BLM, and when applicable the FS, will post it in their local field office and, when possible, electronically on the internet. When the request is included in the Notice of Staking or APD, the request will be included as part of the well posting under Section III. C. of this Order. Prior to granting a waiver, exception or modification, the BLM will obtain the concurrence or approval of the FS or Federal surface management entity. Decisions on such waivers, exceptions or modifications are subject to administrative review by the State Director and thereafter appeal pursuant to 43 CFR Part 4.

After drilling has commenced, the BLM and FS may consider verbal requests for variances. However, the operator must submit a written notice within 7 days after the verbal request. BLM and the FS will confirm in writing any verbal approval. Decisions on waivers, exceptions or modifications submitted after drilling has commenced are final for the Department and not subject to administrative review by the State Director or pursuant to 43 CFR Part 4.

XI. Abandonment

In accordance with the requirements of 43 CFR 3162.3–4, before starting abandonment operations the operator must submit a Notice of Intent to Abandon on Sundry Notices and Reports Form 3160–5. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Notice of Intent to Abandon.

A. Plugging

The operator must obtain BLM approval for the plugging of the well by submitting a Notice of Intent to Abandon. In the case of dry holes, drilling failures, and in emergency situations, verbal approval for plugging may be obtained from BLM, with the Notice of Intent to Abandon promptly submitted as written confirmation. Within 30 days following completion of well plugging, the operator must file with BLM a Subsequent Report of Plug and Abandon, using Sundry Notices and Reports Form 3160–5. For depleted production wells, the operator must submit a Notice of Intent to Abandon in advance of plugging.

B. Reclamation

Plans for surface reclamation are a part of the Surface Use Plan of Operations, as specified in Section III.E.3.j., and must be designed to return the disturbed area to productive use and to meet the objectives of the land and resource management plan. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Subsequent Report of Plug and Abandon using Sundry Notices and Reports Form 3160–5.

For wells not having an approved plan for surface reclamation, operators must submit a proposal describing the procedures to be followed for complete abandonment, including a map showing the disturbed area and roads to be reclaimed. The operator must submit the request to BLM. BLM will forward the request to the FS or other Surface Managing Entity, if appropriate. Neither BLM nor the FS will approve the complete abandonment of an well if the Surface Managing Entity commits to acquiring the well for water use purposes. The party acquiring the well assumes liability for the well.

Earthwork for intermediate and final reclamation must be completed within 6 months of well completion or well plugging (weather permitting). All pads, pits, and roads must be reclaimed to a satisfactorily revegetated, safe, and stable condition, unless an agreement is made with the landowner or Surface Managing Entity to keep the road or pad in place. Pits containing fluid must not be breached (cut) and pit fluids must be removed or solidified before backfilling. Pits may be allowed to air dry subject to BLM or FS approval, but the use of chemicals to aid in fluid evaporation, stabilization, or solidification must have prior BLM or FS approval. Seeding or other activities to reestablish vegetation must be completed within the time period approved by BLM or the FS.

Upon completion of reclamation operations, the lessee or operator must notify BLM or the FS using Form 3160–5, Final Abandonment Notice, when the location is ready for inspection. Final abandonment will not be approved until the surface reclamation work required in the Surface Use Plan of Operations or Subsequent Report of Plug and Abandon has been completed to the satisfaction of BLM or the FS and Surface Managing Entity, if appropriate.

XII. Appeal Procedures

Complete information concerning the review and appeal processes for BLM actions is contained in 43 CFR part 4 and subpart 3165. Incorporation of an FS approved Surface Use Plan of Operations into the approval of an APD or a Master Development Plan is not subject to protest to BLM or appeal to the Interior Board of Land Appeals.

FS decisions approving use of National Forest System Lands are subject to agency appeal procedures, currently in accordance with 36 CFR part 215 or 251. Decisions governing Surface Use Plan of Operations

and Special Use Authorization approvals on NFS lands that involve analysis, documentation, and other requirements of the NEPA are subject to agency appeal procedures, currently under 36 CFR part 215. If an appeal is filed, the FS must respond within 45 days and operations must not occur for 15 days following the date of appeal disposition.

FS regulations at 36 CFR part 251 govern appeals of written decisions of the FS related to issuance, denial, or administration of written instruments to occupy and use NFS lands. A list of the types of written instruments is provided at 36 CFR 251.82, and includes an SUA and Surface Use Plan of Operations related to the authorized use and occupancy of a particular site or area.

The operator may appeal decisions of the BIA under 25 CFR part 2.

Attachment I—Sample Format for Notice of Staking

Attachment I—Sample Format for Notice of Staking

(Not to be used in place of Application for Permit to Drill Form 3160–3)

1. Oil Well, Gas Well, Other (Specify).
2. Name, Address, and Telephone of Operator.
3. Name and Telephone of Specific Contact Person.
4. Surface Location of Well.

Attach:

(a) Sketch showing road entry onto pad, pad dimensions, and reserve pit.

(b) Topographical or other acceptable map showing location, access road, and lease boundaries.

4a. A map (*e.g.*, a USGS 7½″ Quadrangle) of the area including the proposed well location and access road.

5. Lease Number.
6. If Indian, Allottee or Tribe Name.
7. Unit Agreement Name.
8. Well Name and Number.
9. American Petroleum Institute Well Number (if available).
10. Field Name or Wildcat.
11. Section, Township, Range, Meridian; or Block and Survey; or Area.
12. County, Parish, or Borough.
13. State.
14. Name and Depth of Formation Objective(s).
15. Estimated Well Depth.
16. For directional or horizontal wells, anticipated bottom hole location, if known.
17. Additional Information (as appropriate; include surface owner's name, address and, if known, telephone).
18. Signed _____ Title _____ Date

Note: When the Bureau of Land Management or Forest Service, as appropriate, receives this Notice, the agency will schedule the date of the onsite inspection. You must stake the location and flag the access road before the onsite inspection. Operators should consider the following before the onsite inspection and incorporate these considerations into the Notice of Staking Option, as appropriate:

(a) H_2S Potential.

(b) Cultural Resources (Archeology).

(c) Federal Right-of-Way or Special Use Permit.

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BILLING CODE 3410–11–P; 4310–84–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 270

[Docket No. RM 2005–2]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Supplemental request for comments.

SUMMARY: The Interim Chief Copyright Royalty Judge, on behalf of the Copyright Royalty Board of the Library of Congress, is issuing a supplemental request for comments regarding rules for the delivery and format of records of use of sound recordings for statutory licenses under sections 112 and 114 of the Copyright Act.

DATES: Written comments should be received no later than August 26, 2005. Reply comments should be received no later than September 16, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of comments and reply comments must be brought to Room LM–401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and other similar overnight delivery services), an original and five copies of comments and reply comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments and reply comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments and reply comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Overview

The Copyright Act, as amended by the Digital Millennium Copyright Act (Pub. L. 105–304, 112 Stat. 2860 (1998)), provides a statutory license for digital audio transmissions by certain eligible subscription, nonsubscription, satellite digital audio radio, business establishment and new subscription services (17 U.S.C. 114(f)(4)(A)) and a related "ephemeral" statutory license for the temporary recordings used in those transmissions (17 U.S.C. 112(e)(4)). The statute directs the Librarian of Congress to "establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of use shall be kept and made available by entities performing sound recordings[]" by digitial audio transmission. 17 U.S.C. 114(f)(4)(A); see, also 17 U.S.C. 112(e)(4). Avoidance of infringement liability is contingent upon "complying with such notice requirements * * *." 17 U.S.C. 114(f)(4)(B)(i).

Through extensive prior proceedings, the Librarian has partially "establish[ed] requirements by which copyright owners may receive reasonable notice of the use of their sound recordings," adopting interim regulations on the types of information that must be kept by digital audio services under 17 U.S.C. 114(f)(4)(A) and 112(e)(4). See, 69 FR 11515 (March 11, 2004). A notice of proposed rulemaking on the issues of delivery and formatting was published on April 27, 2005, by the Copyright Office. 70 FR 21704. Responsibility for the notice and recordkeeping regulations was transferred by Congress to the Copyright Royalty Judges ("CRJs") by amended sections 114(f)(4)(A) and 112(e)(4) in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108–419, 118 Stat. 2341 (November 30, 2004), which became effective on May 31, 2005. As anticipated in the April 27, 2005, notice of proposed rulemaking, the rulemaking record, including the comments received on the proposed

delivery and formatting rules, has been transferred to the Copyright Royalty Board ("the Board"), which was created by the Librarian to house the functions of the CRJs.

By this notice, the Copyright Royalty Board is seeking further comments on the rules proposed by the Copyright Office in the April 27, 2005, notice of proposed rulemaking ("NPRM"). These additional comments are sought in an effort to improve the quality of the Board's consideration of these important matters.

II. The Need for Supplemental Rulemaking Comments

This rulemaking task has proved nettlesome and frustrating. The written comments received from copyright owners [1] and licensees, [2] pursuant to the April 27, 2005, notice of proposed rulemaking, underscores the continued sharp divisions among the parties on the highly technical formatting and delivery issues. Resolution of these issues does not draw upon a reservoir of traditional agency expertise. The written comments seem frequently characterized by conclusory assertions and the issuance of a final rule on this record would be extremely difficult.

The Board's goal here is to obtain a fair and practical allocation of the burdens of data delivery for those who are unable to negotiate their own data delivery solutions with SoundExchange. The resulting system should not impose an unnecessary burden on copyright owners; at this time, the system cannot allow copyright owners to throw up burdens that would defeat or unnecessarily discourage use of the statutory licenses. The Board is earnestly asking for more specific, additional information that will reduce the speculative nature of its rulemaking decision to the degree possible. The information should be detailed enough to provide support for, and rebuttal to, assertions regarding the burdens imposed by the proposed rules or by the logical alternatives to those rules. Citations to supporting references should be provided wherever possible. Reports from expert consultants are encouraged.

In issuing this supplemental notice, the Board stresses that it has not made a decision on the merits of any of the formatting and delivery issues presented in this rulemaking proceeding and will consider any further comments on any matter interested persons might wish to offer. The Board is, however, urging commenters to zero in on the following specific technical issues.

III. Specific Factual Questions

A. Spreadsheets

SoundExchange has agreed to allow webcasters to use two commercially available spreadsheets in creating and formatting records of use for each sound recording used under sections 112 and 114 of the Copyright Act. SoundExchange has already posted on its Web site a template for Microsoft Excel and asserts that a version for Correl's Quattro Pro will soon be posted. It submits that "due to the significant limitations of spreadsheets, SoundExchange shall not be required to provide technical support for the use of spreadsheets for recordkeeping purposes." SoundExchange comments at Exhibit B at 3 (May 27, 2005). All spreadsheet data must be converted into an American Standard Code for Information Interchange ("ASCII") format prior to delivery to SoundExchange.

CBI and WHRB offer the following objections. CBI objects that SoundExchange will not provide technical assistance to services seeking to complete spreadsheets and that such a provision "absolves SoundExchange of any responsibility to provide a template and instructions that are free from errors, no matter how egregious." CBI comments at 8 (May 27, 2005). CBI and WHRB assert that converting spreadsheet data to ASCII is expensive, impractical, and "eliminates the only reasonable, financially accessible, and widely available tool." Id.; WHRB comments at 6 (May 27, 2005) ("The process of using a spreadsheet program to export an ASCII file is difficult and will be prone to errors, particularly in the hands of unpaid volunteers with relatively high rates of turnover.")

Questions:

1. How expensive and time-consuming would it be for a typical noncommercial webcaster on the Internet to compile spreadsheets using Microsoft Excel? Using Corel Quattro Pro?

2. What are the practical difficulties in converting a Microsoft Excel or Corel Quattro Pro spreadsheet into ASCII? How costly is it?

3. What are the kinds of technical support that are typically needed in preparing Microsoft Excel and Corel Quattro Pro spreadsheets and converting them to ASCII? How would that technical support be available to a webcaster and what costs would be involved?

B. Commercially Available Software

Although the Copyright Office NPRM only addressed commercially available spreadsheets as a means of creating records of use, the Board is interested in knowing what, if any, software is commercially available that could be used to compile records of use.

Questions:

What, if any, commercially available software is available that could be used to compile records of use? Would such software produce records of use that are format compatible with SoundExchange's data processing system? What are the costs associated with such software?

C. Report Delivery

SoundExchange supports four methods of delivery for electronic data files: File Transfer Protocol ("FTP"); electronic mail attachment; CD-ROM delivery and; floppy diskette delivery. Each of these delivery methods has specific requirements (examples: e-mail attachments may not exceed ten megabytes; FTP delivery requires securing username and password; floppy diskettes must measure 3.5 inches in diameter). Webcasters do not object to the proposed delivery methods.

However, WHRB recommends that records of use should be accepted by SoundExchange via its Web site. Once logged in, services would have the ability to upload new reports to the SoundExchange site, "with SoundExchange automatically handling the naming and tagging of the reports." The Web site could also allow the webcasters to view their history of submitted reports. WHRB comments at 6–7 (May 27, 2005). SoundExchange has opposed allowing delivery of records of use to a Web site, citing unspecified cost and security concerns. See 70 FR 21704, 21707 (April 27, 2005).

Questions:

1. What are the average estimated costs of creating and maintaining a Web site for receipt of records of use? What are the security concerns and how may they be addressed? Is there a commercially available Web site software that could perform this task? Is Web site software available that could

[1] SoundExchange,Inc. ("SoundExchange"), which has been designated as the Receiving Agent for royalties paid pursuant to the section 112 and 114 statutory licenses, has filed extensive comments in these rulemaking proceedings. The Board has also received comments of a limited nature from Royalty Logic, Inc. ("RLI").

[2] Comments reflecting the views of the digital audio service providers have been received from Collegiate Broadcasters, Inc. ("CBI"); Harvard Radio Broadcasting Company, Inc. ("WHRB"); the Intercollegiate Broadcasting System, Inc. ("IBS"); and the National Religious Broadcasters Music License Committee and Salem Communications Corp. ("NRBMLC/Salem").

be adopted from other SoundExchange uses?

2. To what extent can a SoundExchange-hosted Web site reduce costs associated with records of use? Can it assist in organizing and cataloging delivered data and, if so, in what fashion and to what extent?

3. Could a SoundExchange-hosted Web site be required to provide services with access to prior submitted records of use? For how long?

D. File Naming

Every record of use must be named and must contain the dates of the reporting period. SoundExchange insists that the "[s]tart and end dates should be in the format of day, month, and year (DDMMYYYY) where DD is the two-digit day of the log period (beginning or end); MM is the two-digit month of the log period; and YYYY is the four-digit year of the log period (beginning or end)." SoundExchange comments, Exhibit B at 4 (May 27, 2005). NRBMLC/Salem urge that the reporting dates for data files should be in the format of YYYYMMDD, which they state is "the official format adopted by the ASCII standard." NRBMLC/Salem comments at 1 (May 27, 2005); See, also NRBMLC/Salem comments at 5 (September 30, 2002) and NRBMLC/Salem reply comments at 8 (October 10, 2002).

In addition, NRBMLC/Salem submit that "we are concerned about radio stations that may not have the technological capability of assigning file names the length that SoundExchange's proposal envisions." Id.

Questions:

1. What is the ASCII standard for reporting days, months and years? Is one way more cumbersome or expensive than the other?

2. What is required to be technologically capable of assigning file names of the length proposed in the NPRM?

E. File Extension

SoundExchange requests that the service name, start and end date of the reporting period and the transmission category be followed by the file extension ".txt.". An example of a file identifier is as follows: ex. *AcmeMusicCo15012005–21012005_H.txt*. NRBMLC/Salem objects to the sole use of ".txt" as a file extension and asserts that "[t]here is no need for the Office to regulate at this level of detail, and alternate file type extensions should be allowed so long as the data contained in the file is in the appropriate format." NRBMLC/Salem reply comments at 9 (October 10, 2002).

Questions:

1. What difficulties would it create for SoundExchange if reports without .txt file extensions and/or with different file extensions were submitted?

2. What difficulties would it create for digital audio services if they were required to use .txt file extensions on their reports?

F. Delivery Address

RLI requests that it receive all records of use. RLI comments at 1 (May 27, 2005).

Questions:

1. What standing does RLI have to request copies of the reports of use?

2. How expensive and burdensome would it be, on average, for services to provide RLI with records of use in addition to SoundExchange?

3. Must all the format requirements be the same?

G. Files With Headers

SoundExchange requests that the following header appear, in order, on each data file of a record of use:

Row No.	Field definition
1	Name of Serivice.
2	Name of Contact Person.
3	Street Address.
4	City, State, Zip, Country.
5	Phone.
6	E-mail.
7	Start of the Reporting Period.
8	End of the Reporting Period.
9	Report Generation Date.
10	Number of Rows.
11	Text Indicators.
12	Field Delimiters.
13	Blank Line.
14.	

SoundExchange comments Exhibit B at 8 (May 27, 2005).

NRBMLC/Salem object to SoundExchange's requested format for a file with headers on multiple grounds. First, they assert that the contact information on the first six lines should not be required since preexisting subscription services are not required to report such information in a file with headers. See 37 CFR 270.2. Second they assert that there is no reason to require lines 7 and 8 because the information contained therein already appears in the file name. Third, they assert that line 9 is completely unnecessary because the report generation date has nothing to do with the distribution of royalties. And fourth, NRBMLC/Salem submit that row 10 is unnecessary because the information has nothing to do with a station's music use.

NRBMLC/Salem comments Exhibit 2 at 7–8.

NRBMLC/Salem assert that files with headers should resemble the format followed by the webcasters that generate playlists. They propose the following requirements for files with headers:

i. A file identifying the data fields conforming to the following specifications with accompanying header information:

1. The file may identify the sound recordings performed on a particular day or during a particular multiple-day reporting period.

2. The file must contain at least the fields required to be reported * * * but may contain additional fields. If the file contains data concerning sound recording transmissions spanning more than one day, the date of transmission of each sound recording shall also be specified in each data record.

3. The Service shall provide header information that identifies the required fields of information and the order in which they appear in the file. The header information shall include field identifiers from the following list:

a. DATE, to identify the date on which a sound recording was performed;

b. TITLE, to identify the title of the sound recording;

c. ARTIST, to identify the featured performing artist;

d. ALBUM, to identify the album from which the sound recording was played, if, in fact, the sound recording was played from an album and if that information is in the source file that was used to create the playlist;

e. LABEL, to identify the record label that distributes the sound recording, if that information is in the source file that was used to create the playlist;

f. LISTENER, to identify the estimated number of listeners who heard the particular sound recording performed; and

g. IRREL, to identify irrelevant fields not required to be reported.

4. At the Service's option, header information may be embedded in the file as the first line of data, or it may be provided to the Collective [3] separately. The Service shall notify the Collective of the means of transmitting such header information.

5. At the Service's option, information concerning the estimated number of listeners to particular sound recordings may be submitted in a separate file with accompanying header information including, without limitation, the DATE and LISTENER field identifiers set forth above * * *

6. Notwithstanding the above requirements, output files generated by

[3] The "Collective" in this instance is SoundExchange, and possibly Royalty Logic if its proposal for inclusion is adopted.

a Broadcaster's music scheduling or digital automation software shall be deemed to be in an acceptable format provided that they are accompanied by header information described above to identify the data fields contained therein.

NRBMLC/Salem reply comments Tab A at 2–4 (September 30, 2002) (footnote added).

Questions:

1. How are files with headers typically organized? Are there any generally recognized standards for music reporting? What are the software requirements and costs associated with creating data files with headers?

2. Given that preexisting subscription services are not required by Copyright Office regulations to report the data contained in the first six lines of SoundExchange's proposal, what are the costs/benefits to requiring this information in each data file?

3. Given that lines 7 and 8 of the header information contained in SoundExchange's proposal are already reported in the file name, what are the costs/benefits of requiring them to be repeated in each data file?

4. To what extent must the header information in SoundExchange's proposal be provided in the requested order? Is any variance possible? What are the costs/benefits associated with variances?

5. What are the problems, if any, associated with the NRBMLC/Salem proposal for files with headers? Do they present compatibility issues with the SoundExchange data processing system and, if so, what are those issues?

6. Can there be flexibility in the regulations for the creation of files with headers or must the regulations be rigid?

H. Field Delimiters and Text Indicators

SoundExchange proposes the field delimiter for a data string be a pipe ("|") and that the text indicator be a carat ("^") and that in no instance may a field delimiter or text indicator appear in a data string. SoundExchange comments Exhibit B at 8 (May 27, 2005). Harvard and NRBMLC/Salem propose the use of commas for field delimiters and quotes as text delimiters, arguing that these are the industry standards. NRBMLC/Salem comments at 1–2 (May 27, 2005).

Questions:

1. What are the industry standards for use of field delimiters and text delimiters? Should particular ones be specified in the regulations? To what extent is flexibility acceptable in their selection?

2. What problems will be created by allowing the use of commas and quotes as field delimiters and text indicators, respectively? How can such problems, if any, be avoided?

I. Data Fields

SoundExchange requests that all data appearing in data fields be in upper case characters (ex. THE ROLLING STONES). SoundExchange comments Exhibit B at 11 (May 27, 2005). CBI submits that while the:

[U]se [of] all capital letters in the data fields might be convenient for SoundExchange, [it] is a substantial problem for stations in numerous ways. Stations that have existing databases would have to go back and change every record in their database, not an insignificant prospect. This would be a time consuming task that would also likely induce additional errors in the database. Stations that manually enter the data by hand at the time of use will likely encounter many unintentional cases of the data being entered improperly. Further, those that utilize this data for other uses will likely not want the data to be in all capital letters, which would require such stations to maintain two separate databases.

CBI comments at 10 (May 27, 2005).

Questions:

1. What are the costs/benefits of requiring all data fields to be in upper case characters? Will the SoundExchange data processing system accept lower case characters in a data field and combinations thereof?

2. What is the industry standard for data fields?

J. Abbreviations

SoundExchange requests that there not be any abbreviations permitted in the data fields. SoundExchange comments Exhibit B at 11 (May 27, 2005). CBI, NRBMLC/Salem and WHRB object. CBI submits that disallowing abbreviations will increase the likelihood of data entry errors due to the voluntary nature of staff and/or the requirement would "cause a major expense and/or disruption" to their existing practices. CBI comments at 11 (May 27, 2005). NRBMLC/Salem states that "[t]he very concept that there is a "standard" manner of inputting title and artist information in light of the many ways in which stations receive music and the varying practices amongst broadcasters defies common sense." NRBMLC/Salem reply comments at 7 (October 10, 2002). WHRB argues that SoundExchange should be required to "compile and make publicly available a comprehensive, universal database to identify sound recordings." WHRB comments at 8 (May 27, 2005).

Questions:

1. What problems, if any, does allowing abbreviations within data fields present to SoundExchange's data processing system? How can these be addressed?

2. Can a set of rules be developed that permit abbreviations within data fields and, if so, what should these rules be?

3. What are the burdens and costs associated with the creation and maintenance of a data-base of sound recording titles, album titles, artists' names, etc. by SoundExchange? What should be the functionality of such a database? How could such a database be utilized to reduce the overall costs of reporting records of use?

K. Files Without Headers

SoundExchange requests the following format requirements for data files without headers:

(1) ASCII delimited format, using pipe (|) characters as delimiters, with no headers or footers;

(2) Carets (^) should be used as the text indicator, surrounding alphanumeric data elements such as name of Service, transmission category, channel name, artist, song title, album;

(3) No carets (^) should surround dates and numbers;

(4) A carriage return must be at the end of each line; [and]

(5) All data for one record should be on a single line.

SoundExchange comments Exhibit B at 11 (May 27, 2005)(sixth format requirement omitted).

NRBMLC/Salem proposes different requirements for files without headers:

A file containing data records only, with no header information, and conforming to the following specifications.

1. The file may identify the sound recordings performed on a particular day or during a particular multiple-day reporting period.

2. The file must contain only the fields required to be reported * * *, in a particular order reasonably agreed upon by the Service and the Collective.

3. At the Service's option, information concerning the estimated number of listeners to particular sound recordings may be submitted in a separate file containing date and listener information in an order reasonably agreed upon by the Service and the Collective.

NRBMLC/Salem reply comments Tab A at 4 (September 30, 2002).

Questions:

1. Are there industry standards for compiling data files without headers and, if so, what are they? What are the

costs/benefits of compiling data files without headers versus those with headers?

2. How flexible can the format requirements be for files without headers? What are the options?

3. Can categories of data be submitted in separate files or must it all be submitted in a single file? What is the capability of SoundExchange's data processing system to handle more than one file of data per Service?

4. To what extent could it be permissible to allow automated services to report playlist data in native form to SoundExchange?

IV. Legal and Policy Questions

In addition to the specific technical questions presented above, interested persons are also encouraged to supply their views on the following questions of a more general nature.

Questions:

1. Did Congress, in 17 U.S.C. 114(f)(4)(A) and 112(e)(4), require the Copyright Royalty Judges to prescribe particular formatting and delivery requirements at the level of detail described in the April 27, 2005, notice of proposed rulemaking? Is there some relevant set of Internet conventions or practices that could guide the Board in setting data submission standards here?

2. Could a system of webcast sampling, analogous to the sampling performed by performing rights societies in the context of broadcasting, meet the record-of-use requirements of 17 U.S.C. 114(f)(4)(A) and 112(e)(4)?

3. Under the provisions of any final rule adopted to implement the notice and record of use requirements of 17 U.S.C. 114(f)(4)(A) and 112(e)(4), either copyright owners (in the form of their agent, SoundExchange) or licensees will be burdened with having to change their existing data systems. From a legal and a policy perspective, on whom is it most appropriate to place these burdens? Is the court's discussion in *Amusement and Music Operators Association* v. *Copyright Royalty Tribunal*, 676 F.2d 1144, 1154–55 (7th Cir. 1982), cert. denied, 459 U.S. 907 (1982) ("depriv[ing] copyright owners of increased remuneration for the exploitation of their works by showing that some * * * operations will become unprofitable is * * * unsound and unjust") pertinent to this inquiry?

V. Encouragement of Settlement

As the Copyright Office has repeatedly stated, it would be far preferable for the parties to reach their own agreement on these formatting and delivery issues. Government regulation, especially at this level of detail, is an undesirable substitute for industry agreement. The parties who will be affected by the format and delivery regulations should confer and advise the Board if some or all of them can jointly propose solutions with respect to any of the issues raised in these proceedings.

Dated: July 21, 2005.

Bruce G. Forrest,

Interim Chief Copyright Royalty Judge.

[FR Doc. 05–14872 Filed 7–26–05; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0160; FRL–7723–5]

Cyhexatin; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke, under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(e)(1), all existing tolerances for residues of the insecticide/acaricide cyhexatin because they do not meet requirements of FFDCA section 408(b)(2). EPA canceled food use registrations for cyhexatin in 1989. Currently, EPA determined that acute dietary risks from use of cyhexatin on commodities for which import tolerances exist exceed the Agency's level of concern. However, EPA also determined that if the only cyhexatin tolerance is for orange juice, there is a reasonable certainty that no harm to any population subgroup will result from exposure to cyhexatin treated oranges. Because manufacturers support a cyhexatin tolerance on orange juice for purposes of importation and the Agency has made a determination of safety for such a tolerance, EPA is also proposing that, concurrent with the revocation of the citrus fruit group tolerance, an individual time-limited tolerance be established for orange juice. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 41 tolerances which would be counted as tolerance reassessments toward the August 2006 review deadline.

DATES: Comments must be received on or before August 26, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2005–0160, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0160.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0160.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0160. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2005–0160. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is

placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The last U.S. product registration for cyhexatin was canceled in 1989. On January 21, 1998 (63 FR 3057) (FRL–5743–8), EPA published a proposal in the **Federal Register** to revoke tolerances for canceled active ingredients, including cyhexatin. In a **Federal Register** final rule of October 26, 1998 (63 FR 57062) (FRL–6035–8), EPA responded to comments received during a 60–day public comment period on proposed tolerance revocations. The California Citrus Quality Council and the U.S. Hop Industry Plant Protection Committee expressed concern about proposed tolerance revocations pertaining to residues of cyhexatin on citrus and hops, respectively. Elf Atochem North America, Inc. (now known as CEREXAGRI, Inc.) and OXON ITALIA expressed an interest in maintaining specific cyhexatin import tolerances. Elf Atochem stated that it had pending applications for registration and was developing certain data. OXON ITALIA stated that it was committed to providing data required to maintain tolerances of cyhexatin on imported citrus crops. Therefore, EPA did not revoke the cyhexatin tolerances at that time.

Recently, EPA completed its Tolerance Reassessment Eligibility Decision (TRED) for cyhexatin. In the **Federal Register** of July 13, 2005 (70 FR 40341) (FRL–7720–3), EPA published a decision notice for the cyhexatin TRED. The TRED and documents in support of the TRED are available in Edocket ID number OPP–2004–0295 at *http://www epa.gov/edocket*, and will also be made available via the reregistration status website at *http://www.epa.gov/pesticides/reregistration/status.htm*. Because there are no active U.S. registrations, human exposure to this pesticide is strictly through the consumption of treated imported foods. Residential and occupational exposures as well as dietary exposure through drinking water are not expected because there is no domestic use of cyhexatin.

There are currently 41 tolerances for cyhexatin. Currently, EPA determined that acute dietary risks from use of cyhexatin on commodities for which import tolerances exist exceed the Agency's level of concern. Therefore, manufacturers had indicated that they would support only the import tolerances for apple (fresh, juice, sauce, and dried) and citrus (orange juice). However, the estimated acute dietary risks from use of cyhexatin on these commodities exceed the Agency's level of concern. The assessment concluded that for apples and oranges, the acute dietary exposure estimate for children 1–2 years of age is at 223% of the acute population-adjusted dose (aPAD) at the 99.9th percentile; for all infants < 1 year of age at 187% of the aPAD, and for children 3–5 years of age at 151% of the aPAD. Apple juice and apple sauces were the risk drivers.

Because of this acute dietary concern, manufacturers have withdrawn support for cyhexatin tolerances, except for orange juice. EPA has evaluated the dietary risks from the importation of orange juice concentrate to be processed into orange juice and has determined that there is reasonable certainty that no harm to any population subgroup will result from exposure to cyhexatin treated oranges. The acute dietary exposure estimates for orange juice only are below the Agency's level of concern for all population subgroups. The most highly exposed sub-population was children 1–2 years of age, at 35% of the aPAD.

Therefore, EPA is proposing to revoke all existing tolerances for residues of the insecticide/acaricide cyhexatin under FFDCA section 408(e)(1) because existing tolerances do not meet requirements of FFDCA section 408(b)(2).

Specifically, EPA is proposing to revoke the tolerances in 40 CFR 180.144 for combined residues of cyhexatin and its organotin metabolites (calculated as cyhexatin) in or on the following food commodities: almond; almond, hulls; apple; cattle, fat; cattle, kidney; cattle, liver; cattle, meat byproducts, except kidney and liver; cattle, meat; citrus, dried pulp; fruit, citrus; goat, fat; goat, kidney; goat, liver; goat, meat byproducts, except kidney and liver; goat, meat; hog, fat; hog, kidney; hog, liver; hog, meat byproducts, except kidney and liver; hog, meat; hop; hop, dried cone; horse, fat; horse, kidney; horse, liver; horse, meat byproducts, except kidney and liver; horse, meat; milk, fat (=N in whole milk); nectarine; nut, macadamia; peach; pear; plum, prune, dried; plum, prune, fresh; sheep, fat; sheep, kidney; sheep, liver; sheep, meat byproducts, except kidney and liver; sheep, meat; strawberry; and walnut.

However, concurrent with the proposed revocation of the crop group tolerance on fruit, citrus in 40 CFR 180.144 at 2 parts per million (ppm), a tolerance on orange juice should be established at 0.1 ppm. Available processing data indicate that cyhexatin residues of concern in orange juice concentrate were less than the limit of quantitation; i.e., less than 0.1 ppm. Nevertheless, additional generic data is needed for EPA to confirm processing, analytical method, and toxicological data. Under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerance provide the necessary information. Therefore, EPA is proposing to establish an individual time-limited tolerance in 40 CFR 180.144 for combined residues of cyhexatin and its organotin metabolites (calculated as cyhexatin) in orange, juice at 0.1 ppm with an expiration/revocation date of June 13, 2009; i.e., the time-limited tolerance will be established for a period of 4 years from the TRED completion date of June 13, 2005 in order to allow sufficient time for the Agency to issue a data call-in request, the manufacturers to submit the needed data, and for the Agency to review it. After reviewing the available data, EPA will decide whether there is sufficient data to support the orange juice tolerance as a permanent one. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue or allow the time-limited tolerance to expire.

Because, with the exception of orange juice, EPA cannot make a determination of safety concerning the specific cyhexatin tolerances proposed herein for revocation, the Agency has determined that for good cause and in the public interest, it will provide a shorter period of 30 days for public comment under FFDCA section 408(e)(2), instead of the typical 60 days for proposed rulemaking. Cyhexatin is used on a number of children's foods, including apples, that can currently be imported. EPA's risk assessment has concluded that there is a concern for infants and children resulting from acute dietary exposure to these imported commodities treated with cyhexatin. The Agency expects that a decrease in the public comment period for this proposed rule would hasten the cyhexatin tolerance revocation process and thus reduce exposure to cyhexatin for infants and children more quickly.

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure

to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

EPA is proposing that revocation of specific cyhexatin tolerances and establishment of the time-limited tolerance on orange juice become effective on the date of publication of the final rule in the **Federal Register**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. As of July 18, 2005, EPA has reassessed over 7,330 tolerances. This document proposes to revoke a total of 41 tolerances which would be counted in a final rule as tolerance reassessments toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996. For counting purposes, the Agency will count the citrus fruit group tolerance as one revocation (where an individual tolerance for orange juice would be established in its place).

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select "Laws, Regulations, and Dockets," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish a tolerance under FFDCA section 408(e) and also revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances or revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency

hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal. and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: July 18, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.144 is amended by revising the table in paragraph (a) to read as follows:

§ 180.144 Cyhexatin; tolerances for residues.

(a)*General.* * * *

Commodity	Parts per million	Expiration/ Revocation Date
Orange, juice	0.1	06/13/2009

* * * * *

[FR Doc. 05–14738 Filed 7–26–05; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[WT Docket No. 05–211; FCC 05–123]

Implementation of the Commercial Spectrum Enhancement Act; Modernization of Competitive Bidding Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this the Commission begins a proceeding to implement rules and procedures needed to comply with the recently enacted Commercial Spectrum Enhancement Act (CSEA). The Commission also proposes a number of changes to its competitive bidding rules that are necessary, apart from CSEA, to bring them in line with the current requirements of the Commission's auctions program.

DATES: Comment Date, August 26, 2005; Reply Comment Date, September 12, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before September 26, 2005.

ADDRESSES: You may submit comments, identified by WT Docket No. 05–211; FCC 05–123 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instruction for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L._LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

For detailed instructions for submitting comments and additional information on the rule making process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin or Gary Michaels, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0660. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at

202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronics Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rule making numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rule making number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rule making number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number. 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 the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor 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, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.
- People with Disabilities: Contact the FCC to request materials in accessible formats (Braille, large print, electronics files, audio format, etc.) by e-mail at *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days after the date of publication in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

Form Numbers: N/A.

Type of Review: Supplemental collection for which comment is being sought in a notice of proposed rule making.

Respondents: Business or other for-profit, not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents: 75.

Estimated Time per Response: 10 minutes, entirely by in-house staff.

Frequency of Response: Reporting; on occasion.

Total Annual Burden: 12.5 hours.

Total Annual Costs: none.

Privacy Impact Assessment: No.

Needs and Uses: Respondents would be required to specify on their short-form applications the licenses, if any, for which they intend to seek a tribal land bidding credit, should they win. This information would enable the Commission to determine at the close of bidding in a spectrum auction with a reserve price or prices whether the price or prices had been met, taking into account all possible tribal land bidding credits that might be awarded in the auction.

I. Introduction and Executive Summary

1. With this *Notice of Proposed Rule Making* ("*NPRM*"), WT Docket No. 05–211, FCC–123 released on June 14, 2005, the Commission begins a proceeding to implement rules and procedures needed to comply with the recently enacted Commercial Spectrum Enhancement Act (CSEA). The Commission also proposes a number of changes to its competitive bidding rules that are necessary, apart from CSEA, to bring them in line with the current requirements of the Commission's auctions program.

2. CSEA establishes a mechanism to use spectrum auction proceeds to reimburse federal agencies operating on the 216–220 MHz, 1432–1435 MHz, 1710–1755 MHz, and 2385–2390 MHz bands, and certain other frequency bands that may be reallocated from federal to non-federal use, for the cost of relocating operations. In a related *Declaratory Ruling*, the Commission interpreted the meaning of the term "total cash proceeds" as used in CSEA to be winning bids net of any applicable bidding credit discounts. In the *NPRM*, the Commission seeks comment on changes to the Commission's competitive bidding rules necessary to implement CSEA. Specifically, the Commission proposes to:

- Change the Commission reserve price rule as mandated by CSEA; and
- Change the Commission tribal land bidding credit rules in auctions subject to CSEA or to a reserve price requirement unrelated to CSEA in order to determine whether auction results

satisfy any revenue requirement at or near the completion of bidding.

3. The Commission also considers in the *NPRM* a number of other measures to update the Commission's competitive bidding rules and procedures, including steps to (a) ensure that the Commission's general auction rules are consistent with the use of combinatorial (or package) bidding methodologies, (b) conform the payment rules and procedures for broadcast construction permits won at auction to the Commission's part 1 general competitive bidding rules and recent procedures, and (c) determine whether certain existing competitive bidding provisions should be modified in order to achieve their intended purposes. Specifically, the Commission proposes to:

- Change the Commission's default payment rule to clarify its application in certain situations;
- Change the Commission's interim withdrawal and additional default payment rules to replace the current interim withdrawal and additional default payments of 3 percent of the relevant bid with an amount up to 20 percent of the relevant bid, with the precise amount for each auction established in advance of the auction;
- Adopt new Commission rules to establish procedures in advance of each auction for apportioning bid amounts in the auction among licenses in a package or among components of a license to determine the amount of an individual bid or a portion of a bid when needed for calculations pursuant to Commission rules or procedures;
- Change Commission payment rules and procedures for broadcast construction permits won at auction to conform to the payment rules and procedures for non-broadcast licenses won at auction; and
- Change Commission rules and procedures for consortia of designated entities and entrepreneurs to improve the licensing process for such entities.

4. The Commission notes that several additional issues involved with implementing reserve prices for auctions subject to CSEA may arise. One such issue is whether the total cash proceeds attributable to eligible frequencies can be assessed on a license-by-license basis, so that the auction might be deemed to meet the CSEA revenue threshold for one license but not another. Another unresolved issue is whether, where an auction involves both CSEA-eligible frequencies and other spectrum, the full amount or only a portion of winning bids should be considered when measuring whether auction results satisfy the CSEA revenue requirement. Whether such issues will actually arise in an auction, and what the best possible resolutions may be, may depend upon the characteristics of the specific spectrum licenses to be auctioned and the circumstances under which the auction is conducted. Accordingly, the Commission will leave consideration of such issues to later actions, including possible auction- or service-specific rule making proceedings, subsequent declaratory rulings regarding questions of statutory interpretation, or adoption of specific auction procedures by the Commission.

II. Notice of Proposed Rule Making

A. Implementing CSEA

i. Complying With CSEA's Reserve Price Requirement

5. From the inception of the Commission's auctions program in 1994, Commission rules have allowed for the use of reserve (or "reservation") prices. The Balanced Budget Act of 1997 added paragraph 309(j)(4)(F) to the Communications Act, requiring the Commission to prescribe methods to require a reasonable reserve price or establish a minimum bid for licenses made available in spectrum auctions. The Commission's current reserve price rule for all auctionable services, § 1.2104(c) of the Commission's rules, states that the Commission may establish a reservation price, disclosed or undisclosed, below which a license subject to auction will not be awarded.

6. CSEA requires the total cash proceeds from any auction of eligible frequencies to equal at least 110 percent of the total estimated relocation costs provided to the Commission by NTIA. To implement this requirement, CSEA directs the Commission to revise its reserve price regulations adopted pursuant to section 309(j)(4)(F) of the Communications Act. Thus, in contrast to the Commission's current reserve price rule, the reserve price rule the Commission must adopt for auctions subject to CSEA cannot be discretionary. The Commission proposes, therefore, to modify § 1.2104(c) of its rules to add a requirement that, for any auction of eligible frequencies under CSEA, the Commission will establish a reserve price (or prices) that ensures that the total cash proceeds (as defined in the related *Declaratory Ruling*) attributable to such spectrum will equal at least 110 percent of the total estimated relocation costs provided to the Commission by NTIA. The Commission seeks comment on this proposal.

ii. Modifying Tribal Land Bidding Credit Rules

7. In an effort to encourage carriers to provide telecommunications services to tribal lands with historically low telephone service penetration rates, the Commission makes tribal land bidding credits available to auction winners that serve qualifying tribal lands. The amount of a bidding credit is determined according to a formula set forth in the Commission's rules and is subject to a cap based on a sliding scale according to the amount of the high bid. To apply for a tribal land bidding credit, an auction winner must indicate on its long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within a particular market. The applicant must then amend its long-form application by attaching a certification from the tribal government authorizing the applicant to provide service on its tribal land, certifying that the area to be served by the winning bidder is indeed qualifying tribal land, and assuring that it has not and will not enter into an exclusive contract with the applicant and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land. The applicant must also attach its own certification that it will comply with construction requirements for tribal land and consult with the tribal government regarding the siting of facilities and service deployment.

8. The deadline for submitting these certifications is not until 180 days after the filing deadline for long-form applications. Accordingly, in auctions that include spectrum covering qualifying tribal lands, the Commission may not know for at least 180 days after the long-form deadline how much of a discount on the auction's winning bids it will have to allow for tribal land bidding credits. In auctions subject to CSEA, this situation could lead to a potentially substantial post-auction delay in calculating whether "total cash proceeds" meet the 110 percent revenue requirement. Thus, the Commission's current tribal land bidding credit procedures could prevent the Commission from concluding the auction expeditiously after the cessation of bidding and might even (should award of the credits reduce the auction's net winning bids to below the 110 percent revenue requirement) lead to cancellation of the auction long after the bidding has ended.

9. The Commission, therefore, seeks comment on different possible methods of ensuring that the Commission will be able to promptly calculate "total cash

proceeds" while at the same time preserving the availability of tribal land bidding credits in auctions subject to CSEA. One possibility in such auctions is to award tribal land bidding credits on a pro rata basis out of the funds exceeding the reserve price. Under this option, the amounts that could be discounted by tribal land bidding credits in an auction subject to CSEA would be limited to net bids in excess of the reserve price or 110 percent of the total estimated relocation costs. If this amount were insufficient to pay all of the tribal land bidding credits for which auction winners were eligible, then each eligible tribal land bidding credit recipient would receive a pro rata credit in proportion to the amount the applicant would have received had the auction not been subject to a reserve price.

10. A second option on which the Commission seeks comment is to award tribal land bidding credits on a first-come, first-served basis in auctions subject to CSEA. Under this alternative, winning bidders would still have to file the certifications for a tribal land bidding credit no later than 180 days after the filing deadline for long-form applications. However, bidding credits up to the full amount determined by the existing formula would be awarded to eligible applicants in the order in which they had filed the certifications for such credits, but only to the extent that funds were available. As with the first alternative, the money available for tribal land bidding credits would be limited to the net winning bids exceeding 110 percent of the total estimated relocation costs (or another specified reserve price). This alternative offers the appeal of encouraging the early filing of tribal land bidding credit certifications but might exclude applicants that encountered delays through no fault of their own in obtaining the required certifications.

11. The Commission also seeks comment on a third option pursuant to which it would require applicants to specify on their short-form applications the licenses, if any, for which they intend to seek a tribal land bidding credit, should they win. Under this option, the Commission would determine whether the CSEA reserve price had been met, insofar as tribal land bidding credits are concerned, by deducting the maximum amount of tribal land bidding credits for which winning bidders that had indicated on their short-form applications an interest in receiving such credits could be eligible. While this alternative would facilitate prompt determination of whether, taking tribal land bidding credits into account, the CSEA-required reserve price had been met, it could create an additional burden for short-form applicants. It could also overstate the potential impact of tribal land bidding credits on auction revenues in the event that license winners that had indicated an interest in receiving tribal land bidding credits ultimately did not receive such credits for any reason.

12. The Commission also invites commenters to propose other methods to enable the Commission to determine promptly total cash proceeds while preserving the availability of tribal land bidding credits. The Commission encourages those offering proposals or commenting on the proposals presented here to consider the practical implications of each approach, and the Commission requests that commenters discuss, in particular, how a given approach might best promote the dual purposes of facilitating CSEA compliance and encouraging service on tribal lands through the award of tribal land bidding credits. The Commission also seeks comment on whether it should adopt the same or similar approach for any non-CSEA auctions for which the Commission, pursuant to section 309(j)(4)(F) of the Communications Act, establishes a reserve price based on winning bids net of all discounts.

B. Updating Competitive Bidding Rules and Procedures

i. Clarifying the Default Rule

13. Section 1.2104(g) of the Commission's rules provides that a bidder that withdraws a high bid during the course of an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction. In the event that a bidding credit applies to any of the bids, the bid withdrawal payment equals the difference between either the net withdrawn bid and the subsequent net winning bid or the gross withdrawn bid and the subsequent gross winning bid, whichever difference is less. However, no withdrawal payment is assessed for a withdrawn bid if either the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the original withdrawn bid. (Net bids for purposes of this calculation would not include any discounts resulting from tribal land bidding credits.) An intervening subsequent withdrawn bid less than the original withdrawn bid may limit the amount of the withdrawal payment; however, it is only possible to determine the final amount of a withdrawal payment once there is a higher intervening subsequent withdrawn bid or a subsequent winning bid.

14. Under § 1.2104(g) of the Commission's rules, a high bidder that defaults or is disqualified after the close of an auction is subject to the payment just described for withdrawn bids (the "deficiency payment" or "deficiency portion") plus an additional payment equal to 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulting bidder's bid or the subsequent winning bid, whichever is less. (The deficiency payment for a default or disqualification following a package bidding auction is, in most instances, calculated differently from the way in which the deficiency payment is calculated for a default or disqualification following a non-package bidding auction.) The 3 (or 25) percent payment must be calculated using the same bid amounts and basis (*i.e.*, net or gross bids) as used in calculating the deficiency payment.

15. The rule does not, however, anticipate the anomaly that might result from calculating the additional 3 or 25 percent payment for a bidder that defaults or is disqualified after the close of an auction, when, in a subsequent auction, there is a higher withdrawn bid, but no winning bid, for a license corresponding to the defaulted license. A literal reading of § 1.2104(g) of the Commission's rules might seem to dictate that, while the defaulter's deficiency obligation would be calculated as the difference between the defaulter's bid and the higher withdrawn bid in the subsequent auction (thus resulting in no deficiency payment), the defaulter's additional 3 or 25 percent payment obligation, which is based upon the lesser of the defaulter's bid or the subsequent winning bid, could not be calculated until the corresponding license had been won in a still later auction. Yet such a reading conflicts with the explicit assumption in the Commission's default payment rule that the deficiency payment and the additional payment are calculated using the same bids. Moreover, reading the rule this way would prolong the period before the final amount of the default payment obligation could be assessed and payment could be collected.

16. To remove any ambiguity associated with this possible occurrence, the Commission believes that a clarification of the rule is needed. Therefore, the Commission proposes that when, in a subsequent auction, there is a higher withdrawn bid but no

winning bid for a license that corresponds to a defaulted license, the additional default payment be determined as 3 percent (or 25 percent) of the defaulting bidder's bid. The additional payment would, as always, be calculated using the same basis, *i.e.*, net or gross bids, as used in the calculation of the deficiency payment. The Commission believes that adopting this proposal would simplify and accelerate the calculation of final default payments in applicable situations by allowing use of the same subsequent bid in calculating both the deficiency payment portion and the additional payment portion of the final default payment and by allowing an earlier determination of the additional payment amount.

17. Further, the Commission believes that clarification of the additional payment portion of the default payment rule is needed for certain situations in which no deficiency payment is owed. As noted, normally the additional payment is a percentage of either the defaulting bidder's bid or the subsequent applicable bid, whichever is less, using the same basis—net or gross bids—as used in calculating the deficiency payment. However, when the defaulted bid was subject to a bidding credit and the subsequent applicable bid equals or exceeds the defaulted bid, regardless of which basis—net or gross bids—is used, it is not clear whether the additional payment should be based on the net defaulted bid or on the gross defaulted bid. The Commission proposes that, in such a situation, the additional payment be 3 (or 25) percent of the net defaulted bid amount, thus basing the default payment on what the defaulter was obligated to pay at the close of bidding. The Commission further proposes to extend this proposed clarification to determinations of the amount of default payments in situations where the initial bid, the subsequent winning bid, or any intervening withdrawn bid is for a license that is part of a package, contingent upon the Commission's prior or concurrent adoption of a rule change that would allow use of the conventional default rule in such situations. The Commission seeks comment on these proposals.

ii. Raising the Limit on Withdrawal and Default Payments

a. Background

18. *Withdrawals.* The Commission's rules provide that a bidder that withdraws a high bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). In the event that a license for which there has been a withdrawn high bid is not subject to a subsequent higher bid or won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. In such a case, the bidder responsible for the withdrawn high bid is assessed an interim bid withdrawal payment equal to 3 percent of the amount of its withdrawn bid, and this interim payment is applied toward any final bid withdrawal payment that is ultimately assessed.

19. The Commission adopted the withdrawal payment rules in 1994 to discourage insincere bidding, which, whether done for frivolous or strategic purposes, distorts price information generated by the auction process and may reduce the efficiency of the auction. The Commission anticipated that strategic withdrawals—such as when a bidder attempts to deter a rival from acquiring a license by bidding up the price of the license and then withdrawing—would be particularly damaging to competitive bidding. The Commission added the 3 percent interim bid withdrawal payment to the rules to help ensure that the withdrawal payment could be collected if one ultimately were assessed.

20. *Defaults and Disqualifications.* The Commission's rules also provide that if, after the close of an auction, a high bidder defaults on a down payment or final payment obligation or is disqualified, the bidder is liable for a default payment. This payment consists of a deficiency portion, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulter's bid or of the subsequent winning bid, whichever is less. The Commission adopted the default payment rule in 1994. In 1997, the Commission extended to all auctionable services a policy, earlier adopted for broadband personal communications services ("PCS"), of assessing initial default deposits. Pursuant to this policy, the Commission, in instances in which the amount of a default payment cannot yet be determined, assesses an initial default deposit of between 3 percent and 20 percent of the defaulted bid amount.

21. Requiring an additional payment in the case of post-auction defaults is intended to provide an incentive to bidders wishing to withdraw their bids to do so prior to the close of an auction, because a default or disqualification after an auction is generally more harmful to the auction process than a withdrawal during the auction. The Commission set the additional payment at 3 percent, estimating that amount as the transaction cost of selling a license in the after-market. The Commission posited that if it were to establish a significantly higher additional default payment, most bidders would, rather than default, sell unwanted licenses individually in the secondary market. The Commission determined that such a result would not only be unfair to entities subject to resale restrictions but also would be a less efficient mechanism for assigning defaulted licenses than would Commission auctions of such licenses.

b. Discussion

22. The Commission has observed a disproportionate number of withdrawals late in its auctions, indicating that some bidders have been placing and then withdrawing bids primarily to discourage potential or existing market competitors from seeking to acquire licenses. Moreover, bidders continue to default on their payment obligations. Withdrawals and defaults weaken the integrity of the auctions process and impede the deployment of service to the public and could prove particularly troublesome in auctions with a specific cash proceeds or reserve price requirement, such as auctions subject to CSEA.

23. Based on its experience in administering auctions, the Commission believes that changes to its existing withdrawal and default payment rules may be necessary in order to more effectively minimize the occurrence of withdrawals, defaults, and disqualifications. Accordingly, the Commission proposes to increase the current limits on the interim withdrawal payment and the additional default payment. In the case of defaults on unwanted licenses, the Commission's rationale for limiting the additional payment to 3 percent no longer holds the same validity that it did eleven years ago when the payment was established. Resale restrictions have since been reduced, and secondary market tools for the redistribution of access to spectrum have been rapidly developing, due, in part, to Commission innovation and encouragement. In cases where defaults result from the failure of bidders realistically to assess in advance their

ability to pay for their bids, a larger payment requirement may provide added incentive for bidders to conduct the necessary analysis and refrain from placing bids they cannot afford or at least for them to withdraw such bids rather than defaulting on them.

24. Accordingly, the Commission proposes to modify § 1.2104(g) of its rules to raise the current 3 percent limits on the interim withdrawal payment and the additional default payment to 20 percent each. The Commission would, as part of its determination of competitive bidding procedures in advance of each auction, establish the appropriate level, from 3 percent up to a maximum of 20 percent, at which to set each of the two payments. This 3 to 20 percent range mirrors the parameters long used for determining initial default deposit amounts. In light of the potentially greater harm resulting from defaults in combinatorial bidding auctions, the Commission does not propose to change the size of the 25 percent additional payment for defaults or disqualifications following combinatorial bidding auctions. The Commission seeks comment on these proposals.

iii. Apportioning Bid Amounts

a. Apportionment Among the Licenses in a Package

25. The Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license is always known. This assumption makes sense only when licenses are won individually. However, in combinatorial (or "package") bidding, bidders place single all-or-nothing bids on groups (or packages) of licenses. Thus, there may be no identifiable bid amounts on the individual licenses comprising packages of more than one license.

26. The Commission employed package bidding for the first time in Auction No. 51, an auction of regional narrowband PCS licenses that was held on September 24 and 25, 2003. The Commission announced in 2000 that a combinatorial bidding system would be used for Auction No. 31, the planned auction of licenses in the Upper 700 MHz bands. In addition, the Commission recently announced its launch of a new auction bidding software system—the Integrated Spectrum Auction System or "ISAS"—which, among other things, will facilitate package bidding. The Commission believes that the use of combinatorial bidding methodology makes it necessary for it to modify its rules to allow the apportionment of package bids among the individual licenses comprising a package whenever an individual bid amount is needed to administer a Commission rule or procedure. There are several situations in which the need for an individual bid amount could arise.

27. *Small Business and New Entrant Bidding Credits.* Under the Commission's rules, small business and new entrant bidding credits are awarded as percentage discounts on winning bid amounts for specific licenses. In the event that an entity entitled to such a bidding credit places a bid on a package of licenses in an auction with combinatorial bidding, it may be necessary to apportion the bid among the licenses comprising the package. For example, if the entity bids on a package of licenses not all of which entitle the winner to a bidding credit or to the same percentage bidding credit, it will be necessary to apportion the bid among the individual licenses comprising the package in order to calculate the amount of the bidding credits. Moreover, in the case of small business bidding credits, even if the small business is entitled to a uniform bidding credit on all licenses in a package, it may be necessary to apportion the package bid among individual licenses in order to determine the amount of an unjust enrichment payment obligation.

28. *Unjust Enrichment Payment Obligations.* Under the Commission's existing rules, an unjust enrichment payment is due when a licensee that received a small business bidding credit for a license transfers control of, or fully or partially assigns, the license within the first five years of the license term to an entity not qualifying for a bidding credit, or for as favorable a bidding credit as the licensee's. The amount of an unjust enrichment payment, determined according to a declining schedule, is a percentage of either the bidding credit or the difference between the bidding credit the licensee received and the bidding credit for which the transferee or assignee would qualify, up to 100 percent, plus interest. Unjust enrichment payment obligations for partitioned license areas are calculated based upon the ratio of the population of the partitioned area to the overall population of the original license area. Correspondingly, unjust enrichment payment obligations for disaggregated spectrum are calculated based upon the ratio of the amount of spectrum disaggregated to the total amount of spectrum of the original license. In the case of combined partitioning and disaggregation, unjust enrichment payment obligations are calculated based upon the ratio of "MHz-pops" in the partial license to the total "MHz-pops" in the original license, where "MHz-pops" is defined as the number of megahertz of spectrum multiplied by the population of the covered area. This MHz-pops ratio is a generalization of the ratios used for simple partitions and disaggregations, taking into account both the license area and the bandwidth being assigned. If a bidder wins a package of licenses in an auction with combinatorial bidding and subsequently seeks to transfer or fully or partially assign an individual license that comprises part of the package, calculating any required unjust enrichment payment will require a determination of the price and applicable bidding credit for the individual license.

29. *Tribal Land Bidding Credits.* The size of a tribal land bidding credit is subject to a limit which is set using the amount of the high bid on the license in question. Accordingly, in order to calculate a tribal land bidding credit for a license won as part of a package, it will be necessary to determine how much of the winning bid amount for the package to allocate to that license.

30. *Default and Withdrawal Payments.* Calculating the amount of a default or withdrawal payment involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid. The Commission already has in place a rule for calculating default payment obligations in connection with combinatorial bidding auctions. Initially adopted as part of the service-specific part 27 competitive bidding rules in anticipation of package bidding in auctions of the Upper 700 MHz band, the rule later was incorporated into the part 1 rules as § 1.2104(g)(3), applicable to all defaults on licenses won in a combinatorial bidding auction. In addition to specifying the method of calculating the deficiency portion of default payments after package bidding auctions, this rule increases the additional payment required of package bidding defaulters from 3 percent to 25 percent. In raising the amount of the additional default payment, the Commission reasoned that defaults following a combinatorial bidding auction have the potential to cause greater disruption to the auction and licensing process than do defaults following other types of auctions. Section 1.2104(g)(3) of the Commission's rules accommodates situations in which all relevant licenses won in one or more subsequent auctions correspond to licenses originally made available in the same initial auction. However, it does not allow for situations

in which the corresponding licenses are made available in one or more subsequent auctions that include licenses that were not won in the same initial auction. Consequently, rather than use § 1.2104(g)(3) of the Commission's rules to calculate a default payment obligation when one or both of the involved licenses is part of a package, the Commission believes that it would be preferable to use a method to apportion the package bid amount among the individual licenses comprising the package.

31. The procedures for the two package bidding auctions announced to date have not permitted withdrawals, and, accordingly, the Commission has never adapted its withdrawal payment rule to package bidding situations. Nevertheless, it may happen that, after a withdrawal in a non-package bidding auction, the license on which the bid was withdrawn is not won in the same auction but, instead, a corresponding license is won in a subsequent auction as part of a package. Moreover, new package bidding designs may at some point make it practicable for the Commission to allow withdrawals in package bidding auctions. For these reasons, the Commission believes it necessary to amend § 1.2104(g) of the Commission's rules to provide for calculating withdrawal payments in all possible situations involving combinatorial bidding.

32. *Proposal for Apportioning Package Bids.* The Commission proposes to specify in advance of each auction that uses a combinatorial bidding design or includes spectrum previously subject to a combinatorial auction a method for apportioning the bid on a package among the individual licenses comprising the package. The Commission proposes further that the portion of the total bid attributed to an individual license pursuant to the selected method—to be known as the "apportioned package bid" or "APB"—serve as a stand-in for the bid on that license whenever the individual bid amount is needed for one of its regulatory calculations, such as calculating the size of a bidding credit, a small business bidding credit unjust enrichment payment obligation, a tribal land bidding credit limit, or a withdrawal or default payment obligation.

33. There are at least two available methods by which the Commission could apportion package bids to the individual licenses comprising a package. One possible method is to use a MHz-pops ratio, just as is currently done for unjust enrichment calculations involving partitioning or disaggregation. For Auction No. 51, the Commission decided that MHz-pops would be used should it be necessary to calculate the upper limit on a tribal land bidding credit for a license won as part of a package. Another possible method is to use current price estimates ("CPEs"), which are estimates of the prices of individual licenses comprising a package in a combinatorial bidding auction. The Commission developed a methodology for determining CPEs as part of the combinatorial bidding procedures established for Auctions No. 31 and 51. CPEs were calculated after every round of Auction No. 51 as part of the mathematical optimization process used to determine the winning bids and were also used in determining the minimum acceptable bid amounts for each subsequent round. The same use of CPEs was announced for Auction No. 31.

34. CPEs determined for the final round of an auction ("final price estimates" or "FPEs") can serve as a valid proxies for the market values of individual licenses won as parts of a package, because they take into account the minimum opening bids for the licenses as well as all the bids placed in the auction and, therefore, reflect all available information about the relative demand for the licenses. In addition, because the sum of all of the FPEs for the component licenses of a package is mathematically constrained to equal the winning bid for the package, the ratios of these estimates to the package bid amount have a natural role as indicators of the relative weights of the different licenses in the market value of the package.

35. While the Commission considers the use of either MHz-pops ratios or FPEs to be acceptable for determining APBs, the Commission does not wish now to be limited to any given method, including these two. Instead, the Commission believes that it is in the best interest of the auction program and bidders for the Commission to have the flexibility to select the method best suited to a particular auction, including being able to take advantage of any developments in auction design that might provide other ways to apportion package bids among the individual component licenses of a package.

36. Adoption of the Commission's proposal that APBs be determined for each combinatorial bidding auction would allow calculation of how much of a total bidding credit to attribute to a license won as part of a package and determination, according to the Commission's existing rules, of the amount of an unjust enrichment payment obligation, the upper limit on a tribal land bidding credit for a license won as part of a package, or a withdrawal payment obligation. Further, substituting an APB for the unknown amount of a winning bid on an individual license won as part of a package would allow use of the "conventional" default rule (*i.e.*, the default rule used where neither the initial nor the subsequent winning bid is for a license won as part of a package) for combinatorial bidding situations, including situations not covered by the existing part 1 combinatorial bidding default rule. Indeed, using an APB as a substitute for the amount of a bid on a license won as part of a package would allow the Commission to fairly perform any of its calculations requiring the amount of the individual bid. Consequently, the Commission seeks comment on these proposals.

b. Apportionment Among the Components of a License

37. Implicit in the Commission's rules for determining the amount of a withdrawal or default payment—determinations that involve a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid—is the assumption that the subsequent bid will be for a license with the same geographic and spectral components as the original license. However, when there have been intervening rule changes involving the relevant spectrum, the second license may not be identical in geography and spectrum to the first. For example, such rule changes occurred last year when, in order to provide greater flexibility and a more functional band plan for licensees, the Commission restructured the rules governing the Multipoint Distribution Service and the Instructional Television Fixed Service in the 2495–2690 MHz band. As radio technology continues to evolve and services become more sophisticated, there likely will be other instances where the Commission's band plans are updated. Therefore, for purposes of calculating a withdrawal or default payment—or for any comparison of a bid for one license with a bid for another license in a subsequent auction when the second license is similar to but not exactly the same as the first in terms of geography or spectrum—the Commission needs a procedure for apportioning the bid placed on the reconfigured license in the second auction.

38. The Commission accordingly proposes that, prior to auctions involving reconfigured licenses, the Commission specify, as necessary, a method for apportioning the bid on a

reconfigured license among the license's component parts. Using a MHz–pops ratio would be suitable for such an apportionment, as the Commission has successfully employed the ratio to apportion small business bidding credit amounts in order to calculate unjust enrichment payments. However, the Commission proposes to retain the flexibility to select another method of apportionment should it identify a method that it believes would better suit the particular licenses involved. Further, the Commission proposes to use methods for package bid apportionment and individual license bid apportionment in concert when circumstances warrant. The Commission seeks comment on these proposals.

iv. Conforming Broadcast Construction Permit Payment Procedures With Part 1 Rules

39. The Commission's part 1 rules currently provide that, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following the release of a public notice establishing the payment deadline. In recent wireless spectrum auctions, the Commission has required each winning bidder to submit the balance of the net amount of its winning bid(s) within ten (10) business days after the deadline for submitting down payments. This procedural change was necessary to guard against payment defaults that may then lead to bankruptcy filings and litigation that tie up the availability of the defaulted licenses. Specific part 73 and 74 rules, however, provide that winning bidders in broadcast service auctions must render their final payment for construction permits won through competitive bidding after their long-form applications have been processed, any petitions to deny have been dismissed or denied, and the public notice announcing that broadcast construction permits are ready to be granted has been released. Recognizing the discrepancy between these auction payment procedures, the Commission, in the *Auction No. 37 Procedures Public Notice*, 69 FR 42729, July 16, 2004, noted that it would consider future changes to the broadcast rules to conform the broadcast final payment procedures to the analogous part 1 rules.

40. One of the primary objectives of the Commission's auction rules is to ensure that only serious, financially qualified applicants receive licenses and construction permits so that the provision of service to the public is expedited. The Commission has determined that the timely payment of auction obligations is one of the means by which it can be assured of the financial qualifications, and thus the seriousness, of a winning bidder. Moreover, the Commission has consistently stated that those entities that plan to participate in an auction must have the appropriate financing in place before the start of the auction. Recent judicial clarifications of the relationship between the Commission's authority under section 309(j) of the Communications Act and creditor protections under the Bankruptcy Code have shifted significant risk to the government in the event an auction payment defaulter attempts to tie up the unpaid licenses won at auction in bankruptcy litigation. Accordingly, when establishing the payment schedule for licenses won at auction, the Commission protects the integrity of the auction program and the availability of licenses by ensuring timely full payment and minimizing the opportunity to "game" the auction and license assignment processes. By harmonizing the broadcast auction payment procedures with the Commission's part 1 rules, the Commission seeks to apply its rules consistently in furtherance of the public interest.

41. While the part 73 and part 74 broadcast auction rules reference the part 1 final payment rule, the more specific payment provisions in the broadcast rules preclude application of the part 1 final payment procedures. To conform the part 73 and part 74 broadcast rules and make them consistent with the existing competitive bidding and payment procedures contained in part 1 of its rules, the Commission proposes to adopt for broadcast auctions the final payment procedures in its part 1 rules. Specifically, the Commission proposes to incorporate into its part 73 and part 74 broadcast auction rules the part 1 rule requiring that, unless otherwise specified by public notice, winning bidders in a broadcast auction are required to pay the balance of their winning bids in a lump sum within ten (10) business days following the release of a public notice establishing the payment deadline. The Commission seeks comment on this proposal. Under its current practice, the Commission informs prospective bidders of final payment procedures in a public notice announcing the procedures for the auction. The Commission believes that amending the final payment deadline for broadcast auctions to conform to the Commission's existing procedures for wireless auctions will provide consistency throughout its competitive bidding rules and help to achieve the Commission's objective that only sincere, financially qualified applicants participate in competitive bidding. The Commission further believes that providing greater certainty to all winning bidders regarding when final payment will be due will also benefit them as they compete with other sincere bidders that have also secured the financing necessary to participate in an auction and pay for their licenses. In wireless spectrum auctions, winning bidders, including small businesses, have been able to comply with the Commission's new final payment procedure without difficulty. The Commission therefore believes that winning bidders in broadcast auctions should be able to comply with this change with similar ease. The Commission seeks comment on this proposal.

v. Improving Procedures for Using the Consortium Exception to the Designated Entity and Entrepreneur Aggregation Rule

42. For purposes of determining whether an applicant or licensee is eligible for small business or broadband PCS entrepreneur status, the Commission attributes to the applicant the gross revenues (and, when determining broadband PCS entrepreneur eligibility, the total assets) of the applicant's affiliates, its controlling interests, and the affiliates of its controlling interests, and aggregates these amounts with the applicant's own gross revenues (and total assets). Calculated in this manner, the applicant's gross revenues (and total assets) must not exceed the caps established by the Commission for particular services. However, under an exception to this aggregation rule, where an applicant or licensee is a consortium comprised exclusively of members eligible for small business bidding credits or broadband PCS entrepreneur status, or both, the gross revenues (and total assets) of the consortium members are not aggregated. In other words, so long as each member of a consortium individually meets the financial caps for small business bidding credits (or broadband PCS entrepreneur status), the consortium will be eligible for such credits (or for entrepreneur-only broadband PCS licenses), regardless of whether the gross revenues (or total assets) of all consortium members would, if aggregated, exceed the caps. The consortium exception, originally adopted on a service-by-service basis where capital costs of auction

participation were high, is intended to enable small businesses or entrepreneurs to pool their resources to help them overcome this challenge to capital formation.

43. The Commission has provided some direction as to how the consortium exception should be implemented by parties wishing to establish such consortia, but the Commission is concerned that there remains uncertainty about the operation of the exception in certain situations. For example, the Commission has said that before or during the auction individual members of a bidding consortium may withdraw from the consortium with regard to some licenses selected on the consortium's short-form application, while remaining a part of the consortium for purposes of bidding on all other licenses specified. If consortium members agree that any of their members may withdraw in this fashion, such an agreement must be disclosed on an original or amended short-form application. Should the consortium win licenses, its members must file, in conjunction with their long-form application, requests to transfer or assign licenses as necessary to comply with the consortium arrangement.

44. Apart from this guidance, the Commission has not explained how consortia should proceed once they have won licenses, nor has it considered the problems that allowing consortia to become licensees may cause. The consortium exception has been seldom used, and the Commission suspects that one reason for this infrequent use has been the absence of clear direction from the Commission as to how consortium members should be formally organized or how (and when) members should allocate and own the licenses they win. For example, contractual disputes may arise between members of consortia, with a resulting delay in buildout and the provision of service. Similarly, problems may occur should one or more members of a licensed consortium file for bankruptcy protection. And if consortium members agree after the auction to divide their license holdings among themselves without first applying for Commission approval, they may be held accountable for unauthorized assignments or transfers of control. Not only would such difficulties impede service to the public and consume Commission resources, they would prove expensive and time consuming for the small businesses involved.

45. In order to provide additional guidance to those interested in taking advantage of the consortium exception and to reduce the likelihood of complications resulting from the exception's use, the Commission seeks comment on possible policy options for improving the pre- and post-auction procedures governing the consortium exception to facilitate its use among small businesses facing capital formation constraints. For example, the Commission seeks comment on whether it should adopt a new requirement that each member of the consortium file an individual long-form application for its respective, mutually agreed-upon license(s), following an auction in which a consortium has won one or more licenses. To comply with this requirement, consortium members would, prior to filing their short-form application, have reached an agreement as to how they would allocate among themselves any licenses (or disaggregated or partitioned portions of licenses) they might win, and they would have disclosed this agreement on their short-form application as required by the Commission's disclosure rules. The Commission further seeks comment on whether, in order for two or more consortium members to be licensed together for the same license(s) (or disaggregated or partitioned portions thereof), they should be required to form a legal business entity, such as a corporation, partnership, or limited liability company, after having disclosed this intention on their short-form and long-form applications. In particular, the Commission seeks comment on whether such new entities would have to meet its small business or entrepreneur financial limits and whether allowing these entities to exceed the limits would be consistent with its existing designated entity and broadband PCS entrepreneur rules, as well as its obligations under the Communications Act. As commenters address these issues and any other options proposed by interested parties, the Commission is particularly interested in their views about how these approaches might work in the context of package bidding and to what extent adopting these proposals might encourage wider use of the consortium exception.

III. Conclusion

46. For the reasons stated, the Commission seeks comment on the foregoing proposed changes in its competitive bidding rules set forth in the *Notice of Proposed Rule Making*.

IV. Procedural Matters and Ordering Clauses

A. Ex Parte Rules—Permit-But-Disclose Proceeding

47. For purposes of this permit-but-disclose notice and comment proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the sunshine Agenda period, provided that the presentations are disclosed pursuant to the Commission's rules.

B. Initial Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals suggested in the *Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Notice*, and must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 55. The Commission will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Notice* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

i. Need for, and Objectives of, the Proposed Rules

58. This *Notice* proposes modifications to existing Commission rules for the purposes of implementing the recently enacted Commercial Spectrum Enhancement Act (CSEA). CSEA establishes a mechanism to use spectrum auction proceeds to reimburse federal agencies operating on certain frequencies that have been reallocated from federal to non-federal use for the cost of relocating their operations. The *Notice* also proposes a number of changes to the Commission's competitive bidding rules that are necessary, apart from CSEA, to bring the rules in line with the current requirements of the Commission's auctions program.

59. *Reserve price rule.* CSEA requires the total cash proceeds from any auction of eligible frequencies to equal at least 110 percent of the total estimated relocation costs provided to the Commission by National Telecommunications and Information Administration (NTIA). To implement this requirement, CSEA directs the Commission to revise its reserve price

regulations adopted pursuant to section 309(j)(4)(F) of the Communications Act. The Commission proposes, therefore, to modify its existing reserve price rule (§ 1.2104(c)) to add a requirement that, for any auction of eligible frequencies under CSEA, the Commission will establish a reserve price (or prices) that ensures that the "total cash proceeds" attributable to such spectrum will equal at least 110 percent of the total estimated relocation costs provided to the Commission by NTIA.

60. *Tribal land bidding credit rule.* In an effort to encourage carriers to provide telecommunications services to tribal lands with historically low telephone service penetration rates, the Commission makes tribal land bidding credits available to auction winners that serve qualifying tribal lands. Under the Commission's current rules, in auctions that include spectrum covering qualifying tribal lands, the Commission may not know for at least 180 days after the long-form application deadline how much of a discount on the auction's winning bids it will have to allow for tribal land bidding credits. In auctions subject to CSEA, this timing could lead to substantial post-auction delay in calculating whether total cash proceeds meet the 110 percent revenue requirement. Accordingly the Commission seeks comment on possible methods of ensuring that the Commission will be able to promptly calculate total cash proceeds while at the same time preserving the availability of tribal land bidding credits in auctions subject to CSEA. Specifically, in the *Notice*, the Commission seeks comment on (a) awarding tribal land bidding credits on a pro rata basis out of the funds exceeding 110 percent of the total estimated relocation costs, (b) awarding tribal land bidding credits on a first-come, first-served basis out of the funds exceeding 110 percent of the total estimated relocation costs, and (c) requiring applicants to specify on their short-form applications any licenses for which they intend to seek a tribal land bidding credit, should they win, so that the Commission can calculate the amount necessary to satisfy CSEA's reserve price requirement if winning bidders receive the maximum tribal land bidding credits for which they indicate an interest on their short-form applications. The *Notice* also invites commenters to propose other methods and seeks comment on adopting the same method as that used for auctions subject to CSEA, or a similar approach, for other, non-CSEA auctions for which the Commission establishes a reserve price based on winning bids net of all bidding credits.

61. *Default payment rule clarification.* Under § 1.2104(g) of the Commission's rules, a high bidder that defaults or is disqualified after the close of an auction is subject to a default payment consisting of two parts—a "deficiency payment" and an "additional payment." The deficiency payment is equal to the payment required for a withdrawn high bid, *i.e.*, the difference between the amount of the defaulted (or withdrawn) bid and the amount of a lower winning bid in the same or a subsequent auction. In the event that a bidding credit applies to any of the bids, the deficiency payment equals the difference between either the net defaulted bid and the subsequent net winning bid or the gross defaulted bid and the subsequent gross winning bid, whichever difference is less. The additional payment is equal to 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulting bidder's bid or the subsequent winning bid, whichever is less.

62. No deficiency payment is assessed when either the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the original defaulted bid. It is unclear from the existing rule whether, in such a situation, the additional payment should be a percentage of the higher intervening subsequent withdrawn bid or of the subsequent winning bid. To clarify the rule, the Commission proposes that when, in a subsequent auction, there is a higher withdrawn bid but no winning bid for a license that corresponds to a defaulted license, the additional default payment will be determined as 3 percent (or 25 percent) of the defaulting bidder's bid. The Commission also proposes a further clarification of the additional payment rule for certain situations in which no deficiency payment is owed, because, under the current rule, it is unclear under the current rule whether the additional payment should be based on the net defaulted bid or on the gross defaulted bid. Pursuant to the Commission's proposal, the additional payment in such a situation would be 3 (or 25) percent of the net defaulted bid amount.

63. *Interim withdrawal and additional default payment rules.* When a license for which there has been a withdrawn high bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is either subject to a higher bid or won in a subsequent auction. In such a case, under the Commission's existing rule, the bidder responsible for the withdrawn high bid is assessed an interim bid withdrawal payment equal to 3 percent of the amount of its withdrawn bid, and this interim payment is applied toward any final bid withdrawal payment that is ultimately assessed. As noted in the previous paragraph, a high bidder that defaults or is disqualified after the close of an auction is subject to a default payment consisting of a deficiency payment and an additional payment. Currently, the additional payment is calculated as 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulting bidder's bid or the subsequent winning bid, whichever is less, except that no deficiency payment is assessed when either the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the original defaulted bid. In an effort to discourage withdrawals and defaults, both of which pose an ongoing threat to the integrity of the auctions process, the Commission proposes to increase the current limits on the interim withdrawal payment and the additional default payment from 3 percent to 20 percent each, with the specific percentage to be set by the Commission in advance of each auction.

64. *Package bid and license apportionment.* In combinatorial (package) bidding, bidders place single all-or-nothing bids on groups (or packages) of licenses. Thus, there are no identifiable bid amounts on the individual licenses composing packages of more than one license. Similarly, when the Commission reconfigures licenses, with respect to either geographic or spectral dimensions, following an initial auction, there may not be identifiable bid amounts on licenses comparable to those offered in the initial auction. However, there are several situations in which an individual bid amount is needed for one of the Commission's regulatory calculations, such as calculating a small business bidding credit, an unjust enrichment payment obligation related to such a credit, a tribal land bidding credit limit, or a withdrawal or default payment obligation. Accordingly, the Commission proposes to specify a method for apportioning bids either among the individual licenses composing a package and/or among a license's component parts in advance of each auction that (a) uses a combinatorial bidding design, (b) includes spectrum previously subject to a combinatorial auction, or (c) includes

licenses that have been reconfigured following an initial auction.

65. *Broadcast construction permit rules.* The Commission's part 1 competitive bidding rules provide that, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline. In recent wireless spectrum auctions, winning bidders have been required to submit the balance of the net amount of their winning bids within ten business days after the deadline for submitting down payments. This procedure is necessary to guard against payment defaults that may then lead to bankruptcy filings and litigation that tie up the availability of the defaulted licenses. Specific part 73 and 74 rules, however, provide that winning bidders in broadcast service auctions must render their final payment for construction permits won through competitive bidding only after their long-form applications have been processed, any petitions to deny have been dismissed or denied, and the public notice announcing that broadcast construction permits are ready to be granted has been released. In order to provide consistency throughout the Commission's competitive bidding rules and help to ensure that only sincere, financially qualified applicants participate in competitive bidding, the Commission proposes to adopt for broadcast auctions the final payment procedures in its part 1 competitive bidding rules.

66. *Consortium exception to the designated entity and entrepreneur aggregation rule.* For purposes of determining whether an applicant or licensee is eligible for small business or broadband personal communications services (PCS) entrepreneur status, the Commission attributes to the applicant the gross revenues (and, when determining entrepreneur eligibility, the total assets) of the applicant's affiliates, its controlling interests, and the affiliates of its controlling interests, and aggregates these amounts with the applicant's own gross revenues (and total assets). However, under an exception to this aggregation rule, when an applicant or licensee is a consortium comprised exclusively of members eligible for small business bidding credits or broadband PCS entrepreneur status, or both, the gross revenues (and total assets) of the consortium members are not aggregated. The consortium exception has been seldom used, perhaps because of the absence of clear direction from the Commission as to how consortium members should be formally organized and how (and when) members should allocate and own the licenses they win. In order to provide additional guidance to those interested in taking advantage of the consortium exception and to reduce the likelihood of complications resulting from the exception's use, the Commission seeks comment on possible policy options for improving the pre- and post-auction procedures governing the exception. These options include requiring each member of a consortium to file an individual long-form application for its respective, mutually agreed-upon license(s) and requiring two or more consortium members seeking to be licensed together to form a legal business entity, such as a corporation, partnership, or limited liability company.

ii. Legal Basis

67. The proposed actions are authorized under sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

iii. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

68. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." 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: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the SBA.

69. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

70. The changes and additions to the Commission's part 1 rules proposed in this *Notice* would be of general applicability to all services, applying to all entities of any size that apply to participate in Commission auctions. The changes proposed to parts 73 and 74 of the Commission's rules would apply to all entities of any size that win broadcast construction permits in future competitive bidding. Accordingly, this IRFA provides a general analysis of the impact of the proposals on small businesses rather than a service by service analysis. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date, 1927 out of a total of 2498 qualified bidders either have claimed eligibility for small business bidding credits or have self-reported their status as small businesses as that term has been defined under rules adopted by the Commission for specific services. These figures do not generally include applicants for auctions of broadcast construction permits where sized-based bidding preferences have not been available.

iv. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

71. Pursuant to one of the options set forth to change the tribal land bidding credit rule, the Commission would award tribal land bidding credits on a first-come, first-served basis in auctions subject to a CSEA or other reserve price. This option, if adopted, would not alter the burdens on auction winners of licenses covering qualifying tribal land with regard to reporting or recordkeeping; however, it might encourage them to submit the required certifications sooner than they otherwise would have. Pursuant to another option to change the tribal land bidding credit rule, auction applicants of all sizes would be required to indicate on their short-forms any intention to seek tribal land bidding credits should they win qualifying licenses. While this requirement would increase the reporting burden on applicants planning to seek such

credits, the burden would likely be as minimal as checking off a box.

72. The proposal to increase the current limits on the interim withdrawal payment and the additional default payment from 3 percent to 20 percent each would, to the extent that the respective payment had been set at more than 3 percent, increase the financial burden on entities of any size that withdrew a high bid or defaulted on a payment obligation. However, by refraining from withdrawing high bids and defaulting on payment obligations, entities could avoid any such increased financial burden.

73. Adopting for broadcast auctions the final payment procedures of the Commission's part 1 competitive bidding rules might require future winners of broadcast construction permits, both large and small, to submit their final payments for such permits sooner than would have been required in the absence of the proposed rule changes.

74. Requiring each member of a consortium to file an individual long-form application for its respective, mutually agreed-upon license(s) or requiring two or more consortium members seeking to be licensed together to form a legal business entity might increase the reporting requirements and/or regulatory compliance burdens on auction applicants using the consortium exception, all of which would be small businesses or broadband PCS entrepreneurs. However, adopting these requirements might also increase use of the consortium exception, thus increasing the availability of small business bidding credits and entrepreneur eligibility.

75. None of the other proposals in the *Notice* would alter reporting, recordkeeping, or other compliance requirements.

v. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

76. 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): (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (c) the use of performance, rather than design, standards; and (d) an exemption from coverage of the rule or any part thereof for small entities. The Commission has considered the economic impact on small entities of the following rule changes and additions proposed in the *Notice* and has taken steps to minimize the burdens on small entities.

77. The Commission has sought comment on several options for modifying its tribal land bidding credit rule in order to determine which of the options best ensures that the Commission will be able to comply with CSEA's reserve price requirement while at the same time preserving the availability of tribal land bidding credits in auctions subject to CSEA.

78. Adoption of the proposed increases to the current limits on the interim withdrawal payments and additional default payments would benefit small entities more than it would burden them. For example, the proposal to provide the Commission with the option of increasing the size of the interim withdrawal payment is intended to discourage strategic withdrawals. Such bid withdrawals could have a significant adverse effect on the competitiveness of small entities in the auctions process. Moreover, to the extent that the proposed increase in the additional default payment encourages bidders to realistically assess in advance their ability to pay for their bids, a larger payment requirement may prevent bidders from placing bids they cannot afford.

79. With regard to its proposal to modify its payment rules for broadcast construction permits, the Commission believes that amending the final payment deadline for broadcast auctions to conform to its existing procedures for wireless auctions would provide consistency throughout its competitive bidding rules and help to achieve its objective that only sincere, financially qualified applicants participate in competitive bidding. The Commission further believes that providing greater certainty to all winning bidders regarding when final payment will be due will also benefit them as they compete with other sincere bidders that have also secured the financing necessary to participate in an auction and pay for their licenses. The Commission notes that in wireless spectrum auctions, winning bidders, including small businesses, have been able to comply with the Commission's new final payment procedure without difficulty, and it therefore surmises that winning bidders of all sizes in broadcast auctions should be able to comply with this change with similar ease.

80. The Commission's goal in requesting comment on possible modifications to the consortium exception to the small business and entrepreneur aggregation rule is to promote wider use of the exception and thus to increase the competitive bidding opportunities available to small entities facing capital formation constraints. To that end, the Commission has specifically requested that commenters address whether adopting the rule changes discussed might encourage wider use of the consortium exception.

vi. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

81. None.

C. Ordering Clauses

84. Accordingly, *it is ordered that,* pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), this Notice of Proposed Rule Making is hereby *adopted.*

85. *It is further ordered* that 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 Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications common carriers, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Income taxes, Indemnity payments, Individuals with disabilities, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Television, Wages.

47 CFR Part 73

Civil defense, Communications equipment, Defense communications, Education, Equal employment opportunity, Foreign relations, Mexico, Political candidates, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Research, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 73, and 74 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

2. Amend § 1.2103 by adding paragraphs (b)(1) and (b)(2) to read as follows:

§ 1.2103 Competitive bidding design options.

* * * * *

(b) * * *

(1) *Apportioned package bid.* The apportioned package bid on a license is an estimate of the price of an individual license included in a package of licenses in an auction with combinatorial (package) bidding. Apportioned package bids shall be determined by the Commission according to a methodology it establishes in advance of each auction with combinatorial bidding.

(2) *Substitute for bid amount.* The apportioned package bid on a license included in a package shall be used in place of the amount of an individual bid on that license when the bid amount is needed to determine the size of a designated entity bidding credit (see § 1.2110(f)(1) through 1.2110(f)(2)), a new entrant bidding credit (see § 73.5007 of this chapter), a bid withdrawal or default payment obligation (see § 1.2104(g)), a tribal land bidding credit limit (see § 1.2110(f)(3)(iv)), or a size-based bidding credit unjust enrichment payment obligation (see § 1.2111(d),(e)(2) through (e)(3)), or for any other determination required by the Commission's rules or procedures.

* * * * *

3. Amend § 1.2104 by revising paragraphs (c), (g)(1), and (g)(2); removing paragraph (g)(3); and adding paragraph (j) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(c) *Reserve Price.* The Commission may establish a reserve price or prices, either disclosed or undisclosed, below which a license or licenses subject to auction will not be awarded. For any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)), the Commission will establish a reserve price or prices pursuant to which the total cash proceeds from any auction of eligible frequencies shall equal at least 110 percent of the total estimated relocation costs provided to the Commission by the National Telecommunications and Information Administration pursuant to section 113(g)(4) of such Act (47 U.S.C. 923(g)(4)).

* * * * *

(g) * * *

(1) *Bid withdrawal prior to close of auction.* A bidder that withdraws a high bid during the course of an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). In the event that a bidding credit applies to any of the bids, the bid withdrawal payment is either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. In the case of multiple bid withdrawals on a single license, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn in the same or subsequent auction(s). In the event that a license for which there have been withdrawn bids is not won in the same auction, those bidders for which a final withdrawal payment cannot be calculated will be assessed an interim bid withdrawal payment of between 3 and 20 percent of their withdrawn bids, according to a percentage (or percentages) established by the Commission in advance of the auction. The interim bid withdrawal payment will be applied toward any final bid withdrawal payment that will be assessed at the close of a subsequent auction of the corresponding license.

Example 1 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, Bidder B places a bid of $90 and withdraws. In that same auction, Bidder C wins the license at a bid of $95. Withdrawal payments are assessed as follows: Bidder A owes $5 ($100–$95). Bidder B owes nothing.

Example 2 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, Bidder B places a bid of $95 and withdraws. In that same auction, Bidder C wins the license at a bid of $90. Withdrawal payments are assessed as follows: Bidder A owes $5 ($100–$95). Bidder B owes $5 ($95–$90).

Example 3 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, in that same auction, Bidder B places a bid of $90 and withdraws. In a subsequent auction, Bidder C places a bid of $95 and withdraws. Bidder D wins the license in that auction at a bid of $80. Assuming that the Commission established an interim bid withdrawal payment of 3 percent in advance of the auction, withdrawal payments are assessed as follows: At the end of the first auction, Bidder A and Bidder B are each assessed an interim withdrawal payment equal to 3 percent of their withdrawn bids pending Commission assessment of a final withdrawal payment (Bidder A would owe 3% of $100, or $3, and Bidder B would owe 3% of $90, or $2.70). At the end of the second auction, Bidder A would owe $5 ($100–$95) less the $3 interim withdrawal payment for a total of $2. Because Bidder C placed a subsequent bid that was higher than Bidder B's $90 bid, Bidder B would owe nothing. Bidder C would owe $15 ($95–$80).

(2) *Default or disqualification after close of auction.* A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the high bid at the close of an auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to a default payment consisting of a deficiency payment, described in § 1.2104(g)(2)(i), and an additional payment, described in § 1.2104(g)(2)(ii) through 1.2104(g)(2)(iii). The default payment will be deducted from any upfront payments or down payments that the defaulting bidder has deposited with the Commission.

(i) *Deficiency payment.* The deficiency payment will equal the difference between the amount of the defaulted bid and the amount of the winning bid in a subsequent auction, so long as there have been no intervening withdrawn bids that equal or exceed the defaulted bid or the subsequent winning bid. If the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the defaulted bid, no deficiency payment will be assessed. If there have been intervening subsequent withdrawn bids that are lower than the defaulted bid and higher than the subsequent winning bid, but no intervening withdrawn bids that equal or exceed the defaulted bud, the deficiency payment will equal the difference between the amount of the defaulted bid and the amount of the highest intervening subsequent withdrawn bid. In the event that a

bidding credit applies to any of the applicable bids, the deficiency payment will be based solely on net bids or solely on gross bids, whichever results in a lower payment.

(ii) *Additional payment—applicable percentage.* When the default or disqualification follows an auction without combinatorial bidding, the additional payment will equal between 3 and 20 percent of the applicable bid, according to a percentage (or percentages) established by the Commission in advance of the auction. When the default or disqualification follows an auction with combinatorial bidding, the additional payment will equal 25 percent of the applicable bid.

(iii) *Additional payment—applicable bid.* When no deficiency payment is assessed, the applicable bid will be the net amount of the defaulted bid. When a deficiency payment is assessed, the applicable bid will be the subsequent winning bid, using the same basis—*i.e.*, net or gross—as was used in calculating the deficiency payment.

* * * * *

(j) *Bid apportionment.* Prior to each auction of reconfigured licenses (*i.e.*, licenses having similar, but not identical, geographic and spectral components as licenses made available in one or more prior auctions), the Commission will specify, as necessary, a method for apportioning a bid on a reconfigured license among the license's component parts. The Commission may use such an apportionment for purposes of comparing a bid on the original license with a bid on a reconfigured license.

PART 73—RADIO BROADCAST SERVICES

4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

5. Amend § 73.3571 by revising paragraph (h)(4)(ii) to read as follows:

§ 73.3571 Processing AM broadcast station applications.

* * * * *

(h) * * *

(4) * * *

(ii) Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a) of this chapter. Long-form construction permit applications will be processed and the FCC will periodically release a public notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees, and if the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served.

* * * * *

6. Amend § 73.3573 by revising paragraph (f)(5)(ii) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(f) * * *

(5) * * *

(ii) Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a) of this chapter. Long-form construction permit applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees, and if the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served.

* * * * *

7. Section 73.5003 is revised to read as follows:

§ 73.5003 Submission of full payments.

Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a) of this chapter. If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due in accordance with § 1.2109(a) of this chapter. Broadcast construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees and in accordance with the provisions of this subsection.

8. Amend § 73.5006 by revising paragraph (d) to read as follows:

§ 73.5006 Filing of petitions against long-form applications.

* * * * *

(d) Broadcast construction permits will be granted by the Commission only if the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, and after full and timely payment of winning bids and any applicable late fees. See 47 CFR 73.5003. Construction of broadcast stations shall not commence until the grant of such permit or license to the winning bidder and only after full and timely payment of winning bids and any applicable late fees.

PART 74—RADIO BROADCAST SERVICES

9. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

10. Amend § 74.1233 by revising paragraph (d)(5)(ii) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(d) * * *

(5) * * *

(ii) Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a) of this chapter. Long-form construction permit applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees, and if the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served. If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due in accordance with § 1.2109(a) of this chapter. Construction of the FM translator station shall not commence until the grant of such permit to the winning bidder and only after full and

timely payment of winning bids and any applicable late fees.

* * * * *

[FR Doc. 05–14840 Filed 7–26–05; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 01–309; FCC 05–122]

Hearing Aid-Compatible Telephones

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In an *Order on Reconsideration*, the Commission granted in part and denied in part the petitions for reconsideration of the *Hearing Aid Compatibility Order*, which lifted the blanket exemption for digital wireless telephones under the Hearing Aid Compatibility Act of 1988 (HAC Act). In this document, in order to ensure that the Commission fully effectuates Congress' requirement that it "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing," the Commission seeks comment on two issues related to the Commission's hearing aid compatibility rules.

DATES: Submit comments on or before September 26, 2005 and reply comments are due on or before October 25, 2005.

ADDRESSES: You may submit comments, identified by WT Docket No. 01–309; FCC 05–122, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Andra Cunningham, *Andra.Cunningham@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–1630 or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's *Further Notice of Proposed Rulemaking*, FCC 05–122, adopted on June 9, 2005, and released on June 21, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. In the *Order on Reconsideration*, we clarified that the live, in-store consumer testing requirement applies to all retail outlets owned or operated by wireless carriers or service providers. In addition, we clarified that the *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line. As set forth below, we seek comment on: (1) Extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers, and (2) whether to narrow the *de minimis* exception.

2. First, we seek comment on extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers. Although we clarified today that all retail outlets owned or operated by wireless carriers or service providers must make live, in-store consumer testing available, we are concerned that limiting this requirement to these retail outlets may prevent us from fully effectuating Congress' requirement that we "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing." Moreover, in its petition, the Cellular Telecommunications and Internet Association (CTIA) asks the Commission to "clarify whether the [Commission] has legal authority and the scope of that authority to require retail stores to comply" with the live, in-store testing requirement. Accordingly, we seek comment on this CTIA request. If we find that we have the authority explicitly to extend our hearing aid compatibility rules to independent retailers, should we do so?

3. We also seek comment on the impact that this proposal would have on small business retailers and independent retailers. Would extending this requirement create a more level playing field for different types of retailers? Or, would extending this requirement create an unacceptable burden for independent retailers, small business retailers, or both? For instance, will small business retailers have the physical space to fulfill this requirement? Do small business retailers have the sales volume to support implementation of this requirement? We encourage commenters to be specific as to the impact of this proposed modification.

4. We note that the relationship between independent retailers, whether large or small, and wireless carriers and service providers could have an impact on enforcement of a live, in-store consumer testing requirement. We further note that independent retailers act as agents for wireless carriers and service providers in selling wireless services. As section 217 of the Communications Act explicitly makes carriers responsible for the acts, omissions, and failures of their agents, among others, we seek comment on the nature of any contract provisions that would require the retailers to provide live, in-store consumer testing. Further, because section 217 does not apply to service providers who are not carriers, we seek comment on, whether under provisions of general agency law and the HAC Act, we could require those service providers, in their contracts with retailers selling their wireless services, to require live, in-store consumer testing. We also seek comment on the extent to which carriers and service providers should be expected to monitor and enforce such contract provisions regarding this testing requirement.

5. Finally, we seek comment on how many small business and independent retailers have adopted the fourteen-day trial period for new services set forth in the CTIA Voluntary Consumer Information Code (CTIA Code). Which retailers are bound by the CTIA Code

and offer a fourteen-day trial period? Are there major independent retailers that do not have a two week return policy? What percentage of carriers' service plans is purchased through independent retailers? Do manufacturers own any retail stores? If so, what percentage of manufacturers' handsets is purchased through an independent retailer? Are independent retailers currently preparing to comport with our hearing aid compatibility rules, specifically with our rules on the number of compliant handsets that must be offered for sale and our live, in-store consumer testing rules? Relatedly, we also seek comment on how parties envision consumers with hearing disabilities will be impacted in instances where independent retailers do not provide live, in-store testing or a thirty-day trial period, which the Commission encourages. If some independent retailers do not engage in practices that comport with our hearing aid compatibility rules, how will this present problems for hearing-impaired consumers? For instance, do parties foresee instances where independent retailers would claim that certain wireless phone models are compliant yet would not allow consumers to return handsets if hearing aid compatibility-related problems arose? Have there already been instances where independent retailers have claimed that certain phone models were hearing aid-compatible but refused to allow consumers to return handsets if hearing aid compatibility-related problems arose? We have determined that the ability to return handsets that do not comply with our rules is not a substitute for an in-store testing requirement for stores owned or operated by wireless carriers or service providers. What characteristics or independent retailers would support a different determination for the application of the in-store testing requirement in their case? Would returning wireless phones that present hearing aid compatibility-related problems be more difficult when handsets are purchased from an independent retailer or a small business retailer? We intend to follow these developments closely after the September 16, 2005, handset deployment date. As noted earlier, we believe that persons with hearing disabilities must have a meaningful opportunity and sufficient time to identify and become familiar with digital wireless phones.

6. Second, we seek comment on whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, or whether we should narrow the *de minimis* exception in some other way. Specifically, we seek comment on whether the current rule reduces the ability of consumers with hearing aids and cochlear implants to have access to wireless devices. We seek comment on whether any particular modification that would narrow the *de minimis* exception would increase costs to all consumers, including those with and without hearing disabilities, or discourage market entry by manufacturers. We seek comment on the number of wireless carriers, service providers and manufacturers that would be affected by any such change in the rule, including the impact on small businesses. We encourage commenters to be specific and to provide empirical evidence as to the impact of narrowing the *de minimis* exception.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

7. This is a permit-but-disclose rulemaking proceeding, subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

B. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 26, 2005 and reply comments on or before October 25, 2005. All filings related to this *Notice of Proposed Rulemaking* should refer to WT Docket No. 01–309.

9. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

10. Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.

11. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

12. 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, filers must submit two additional copies for each additional docket or rulemaking number.

13. 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

14. The Commission's contractor 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.

15. 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.

16. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

17. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

18. *Availability of documents.* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW.,

Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at the following e-mail address: *http://www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act

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

II. Initial Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *Further Notice of Proposed Rule Making*. Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in paragraph 77 of the Commission's order. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

21. In the *Order on Reconsideration*, we clarified that the live, in-store consumer testing requirement applies to all carrier-owned and operated retail outlets. In addition, we clarified that the *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line.

22. In the *Further Notice of Proposed Rulemaking*, the Commission seeks comment on:

- Extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers; and
- Whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception.

Legal Basis

23. Authority for issuance of this item is contained in sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

24. 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. 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). As of the year 2002, according to SBA data, there were approximately 22.4 million small businesses nationwide.

25. Neither the Commission nor the SBA has developed specific definitions for small providers of the industries affected. Therefore, throughout our analysis, unless otherwise indicated, the Commission uses the applicable generic definitions under the SBA rules, and the North American Industry Classification System (NAICS) categories. In addition, to facilitate our analysis, we utilize the Commission's report, *Trends in Telephone Service (Trends)*, published annually by the Commission's Wireline Competition Bureau. Below, we further describe and estimate the number of small entities that may be affected by the proposed rules, if adopted.

26. *Cellular and Other Wireless Telecommunications and Paging.* The SBA has developed a size standard for wireless small businesses within the two separate categories of Cellular and Other Wireless Telecommunications, and Paging. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 975 companies reported that they were engaged in the provision of wireless service. Of these 975 companies, an estimated 767 have 1,500 or fewer employees and 208 have more than 1,500 employees. Consequently, we estimate that a majority of small wireless service providers may be affected by the proposed rules, if adopted.

27. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

28. *Radio, Television, and Other Electronics Stores.* "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a small business size standard for this category of retail store; that size standard is $7.5 or less in annual revenues. According to Census Bureau data for 1997, there were 8,328 firms in this category that operated for the entire year. Of these, 8,088 firms had annual sales of under $5 million, and an additional 132 had annual sales of $5 million to $9,999,999. Therefore, the majority of these businesses may be considered to be small.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

29. The *FNPRM* seeks comment on two of the Commission's existing hearing aid compatibility rules. First, all retail outlets owned or operated by wireless carriers or service providers must make live, in-store consumer testing available at this time. The Commission is seeking comment on extending this requirement to additional retail outlets. Second, the *de minimis* exception currently exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, and applies on a per air interface basis. The Commission is seeking comment on narrowing the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception.

30. The proposals set forth in the *FNPRM* do not entail reporting, recordkeeping, and/or third-party consultation. The *FNPRM* seeks comment on two of the Commission's existing hearing aid compatibility rules.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. 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.

32. The *FNPRM* seeks comment two of the Commission's hearing aid compatibility rules and could impact small entities. As noted in the *Hearing Aid Compatibility Order*, however, the critical nature of hearing aid compatibility with wireless phones limits the Commission's ability to provide small wireless carriers, service providers and handset manufacturers with a substantially less burdensome set of regulations than that placed on larger entities. Nonetheless, as set forth in the *Order on Reconsideration* and the *FNPRM*, the Commission continues to recognize that certain manufacturers and service providers, which may have only a small presence in the market, may be impacted by any future actions. We specifically seek comment on alternatives that might lessen any adverse economic impact on small entities, while fulfilling the goals of this proceeding.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

III. Ordering Clauses

34. Pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 610, this *FNPRM* is adopted.

35. It is further ordered that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Further Notice of Proposed Rulemaking* on or before September 26, 2005 and reply comments on or before October 25, 2005.

36. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Further Notice of Proposed Rulemaking* and the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14614 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 70, No. 143
Wednesday, July 27, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Private Voluntary Cooperation/ American Schools and Hospitals Abroad; Announcement of Changed Criterion #8 of the American Schools and Hospitals Abroad (ASHA) Program; Notice

The U.S. Agency for International Development is announcing changed Criterion #8 of the American Schools and Hospitals Abroad program, pursuant to section 214 of the Foreign Assistance Act of 1961, as amended. The program criteria serve as administrative guidance for considering the acceptability and relative merits of applicants.

FOR FURTHER INFORMATION CONTACT: Mr. George Like (202) 712–1766, ASHA, U.S. Agency for International Development, Washington, DC 20523.

SUPPLEMENTARY INFORMATION: On November 26, 1979, the U.S. Agency for International Development published 11 Program Criteria for the American Schools and Hospitals Abroad program. Originally Criterion #8 stated "The institution must be open to all persons regardless of race, religion, sex, color or national origin. (The above shall not be construed to require enrollment of students of both sexes at an educational institution enrolling males or females only.) Assistance may not be used to train persons for religious pursuits or to construct buildings or other facilities intended for worship or religious instruction."

On December 16, 2002, Executive Order 13279 "Equal Protection of the Laws for Faith-Based and Community Organizations" was published in the **Federal Register** (67 FR 77145). In partial fulfillment of that Executive Order, on October 21, 2004, the U.S. Agency for International Development announced in the **Federal Register** (69 FR 61785) proposed changes to Criterion #8 of the American Schools and Hospitals Abroad program. The Agency provided a 60-day comment period on the announced proposed changes, which ended on December 20, 2004. No public comments on the proposed changes were received.

Accordingly, Criterion #8 of the American Schools and Hospitals Abroad program is changed to "The institution must be open to all persons regardless of race, religion, sex, color or national origin. (The above shall not be construed to require enrollment of students of both sexes at an educational institution enrolling males or females only.) Direct assistance may not be used to support any inherently religious activities, such as worship, religious instruction or proselytization."

Leonard M. Rogers,

Deputy Assistant Administrator, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 05–14866 Filed 7–26–05; 8:45 am]

BILLING CODE 6116–01–PF

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 21, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OBM control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: National School Lunch Program.

OMB Control Number: 0584–0006.

Summary of Collection: Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 9(h) of the Richard B. Russell School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by increasing the number of mandatory food safety inspections for schools participating in the National School Lunch Program and the School Breakfast Program from one to two per year and by requiring schools to post the most recent inspection report in a visible location and to release a copy of the report to the public upon request.

Need and Use of the Information: The information will be collected to ensure that State agencies annually monitor the number of food safety inspections obtained by schools and to submit the results to the Food and Nutrition Service for each fiscal year 2006 through 2009.

Description of Respondents: State, Local, or Tribal Government, Individuals or household, Business or other for-profit, Not-for-profit institutions, Federal Government.

Number of Respondents: 121,165.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually.

Total Burden Hours: 9,480,695.

Food and Nutrition Service

Title: 7 CFR Part 226 Child and Adult Care Food Program.

OMB Control Number: 0584–0055.

Summary of Collection: Section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766) authorizes the Secretary of Agriculture to provide each reimbursement and commodity assistance, on a per meal basis, for food service to children in nonresidential child care centers and family day care home, and to eligible adults in nonresidential adult day care centers. Section 119 of the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265 amended the Richard B. Russell National School Lunch Act to increase the duration of tiering determinations from three years to five years for family or group day care homes whose tiering status is derived from school data. The Food and Nutrition Service (FNS) has established application, monitoring, recordkeeping, and reporting requirements to manage the Program effectively, and ensure that the legislative intent of this mandate is responsibly implemented.

Need and Use of the Information: FNS and State agencies administering the Program will use the collected information to determine eligibility of institutions to participate in the CACFP, ensure acceptance of responsibility in managing an effective food service, implement systems for appropriating Program funds, and ensure Compliance with all statutory and regulatory requirements.

Description of Respondents: State, Local or Tribal Government; Individuals or households; Not-for-profit institutions.

Number of Respondents: 4,480,796.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Biennially; Semi-annually; Monthly and Annually.

Total Burden Hours: 5,779,223.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–14766 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Intent To Seek Approval To Collect Information

AGENCY: Office of the Secretary, USDA.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Office of the White House Liaison's intention to request an extension of the currently approved manner of information collection (form AD–755) for all Advisory Committee Membership Background Information—expiration February 28, 2006.

DATES: Comments on this notice must be received by September 23, 2005.

ADDRESSES: Address all comments concerning this notice to Mica Robertson, Office of the White House Liaison, Telephone: (202) 720–2406, 1400 Independence Avenue, SW., the Whitten Building, Room 219A, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Advisory Committee Membership Background Information. OMB Number 0505–0001.

FOR FURTHER INFORMATION CONTACT: Mica Robertson at the above address or telephone: (202) 720–2406.

Expiration Date of Approval: February 28, 2006.

Type of Request: To extend the use of the currently approved information collection form (AD–755).

Abstract: The primary objective for the use of the AD–755 form is to determine the qualifications, suitability and availability of a candidate to serve on advisory committees and/or research and promotion boards. The information will be used to both conduct background clearances and to compile annual reports on advisory committees.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 1684.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 842.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments to: Mica Robertson, Office of the White House Liaison, 1400 Independence Avenue, SW., the Whitten Building, Room 219–A, Washington, DC 20250. 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.

Mike Johanns,

Secretary of Agriculture.

[FR Doc. 05–14781 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Land Management Plan for the National Forests in Mississippi

AGENCY: Forest Service, USDA.

ACTION: Notice of adjustment to an ongoing plan revision process.

SUMMARY: The National Forests in Mississippi elects to adjust its land management plan revision process from compliance with the 1982 planning regulations, to conformance with new planning regulations adopted in January 2005. This adjustment will have the following effects:

(1) The revised forest plan will consist of five components organized into three main parts or sections, making it more strategic and flexible (36 CFR part 219).

(2) The Responsible Official who approves the final plan will be the Forest Supervisor instead of the Regional Forester (36 CFR 219.2).

(3) The National Forests in Mississippi will establish an environmental management system simultaneously with completion of the revised forest plan (36 CFR 219.5).

(4) The National Forests in Mississippi will prepare a comprehensive evaluation for plan revision in conjunction with development of the revised plan (36 CFR 219.6).

(5) Pending final rulemaking, the planning and decision-making process may be categorically excluded from analysis and documentation in an environmental impact statement and record of decision (see draft rule at 70 FR 1062, January 5, 2005).

(6) Administrative review will consist of a pre-decision objection process (36 CFR 219.13).

DATES: Transition is effective immediately upon publication of this notice in the **Federal Register**, July 27, 2005.

ADDRESSES: Submit written comments to; Forest Plan Revision, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, MS 39269. Electronic mail should include "Forest Plan Revision" in the subject line and be sent to: *Mississippi_Plan@fs.fed.us.* Forest plan revision World Wide Web internet address is: *http://www.fs.fed.us/r8/mississippi/forest_plan/.*

FOR FURTHER INFORMATION CONTACT: Jeff Long, Planning Team Leader, National Forests in Mississippi, (601) 965–4391; TTY (601) 965–6038.

SUPPLEMENTARY INFORMATION: The Bienville, Delta, De Soto, Holly Springs, Homochitto, and Tombigbee National Forests are managed as a single administrative unit (National Forests in Mississippi). In December of 1999, the National Forests in Mississippi formally initiated its land management plan revision process with publication of a notice of intent to prepare an environmental impact statement for plan revision (64 FR 69686, December 14, 1999). After that initiation, several delays were experienced due to budget and administrative matters. In anticipation of funding becoming available in fiscal year 2004, the National Forests in Mississippi published a second (or revised) notice of intent in September 2003 (68 FR 55576, September 26, 2003). When plan revision began again in earnest in 2004, the National Forests in Mississippi resumed formal public involvement activities including hosting "open houses" in September and October 2004 around the state. There has been considerable public participation and collaborative work on this planning process over the past few years, including more than 35 public meetings to date. Input from previous public involvement will continue to be considered along with additional (ongoing) collaborative efforts during development of the plan revision components under the January 5, 2005, Planning Rule (70 FR 1023, January 5, 2005).

The plan revision process will continue to be an open planning process with numerous opportunities for the public to obtain information, provide comment, or participate in collaborative stakeholder activities. Options for the public include any of the following methods:

(1) Reviewing and commenting on the preliminary plan components, analysis results, and supporting maps posted on our Web site,

(2) Attending open house meetings,

(3) Requesting planning team presentations to specific groups,

(4) Newsletters, or

(5) Providing input during formal comment periods.

The focal points of the future collaborative work will be:

(1) Review and adjustment of the preliminary proposed action (desired conditions and suitability of land areas for various purposes) and identification of options.

(2) Development of management objectives to assist in attaining or maintaining desired conditions.

(3) Formulation of guidelines to serve as operational controls to help ensure projects move toward or maintain desired conditions.

(4) Development of the plan monitoring framework and environmental management system to guide adaptive management. We expect to complete this phase of collaboration during the fall of 2005.

Our remaining forest plan revision schedule will be approximately as follows:

(1) Release of draft forest plan and start of 90-day public comment period, spring 2006,

(2) Release of final plans and start of 30-day objection period, fall 2006,

(3) Final decision and start of plan implementation, winter 2006.

Antoine L. Dixon, Forest Supervisor, National Forests in Mississippi, is the Responsible Official (36 CFR 219.2(b)(1)).

(Authority: 36 CFR 219.9(b)(2)(i), 70 FR 1023, January 5, 2005)

Dated: July 15, 2005.

Antoine L. Dixon,

Forest Supervisor, National Forests in Mississippi.

[FR Doc. 05–14879 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Invitation for Nominations to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service (NASS), USDA.

ACTION: Solicitation of nominations for Advisory Committee on Agriculture Statistics Membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces an invitation from the Office of the Secretary of Agriculture for nominations to the Advisory Committee on Agriculture Statistics.

On November 24, 2004, the Secretary of Agriculture renewed the Advisory Committee charter for another 2 years. The purpose of the Committee is to advise the Secretary of Agriculture on the scope, timing, content, *etc.*, of the periodic censuses and surveys of agriculture, other related surveys, and the types of information to obtain from respondents concerning agriculture. The Committee also prepares recommendations regarding the content of agriculture reports and presents the views and needs for data of major suppliers and users of agriculture statistics.

DATES: Nominations must be received by August 26, 2005 to be assured of consideration.

ADDRESSES: Nominations should be mailed to Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5041A South Building, Washington, DC 20250–2000. In addition, nominations may be mailed electronically to *hq_aa@nass.usda.gov.* In addition to mailed correspondence to the addresses listed above, nominations may also be faxed to (202) 720–9013.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, (202) 720–4333.

SUPPLEMENTARY INFORMATION: Nominations should include the following information: name, title, organization, address, telephone number, and e-mail address. Each person nominated is required to complete an Advisory Committee Membership Background Information form. This form may be requested by telephone, fax, or e-mail using the information above. Forms will also be available from the NASS home page *http://www.usda.gov/nass* by selecting "Agency Information," "Advisory Committee on Agriculture Statistics." Completed forms may be faxed to the number above, mailed, or completed and e-mailed directly from the Internet site.

The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging issues

in the agriculture community that can affect agriculture statistics activities.

The Committee, appointed by the Secretary of Agriculture, consists of 25 members representing a broad range of disciplines and interests, including, but not limited to, representatives of national farm organizations, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Members serve staggered 2-year terms, with terms for half of the Committee members expiring in any given year. Nominations are being sought for 13 open Committee seats. Members can serve up to 3 terms for a total of 6 consecutive years. The Chairperson of the Committee shall be elected by members to serve a 1-year term.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The duties of the Committee are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture; Under Secretary for Research, Education, and Economics; or the Administrator of NASS may request. The Committee will meet at least annually. All meetings are open to the public. Committee members are reimbursed for official travel expenses only.

Send questions, comments, and requests for additional information to the e-mail address, fax number, or address listed above.

Signed in Washington, DC, July 8, 2005.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 05–14778 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Muddy Fork of the Illinois River Watershed, Washington County, AR

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact (FONSI).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650), U.S. Department of Agriculture, Natural Resources Conservation Service, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Lake Prairie Grove, Multiple Purpose Structure No. 4, Muddy Fork of the Illinois River Watershed, Washington County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225, phone (501) 301–3100.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of this project is to provide for the rehabilitation of the multiple purpose flood control and water supply structure No. 4 located southwest of Prairie Grove, Arkansas in the Muddy Fork of the Illinois River Watershed. The planned works of rehabilitation includes raising the dam height, adding a structural auxiliary spillway, and modifying the existing auxiliary spillway.

A limited number of copies of the FONSI are available at the above address to fill single copy requests. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bob Fooks, Acting Assistant State Conservationist Natural Resources Planning, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225, phone (501) 301–3143.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: July 11, 2005.

Kalven L. Trice,

State Conservationist.

[FR Doc. 05–14829 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Statement; Notice of Availability

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Natural Resources Conservation Service (NRCS), has prepared an Environmental Assessment in compliance with the National Environmental Policy Act (NEPA), as amended, the implementing regulations for NEPA (40 CFR parts 1500–1508), and NRCS policy. The St. George and Washington Canal Washington Fields Pipeline Project is a federally assisted action authorized as a Congressional Earmark under the Consolidated Appropriations Act, 2004. The Environmental Assessment was developed in coordination with the Washington County Water Conservancy District and the Bureau of Land Management. Upon review of the Environmental Assessment, the State Conservationist for NRCS, Utah, made a Finding of No Significant Impact (FONSI) and the determination was made that no environmental impact statement is required to support the project. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the St. George and Washington Canal Washington Fields Pipeline Project. Written comments regarding this action may be submitted to: Sylvia Gillen, State Conservationist, USDA/NRCS, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138–1100. Comments must be received no later than 30 days after this notice is published.

EFFECTIVE DATE: July 27, 2005.

FOR FURTHER INFORMATION CONTACT: Sylvia Gillen, State Conservationist, Natural Resources Conservation Service, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84138–1100; telephone (801) 524–4550.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action documents that the project will not cause significant local, regional, state, or national impacts on the human environment. The findings of Sylvia Gillen, State Conservationist, indicate that the preparation and review of an environmental impact statement is not needed for this project.

The objectives of the proposed project are:

- To decrease the amount of water loss from the canal caused through seepage.
- To decrease the potential liability associated with the canal washing out and the resulting flooding.
- To increase public safety by piping the canal.

The proposed action is to replace the St. George and Washington Canal with a buried pipeline. The existing concrete canal lining would be removed and a pipeline would be placed in the existing trench. Approximately 9 miles of pipeline would be welded together and then lifted and placed into the canal alignment.

Copies of the FONSI and Environmental Assessment are available by request from Sylvia Gillen, Utah State Conservationist. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Sylvia Gillen, Utah State Conservationist. Requests may be submitted to: Sylvia Gillen, State Conservationist, Natural Resources Conservation Service, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84138–1100; telephone (801) 524–4550.

No administrative action on implementation of this project will be taken until 30 days after the date of this notice is published.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.902, Soil and Water Conservation and Environmental Quality Incentive Program 10.912.)

Signed in Salt Lake City, Utah, on July 20, 2005.

Sylvia A. Gillen,

State Conservationist.

[FR Doc. 05–14830 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1402]

Grant of Authority for Subzone Status, Quantegy, Inc., (Audio and Video Tape and Cassettes, Digital Data Media, and Instrumentation Media Products), Opelika, Alabama

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ". . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Montgomery Area Chamber of Commerce, grantee of Foreign–Trade Zone 222, has made application to the Board for authority to establish special–purpose subzone status at the manufacturing facilities (audio and video tape and cassettes, digital data media, and instrumentation media products) of Quantegy, Inc., located in Opelika, Alabama (FTZ Docket 22–2004, filed 5/25/2004);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 30871, 6/1/2004); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the manufacturing facilities of Quantegy, Inc., located in Opelika, Alabama (Subzone 222B) at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 18th day of July, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–14875 Filed 7–26–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1403]

Grant of Authority for Subzone Status, Midwest Quality Gloves, Inc. (Distribution of Gloves, Raingear, Footwear, and Garden Accessories), Chillicothe and Hamilton, Missouri

Pursuant to its authority under the Foreign–Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for "...the establishment... of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Kansas City Foreign–Trade Zone, Inc., grantee of Foreign–Trade Zone 15, has made application to the Board for authority to establish a special–purpose subzone at the warehousing and distribution facilities of Midwest Quality Gloves, Inc., located in Chillicothe and Hamilton, Missouri (FTZ Docket 38–2004, filed 8/24/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 53406–53407, 9/1/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the distribution of glove, raingear, footwear and garden accessories at the warehousing facilities of Midwest Quality Gloves, Inc., located in Chillicothe and Hamilton, Missouri (Subzone 15H), as described in the application, and subject to the FTZ Act and the Board's regulations, including Sec. 400.28.

Signed at Washington, DC, this 18th day of July, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–14876 Filed 7–26–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 34–2005]

Foreign–Trade Zone 44 - Morris County, New Jersey, Application for Subzone, Tiffany & Co. (Jewelry and Consumer Goods), Parsippany and Whippany, New Jersey

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the New Jersey Commerce, Economic Growth and Tourism Commission, grantee of FTZ 44, requesting special–purpose subzone status for the warehousing and distribution facilities of Tiffany & Co. (Tiffany), located in Parsippany and Whippany, New Jersey. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 19, 2005.

The Tiffany facilities (1157 employees) consist of two sites on 78 acres: *Site 1* (40 acres) is located at 15 Sylvan Way, Parsippany, Morris County; and *Site 2* (38 acres) is located at 141 Parsippany Road, Whippany, Morris County. The facilities are used for the storage, distribution and packaging of jewelry, clocks, sterling silverware, stainless steel flatware, china, crystal, stationary, glassware, fragrances and accessories.

Zone procedures would exempt Tiffany from Customs duty payments on products that are re–exported. Some 40 percent of the products are re–exported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Tiffany to utilize certain Customs procedures resulting in increased efficiencies for its logistics and distribution operations. In addition, Tiffany is requesting authority to choose the duty rates during Customs entry procedures that apply to jewelry, china, glassware, ornaments, brushes, pens, pencils, pocket lighters and scent sprayers (HTS 6911.10, 6911.90, 6912.00, 6913.10, 6913.90, 6914.10, 7006.00, 7010.90, 7013.21, 7013.29, 7013.31, 7013.39, 7013.91, 7013.99, 7020.00, 7101.10, 7101.22, 7102.39, 7103.10, 7103.91, 7103.99, 7108.13, 7110.19, 7113.11, 7113.19, 7113.20, 7116.20, 7117.90, 7407.29, 9013.80, 9014.10, 9505.10, 9601.90, 9603.29, 9603.30, 9608.10, 9608.39, 9608.40, 9608.60, 9608.99, 9613.20, 9616.10, 9706.00, duty rate ranges from duty–free to 38%) for certain imported plastic and glass packaging materials (HTS 3923.10, 3923.30, 3923.50, 7010.90 and 7020.00, duty rate ranges from 2.5–5.3%). The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or

2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is September 26, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to October 11, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 744 Broad Street, Suite 1505, Newark, NJ 07102.

Dated: July 19, 2005.

Dennis Puccinelli

Executive Secretary.

[FR Doc. 05–14875 Filed 7–26–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-602, C-351-601, C-427-603]

Brass Sheet and Strip from Germany, Brazil, and France: Extension of Final Results of Expedited Sunset Reviews of the Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for its final results in the expedited sunset reviews of the antidumping (AD) and countervailing duty (CVD) orders on brass sheet and strip from Germany (AD), Brazil (CVD), and France (CVD). As a result of this extension, the Department intends to issue final results of these sunset reviews on or about October 28, 2005.

DATES: EFFECTIVE DATE: July 27, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman at (202) 482-3534 (Germany), or Tipten Troidl at (202) 482-1767 (Brazil and France), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Extension of Final Results:

On April 1, 2005, the Department initiated sunset reviews of the antidumping and countervailing duty orders on brass sheet and strip from Germany, Brazil, and France. *See Initiation of Five-Year (Sunset) Reviews*, 70 FR 16800 (April 1, 2005). Based on adequate responses from the domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping and countervailing duty orders on brass sheet and strip would lead to the continuation or recurrence of dumping or a countervailable subsidy. The Department's final results of these reviews were scheduled for August 1, 2005; however, the Department needs additional time for its analysis.

In accordance with section 751(c)(5)(B) of the Tariff Act of 1930, as amended ("the Act"), the Department

may extend the period of time for making its final determination in a sunset review by not more than 90 days, if it determines that the review is extraordinarily complicated. As set forth in 751(c)(5)(C)(v) of the Act, the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order. The sunset reviews subject to this notice are reviews of transition orders. Therefore, the Department has determined, pursuant to section 751(c)(5)(C)(v) of the Act, that the sunset reviews of the antidumping and countervailing duty orders on brass sheet and strip from Germany, Brazil, and France are extraordinarily complicated and require additional time for the Department to complete its analysis. Therefore, the Department will extend the deadlines in these proceedings, and, as a result, intends to issue the final results of the sunset reviews of the antidumping and countervailing duty orders of brass sheet and strip from Germany, Brazil, and France, on or about October 28, 2005, 90 days from the original scheduled date of the final results of these reviews.

This notice is issued and published in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: July 20, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4005 Filed 7–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Peter and Nancy Fenner From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce)

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Peter and Nancy Fenner.

DATES: The decision record for the Fenner administrative appeal will close as of the date of publication of this notice.

ADDRESSES: Materials from the appeal record are available at the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Suzanne Bass, Attorney-Adviser, NOAA Office of the General Counsel, 301–713–2967.

SUPPLEMENTARY INFORMATION: Peter and Nancy Fenner (Appellant) have filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1456(c)(3)(A), and implementing the regulations found at 15 CFR part 930, subpart H. The Fenners appeal an objection raised by the New York Department of State to a consistency certification contained within their application to the Army Corps of Engineers for a permit to build a catwalk and dock at West Hampton Dune.

The CZMA requires a notice be published in the **Federal Register**, indicating the date on which the decision record has been closed. A final decision on this appeal must be issued no later than 90 days after publication on this notice. 16 U.S.C. 14659(a). The deadline may be extended by publishing, within the 90-day period, a subsequent notice explaining why a decision cannot be issued within this time frame. In this event, a final decision must be issued no later than 45 days after publication of the subsequent notice. 16 U.S.C. 1465(b).

For additional information about this appeal contact Suzanne Bass, 301–713–2967.

Dated: July 18, 2005.

James R. Walpole,

General Counsel.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. 05–14783 Filed 7–26–05; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–5194–19; I.D. 061505A]

RIN 0648–ZB55

Availability of Grants Funds for Fiscal Year 2006; Extension of Application Deadline

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

ACTION: Notice.

SUMMARY: The NMFS publishes this notice to extend the solicitation period on the following initiative originally announced in the **Federal Register** on June 30, 2005: Right Whale Research Grant Program (NMFS-NEFSC–2006–2000252). NOAA extends the solicitation period from August 1, 2005, to August 15, 2005, to provide the public more time to submit proposals. All other requirements for this solicitation remain the same.

DATES: Full proposals must be received by 5 p.m. eastern time on August 15, 2005. Applicants without access to the Internet may submit paper applications using the same deadlines as electronic applications.

ADDRESSES: The address for submitting proposals electronically, to obtain the Full Funding Opportunity and the June 30, 2005, **Federal Register** notice (70 FR 37766) is: *http://www.grants.gov/*. Electronic submission is strongly encouraged. Applicants without access to the Internet may submit paper documents regarding the initiative to the following address: Right Whale Competitive Grants Program, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Kelly Taranto, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543 or by phone at 508–495–2312, or fax at 508–495–2004, or via e-mail at *Kelly.taranto@noaa.gov*. Please contact Kelly Taranto to obtain a copy of the Full Funding Opportunity announcement.

Dated: July 21, 2005.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 05–14883 Filed 7–26–05; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071305C]

Endangered Species; Permit No. 1254

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

ACTION: Notice; modification of scientific research permit.

SUMMARY: Notice is hereby given that a request for a modification to scientific

research permit No. 1254 submitted by Dynegy Northeast Generation, Inc. (Martin W. Daley, Principal Investigator), Regulatory & Administrative Services, 992–994 River Road, Newburgh, New York, 12550, has been granted.

ADDRESSES: The modification 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) 427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9328; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Shane Guan and Patrick Opay (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

Dynegy Northeast Generation, Inc. is authorized to capture, handle, measure, externally tag, and release 95 juvenile and adult shortnose sturgeon (*Acipenser brevirostrum*) and to collect 40 shortnose sturgeon larvae annually in the Hudson River between the estuary and River mile 152. The objectives of the study are to describe the patterns and variability of environmental parameters that may affect fish distribution and abundance of 16 selected species of fish, including shortnose sturgeon, in the Hudson River Estuary and provide information on length frequency where applicable. This modification will extend the permit through August 31, 2006.

Issuance of this modification, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of any endangered or threatened species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 21, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–14877 Filed 7–26–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

July 25, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Notice

SUMMARY: The Committee is extending through July 31, 2005, the period for making a determination on whether to request consultations with China regarding imports of men's and boys' wool trousers (Category 447).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On November 12, 2004, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS and UNITE HERE requesting that the Committee limit imports from China of men's and boys' wool trousers (Category 447) due to the threat of market disruption.

The Committee determined this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See **Solicitation of Public Comment on Request for Textile and Apparel Action on Imports from China**, 69 FR 71781 (Dec. 10, 2004).

On December 30, 2004, the Court of International Trade preliminarily enjoined the Committee from considering or taking any further action on this request and any other requests "that are based on the threat of market disruption". **U.S. Association of Importers of Textiles and Apparel v. United States**, 350 F. Supp. 2d 1342 (CIT 2004). On April 27, 2005 the Court of Appeals for the Federal Circuit granted the U.S. government's motion for a stay and reversed that injunction. **U.S. Association of Importers of Textiles and Apparel v. United States**, Ct. No. 05-1209, 2005 U.S. App. LEXIS 12751 (Fed. Cir. June 28, 2005). Thus, CITA resumed consideration of this case.

The public comment period for this request had not yet closed when the injunction took effect on December 30, 2004. The number of calendar days remaining in the public comment period beginning with and including December 30, 2004 was 12 days. On May 9, 2005, therefore, the Committee published a notice in the **Federal Register** re-opening the comment period and inviting public comments to be received not later than May 23, 2005. See **Rescheduling of Consideration of Request for Textile and Apparel Safeguard Action on Imports from China and Solicitations of Public Comments**, 70 FR 24397 (May 9, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60 day determination period for the threat case expired on July 22, 2005. However, the Committee is unable to make a determination at this time; it is continuing to evaluate conditions in the U.S. market for men's and boys' wool trousers and information obtained from public comments on the case. The Committee is therefore extending the determination period to July 31, 2005. The Committee may, at its discretion, make such determination prior to July 31, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–14953 Filed 7–25–05; 1:37 pm]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the African Growth and Opportunity Act

July 21, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Directive to the Commissioner of Customs and Border Protection.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Nigeria shall be treated as "handloomed, handmade, folklore articles, or ethnic

printed fabrics" and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Nigeria with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) ("AGOA"), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) ("AGOA Acceleration Act") (19 U.S.C. § 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including hand-loomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further expanded AGOA by adding ethnic printed fabrics to the list of textile products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment describes in section 112(a) of the AGOA. In Executive Order 13191 (January 17, 2001) and Presidential Proclamation 7912 (June 29, 2005), the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being hand-loomed, handmade, folklore articles, or ethnic printed fabrics. (66 FR at 7271-72 and 70 FR at 37961 & 63).

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, hand-loomed, folklore articles, or ethnic printed fabrics.

CITA has consulted with Nigerian authorities and has determined that hand-loomed fabrics, hand-loomed articles (e.g., hand-loomed rugs, scarves, place mats, and tablecloths), handmade articles made from hand-loomed fabrics, the folklore articles described in Annex A, and ethnic printed fabrics described in Annex B to this notice, if produced in and exported from Nigeria, are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping "9".

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 21, 2005.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements ("CITA"), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) ("AGOA"), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) ("AGOA Acceleration Act") (19 U.S.C. § 3721(a) and (b)(6)), Executive Order No. 13191 of January 17, 2001, and Presidential Proclamation 7912 of June 29, 2005, has determined, effective on August 1, 2005, that the following articles shall be treated as "handloomed, handmade, folklore articles, or ethnic printed fabrics" under the AGOA: (a) handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and hand-made articles made from handloomed fabrics, if made in Nigeria from fabric handloomed in Nigeria; (b) the folklore articles described in Annex A if made in Nigeria; and (c) ethnic printed fabrics described in Annex B. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping "9", in accordance with the provisions of the Visa Arrangement between the Government of Nigeria and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Nigerian authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Attachment
ANNEX A: Nigerian Folklore Products

CITA has determined that the following textile and apparel goods shall be treated as folklore articles for purposes of the AGOA if made in Nigeria. Articles must be ornamented in characteristic Nigerian or regional folk style. An article may not include modern features such as zippers, elastic, elasticized fabrics, snaps, or hook-and-pile fasteners (such as velcro© or similar holding fabric). An article may not incorporate patterns that are not traditional or historical to Nigeria, such as airplanes, buses, cowboys, or cartoon characters and may not incorporate designs referencing holidays or festivals not common to traditional Nigerian culture, such as Halloween and Thanksgiving.

Eligible folklore articles:

(a) Kaftan: This loose fitting two-piece set contains an ankle length pullover outer tunic and matching trousers. The outer tunic has long sleeves, pockets along the side seam, and side vents at the bottom. It has a round neckline with a slit down the center front. If embroidered, it is along the neckline and sleeves. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets. This garment can be made from fabric of any weight.

(b) Senegalese: This loose fitting two-piece set contains an ankle length pullover outer tunic garment and matching trousers. The outer tunic has long sleeves, pockets along the side seam, and side vents at the bottom. It usually has a round neckline with a slit down the center front, although necklines may vary and may be embroidered. If embroidered, it is usually along the neckline, front opening and sleeves. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets. The garment is usually made from dyed material or guinea brocade.

(c) Buba and Sokoto: This loose fitting, two-piece set contains a pullover upper garment and matching trousers. The three-quarter length upper garment has sleeves extending just below the elbow, side vents at the bottom, and may have patch pockets. It has a round neckline with a slit down the center front. The **Buba** is usually undecorated, but if embroidered, it is usually along the back shoulder and front chest. It has a round, slotted neckline. The **Sokoto** are trousers that are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets. This garment can be made from fabric of any weight.

(d) Kenbe: This loose fitting, two-piece set contains a pullover upper garment and matching trousers. The three-quarter length upper garment has half or three-quarter length sleeves, with side vents at the bottom. The trousers are three-quarter length and are secured at the waist by a drawstring.

(e) Dansiki: This loose fitting two-piece set contains a pullover upper garment and matching trousers. The three-quarter length upper garment is sleeveless, or has short sleeves, and may have patch pockets. Its round neckline may be intricately

embroidered. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets. The garment is frequently made from dyed materials or African prints.

(f) Gbariye: This two-piece, heavily embroidered, three-quarter length ceremonial set contains a pullover upper garment and matching trousers, made of heavy handloomed fabric. The cap sleeved upper garment is heavily embroidered and darted or pleated (i.e. sewn in the form of a pyramid that is wider at the bottom than at the shoulder). This enables the upper garment spin freely during dance ceremonies. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets. The set may be heavily embroidered, usually along the neck, chest and ankle.

(g) Isiagu or Chieftaincy: This one-piece pullover, three-quarter length garment, worn for special occasions, may have short or long sleeves and may come with golden buttons linked together by a chain that adorn the slotted neck opening. The garment contains pleats or darts on the front, below the shoulder, and has a front patch pocket.

(h) Agbada: This is a three-piece set includes the "**Agbada**" "**Buba**", and "**Sokoto**". The **Agbada** is an oversized outer pullover garment and is usually loose flowing, extending to below the knee or ankle. The embroidery work is on both the back and front sides. The side seams open from the shoulder to bottom hem. The **Buba**, the inner, pullover garment may have varying length sleeves. The slotted neck may have buttons. The **Sokoto** are trousers secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets. The set may or may not be embroidered.

(i) Booboo: This is a woman's pullover garment that is designed as a loose flowing gown. The full-length garment is sleeveless or has short sleeves and has side vents at the bottom. The garment has oversized armholes and no means of closure at the neck. If embroidered, it is usually along the neck and shoulders. May come with a length of fabric used as a matching head wrap.

(j) Buba and Iro: This is a two-piece set. The **Buba** is a short-sleeved pullover, T-shaped garment reaching the waist and is open at the neck. The **Iro** is a rectangular piece of fabric that is wrapped around the waist, tucked or tied to secure in place.

(k) Yar Jos: This two-piece set of lightweight fabric contains a three-quarter-length sleeveless pullover upper garment and matching trousers. The sides of the pullover are open from the shoulder to mid-trunk, and have pockets on each side under the arm opening. It has a round neckline with a slit down the center front. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may or may not have pockets.

(l) Baban Riga: This loose, three-piece set contains an oversized, three-quarter length pullover outer garment that is open from the shoulder down the side to the bottom edge of the garment, inner tunic and matching trousers. The three-quarter length inner tunic has long or short sleeves and has side vents at the bottom. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets. This garment may or may not be heavily embroidered.

(m) Jamfa: This two-piece simple wear contains a three-quarter-length pullover upper garment and matching trousers. The upper garment is sewn with long or short sleeves and has side vents at the bottom. It has a round neckline with a slit down the center front. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets.

(n) Yarshara: This two-piece set of lightweight fabric contains a three-quarter-length sleeveless pullover upper garment and matching trousers. The sides of the pullover are open from the shoulder to mid-trunk, and have pockets on each side under the arm opening. It has a round neckline with a slit down the center front. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets.

(o) Dandogo: This heavily embroidered three-piece set, made from heavy weight fabric, is worn during special ceremonies and depicts the richness in traditional folklore. It is made from strips of hand loomed fabric that are sewn together. The oversized three-quarter to full-length outer pullover garment contains a V neckline with very large arm openings. The sleeve openings are almost the full length of the garment. The sleeveless three-quarter length underneath pullover garment is wider at the base than the shoulder. It has a round neckline with a slit down the center front. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may have side seam pockets.

(p) Abaya: This three-piece set contains an outer fully open robe-styled piece, a three-quarter-length inner pullover upper garment, and matching trousers. The long, almost full-length, oversized, outer garment contains a yarn-tassel closure, short sleeves and is heavily embroidered along the front opening and sleeve caps. The ankle length inner pullover piece has a round neckline with a slit down the center front, has long sleeves, side seam pockets side, vents at the bottom, and is heavily embroidered around the neckline and sleeve cuffs. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets and are embroidered at the bottom.

(q) Kaftan Falmara: This loose fitting ceremonial two-piece set contains an ankle length pullover outer garment and matching trousers. The outer garment has long sleeves, pockets along the side seam, and side vents at the bottom. It has a round neckline with a slit down the center front. If embroidered, it is usually along the neckline and sleeve cuffs. The garment is similar to a **Kaftan**, except the **Kaftan Falmara** has panels resembling a vest, or waistcoat, sewn into the front. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets.

(r) Zabuni: Originally from the northern part of Nigeria, this two-piece set contains a long-sleeved jacket-like upper garment and matching trousers. More tailored that other folklore articles, the coat styled garment may be fully lined, with patch pocket(s) on the inside. It is heavily decorated with a cord-like appliqué which is hand-sewn on solid colored material around the round neckline, front opening placket, back, sleeves at the cuff, and trousers at the hem. The pocket-less trousers are secured at the waist by a drawstring, and have side vents at the cuff.

(s) Kufta: This lightweight and loose fitting two-piece set contains an ankle length pullover garment and matching trousers. The pullover garment has long sleeves, pockets along the side seam, and side vents at the bottom. It has a round neckline with a slit down the center front. It has long triangular shaped panels under each arm. If embroidered, it is usually along the neck, front opening placket and sleeves. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets.

(t) Falmara: This garment is similar in shape to a vest or waistcoat, with embroidery around the round neck continuing down the opening. The sleeveless garment may be fully lined with patch pocket(s) on the inside. It could be worn over any long sleeve shirt or top, but usually, it is worn over a **Kaftan**.

ANNEX B: Nigerian Ethnic Printed Fabrics

Each ethnic-printed fabric must meet all of the criteria listed below:

A) selvedge on both edges
B) width of less than 50 inches
C) classifiable under subheading 5208.52.30 [1] or 5208.32.40 [2] of the Harmonized Tariff Schedule of the United States
D) contains designs, symbols, and other characteristics of African prints normally produced for and sold in Africa by the piece (6 or 12 yard fixed lengths or by the piece or in roll or bolt form) [3]
E) generally designed with colorful, repeating patterns and motifs described in "D"
F) penetration of dye prints both sides of the fabric creating a "duplex effect" such that both the face and the back of the fabric appear the same
G) made from fabric woven in the U.S. using U.S. yarn or woven in one or more eligible sub-Saharan beneficiary countries using U.S or African yarn
H) printed, including waxed in one or more eligible sub-Saharan beneficiary countries
I) inscription of the design number and manufacturer's brand name and/or logo on the selvedge edge of the companies listed in "J"

[1] printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100g/m2 but not more than 200 g/m2, of yarn number 42 or lower.

[2] printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100g/m2 but not more than 200g/m2, of yarn numbers 43-68

[3] For our purposes, fabric by the piece does mean in roll or bolt form.

J) must be manufactured by one of the companies in the list below in "i through xi":
i. African Textile Manufacturers Ltd
ii. Angel Spinning & Dyeing Ltd
iii. Bhojraj Industries PLC
iv. Dangote General Textile Products, Ltd
v. General Cotton Mills Ltd
vi. Gaskiya Textile Mills PLC
vii. Holborn Nigeria Ltd
viii. Hong Kong Synthetic Fibre Co. Nig Ltd
ix. Reliance Textile Industries Ltd
x. Sunflag Nig Ltd
xi. United Nigerian Textiles PLC

[FR Doc. E5–4004 Filed 7–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2005 Puerto Rico Region Specific Mental Health Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of rate setting; establishment of region specific Puerto Rico Mental Health rates.

SUMMARY: This notice provides for the establishment of a Puerto Rico region specific per diem rates for low volume providers; the establishment of region specific per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs under the TRICARE Mental Health Per Diem Payment System for fiscal year 2005.

EFFECTIVE DATE: The fiscal year 2005 rates contained in this notice are effective for services occurring on or after September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Christine Gavlick, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3841.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement methodologies that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. This final rule uses regionally established per diems to pay hospitals that do not have enough CHAMPUS discharges upon which to base a valid hospital-specific rate. Regional rates incorporate adjustments for area wage differences, indirect medical educations costs and pass through payments for direct medical education costs. Mental Health partial hospitalization programs are also reimbursed according to regional per diems. The Mental Health regional per diems are applied utilizing the designated Federal Census regions. By 32 CFR 199.14(a)(2)(viii)(E), the commonwealth of Puerto Rico is subject to TRICARE's mental halth reimbursement methodologies. Since Puerto Rico is not incorporated in a Federal Census Region, this notice establishes a Puerto Rico region specific per diem as well as region specific rates for partial hospitalization programs, both full day and half-day programs. TRICARE additionally published in the **Federal Register** on July 1, 1993, (58 FR 35–400) final rules that set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2005, Medicare has recommended a rate of increase of 3.3 percent for hospitals and units excluded from the prospective payment system. TRICARE has incorporated this update factor for FY 2005 in the determinaion of the region specific Puerto Rico rates. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment is 71.56 percent for FY 2005.

The following reflects the Puerto Rico region specific rates:

REGION SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME

United States region	Rate[1]
Puerto Rico	$434.00

[1] Wage portion of the rate, subject to the area wage adjustment—71.56 percent.

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $169 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2004.

PUERTO RICO REGION SPECIFIC PARTIAL HOSPITALIZATION RATES FOR FULL-TIME DAY AND HALF-DAY PROGRAMS FY 2005

United States region	Full-day rate (6 hours or more)	(Half-day rate (3–5 hours)
Puerto Rico	$183	$138

The above rates are effective for services rendered on or after September 1, 2005.

Dated: July 22, 2005.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 05–14844 Filed 7–26–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of the Defense Business Board Meeting—Correction

AGENCY: Department of Defense.

ACTION: Notice; correction.

SUMMARY: The Department of Defense published an Open Meeting notice on the Defense Business Board on July 22, 2005. This Notice is published to include justification for not publishing the Notice within the 15-day requirement.

Correction

In the **Federal Register** of July 22, 2005, page 36377 FR Doc. 05–14534, in the middle column, the last sentence in the **SUMMARY** is amended to read: "The delay in publishing this Notice was due to technical difficulties in obtaining the information."

Dated: July 22, 2005.

Jeannette Owings-Ballard,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–14846 Filed 7–26–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,745,284: Solid-State Laser Source of Tunable Narrow-Bandwidth Ultraviolet Radiation, Navy Case No. 79,379.//U.S. Patent No. 5,909,306: Solid-State Spectrally-Pure Linearly-Polarized Pulsed Fiber Amplifier Laser System Useful for Ultraviolet Radiation Generation, Navy Case No. 79,383 and any continuations, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: July 21, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–14800 Filed 7–26–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 10/868,445 entitled "Cascade Avalanche Sorbent Plate Array (CASPAR)", Navy Case No. 83,324 and Navy Case No. 95,877 entitled "Thermal Focusing of Collected Analyte on a Micro-Preconcentrator for Optimum Delivery to a Narrow Orifice" and any continuations, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: July 21, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–14801 Filed 7–26–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Sensera, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Sensera, Inc., a revocable, nonassignable, exclusive license, to practice in the field of *in vitro* diagnosis of human disease(s) and determination of disease indicators for the subfields of Point of Care Rapid Diagnosis of Cardiac Infarction Indictors such as cardiac Troponin I, cardiac Troponin T, Myoglobin, and Creatine Kinase-Myocardial Band; Point of Care Rapid Diagnosis of Stroke Indicators; Point of Care Rapid Diagnosis of Cancer Markers such as those for breast, prostate, colorectal, and cervical cancer and Point of Care Rapid Diagnosis of Infectious Disease such as Sexually Transmitted diseases, Hepatitis, TB, tropical traveler's diseases, Lyme disease, toxoplasmosis, cryptosporidium in drinking water, Group A strep, antibiotic resistant staph and strep in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,372,930: Sensors for Ultra-Low Concentration Molecular Recognition, Navy Case No. 73,568//U.S. Patent No. 5,807,758: Chemical and Biological Sensor Using an Ultra-Sensitive Force Transducer, Navy Case No. 76,628//U.S. Patent No. 6,180,418: Force Discrimination Assay, Navy Case No. 78,183//U.S. Patent No. 6,676,904: Nanoporous Membrane Immunosensor, Navy Case No. 80,068.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 11, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 455 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: July 21, 2005.

I.C. LeMoyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–14799 Filed 7–26–05; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 26, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New

Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 21, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Evaluation of States' Monitoring and Improvement Practices Under the Individuals with Disabilities Education Act.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 102.

Burden Hours: 204.

Abstract: States' monitoring and improvement practices under the Individuals with Disabilities Education Act (IDEA) are vital to ensuring that students with disabilities receive a free appropriate public education and that infants and toddlers with disabilities and their families receive early intervention services. The purpose of this study is to evaluate states' monitoring and related improvement practices under IDEA. This study will describe the nature and scope of monitoring as implemented by the 50 states and the District of Columbia for Parts B and C of IDEA, assess the effect of the quality of states' monitoring and related improvement practices on key outcomes of Parts B and C of IDEA, and identify and develop recommendations for potential best practices in monitoring and identify areas for ongoing technical assistance.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2772. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–14812 Filed 7–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by August 3, 2005. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 26, 2005.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: July 22, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Vocational and Adult Education.

Type of Review: New.

Title: The State Scholars Initiative.

Abstract: The purpose of the State Scholars Initiative is to support a non-profit entity that will fund state business-education partnerships that promote rigorous course work among high school students in their states, by encouraging and motivating high school students to select rigorous courses of study that will benefit them in their future careers, postsecondary education, or training. The State Scholars cooperative agreement application package includes information for applicants with selection criteria, program requirements, application requirements, and eligibility requirements, along with relevant ED forms.

Additional Information: Under the State Scholars Initiative (SSI), the Assistant Secretary seeks to fund a nonprofit entity that will provide federal financial resources under the Perkins Act authority as well as technical assistance and monitoring to state-level business-education partnerships for the purpose of motivating high school students to select and complete rigorous courses of study that will benefit them in their futures, whether they choose to pursue postsecondary education, vocational and technical education and training, or a career, immediately upon graduation from high school.

Frequency: One time application.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 1,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2824. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW, Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–14813 Filed 7–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education, Department of Education; Notice of Funding of Continuation Grants and Waiver for the Career Resources Network (CRN) Program

SUMMARY: The Secretary waives the requirements in Education Department General Administrative Regulations, in 34 CFR 75.250, that generally prohibit project periods exceeding five years and announces the funding of continuation grants for the CRNs. This waiver enables the current, eligible CRNs, which implement Statewide, systemic strategies for providing career information resources, to continue to receive Federal funding beyond the five-year limitation.

DATES: This notice is effective July 27, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 11108, Potomac Center Plaza, Washington, DC 20202–7120. Telephone (202) 245–7803.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, on July 14, 2005, in accordance with section 553(b) of the APA, the Department gave actual notice to all current, eligible CRN grantees of our proposal to waive 34 CFR 75.250 and to fund continuation grants instead of holding a new grant competition, and invited comments on our proposal. This waiver enables the Secretary to provide additional funds to all current, eligible grantees for additional periods for as long as Congress continues to appropriate funds for the existing statutory program and during any transition to a new statutory authority. There are no substantive differences between the actual notice of our proposal and this notice of funding of continuation grants and waiver. Therefore, all affected parties were provided actual notice of the Department's proposal and an opportunity to comment in lieu of publication of a notice of proposed rulemaking in the **Federal Register**.

Comment

In response to the actual notice of proposed funding of continuation grants and waiver, and our invitation to comment, thirteen parties submitted comments supporting the proposed waiver and the proposal to fund continuation grants for all current, eligible grantees. We did not receive any comments opposing the proposed waiver and proposal to fund continuation grants, and, therefore, no substantive changes have been made.

Waiver of Delayed Effective Date

The APA requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We provided all 57 affected entities an opportunity to submit comments on the Secretary's proposal to waive 34 CFR 75.250 in order to continue eligible current grants. All comments received supported our proposal. In addition, given the fact that the extension of the project period is only for as long as Congress continues to appropriate funds for the existing statutory program or during a transition to any new statutory authority, and in order to make timely continuation grants to the entities affected, the Secretary has determined that a delayed effective date is unnecessary and contrary to the public interest.

Background

The CRN program supports the implementation of Statewide, systemic strategies for providing career information resources, as authorized by section 118(a) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins Act) (20 U.S.C. 2328(a)). The Congress is now in the process of reauthorizing the Perkins Act, and we do not believe it would be in the public interest to hold a new competition until Congress concludes that process.

Eligible applicants for fiscal year (FY) 2005 funds under the CRN program are the entities designated by the Governor and the eligible agency under Title I of the Perkins Act for each of the 50 States, the Virgin Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Marianna Islands, and the Republic of Palau. The designated entities in the Republic of the Marshall Islands and the Federated States of Micronesia are no longer eligible to receive funds under the CRN program and therefore cannot receive continuation grants from funds appropriated for FY 2005 or subsequent fiscal years, pursuant to 48 U.S.C. 1921d(f)(1)(B)(iii).

The nature of the CRN program, in which the universe of eligible applicants is defined in the law and all eligible entities are funded, allowed us to provide actual notice in lieu of publishing a notice of proposed rulemaking, consistent with section 553(b) of the APA. Pursuant to the requirements of section 553(b) of the APA, and in order to make timely grant awards in FY 2005, on July 14, 2005, we contacted CRN grantees directly and provided them actual notice of, and requested their comments on, our proposal to waive 34 CFR 75.250 and fund continuation grants.

To avoid a lapse in the availability of career resources and related services and activities provided by the CRN grantees, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years. With this waiver we can continue the CRN grants of all current, eligible grantees for as long as Congress continues to appropriate funds for the existing statutory program authority and during a transition to any new statutory program authority. It would be contrary to the public interest to have a lapse in CRN projects, especially as they are preparing for a new school year. This waiver of 34 CFR 75.250 means that: (1) current CRN grants will be continued at least through FY 2005 and possibly beyond, if Congress continues to appropriate funds for the CRN program under the current statutory authority or provides for a transition to any new statutory authority, and (2) we will not announce a new competition or make new awards in FY 2005.

We waived the requirements of 34 CFR 75.261(c)(2), which prohibit project period extensions involving the obligation of additional Federal funds, in a notice published in the **Federal Register** on July 31, 2002 (67 FR 49852). The waiver of 34 CFR 75.261(c)(2) is still in effect; therefore, we are not waiving this requirement in this notice.

The waivers of 34 CFR 75.250 and 75.261(c)(2) do not exempt current CRN grantees from the account closing provisions of 31 U.S.C. 1552(a), nor do they extend the availability of funds previously awarded to current CRN grantees. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Regulatory Flexibility Act Certification

The Secretary certifies that this notice of funding of continuation grants and waiver will not have a significant economic impact on a substantial number of small entities. The only entities that would be affected are the 57 current, eligible CRN grantees.

Paperwork Reduction Act of 1995

This notice of funding of continuation grants and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on our own review, we have determined that this notice of funding of continuation grants and waiver does not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.346 Career Resource Network State Grants)

Program Authority: 20 U.S.C. 2328.

Dated: July 22, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–14948 Filed 7–25–05; 1:28 pm]

BILLING CODE 4000–01–P

UNITED STATES ELECTION ASSISTANCE COMMISSION

Sunshine Act; Meeting

ACTION: Notice of public meeting for EAC Standards Board.

DATE & TIME: Wednesday, August 24, 2005, 8:30 a.m.–5 p.m. and Thursday, August 25, 2005, 8:30 a.m.–5 p.m.

PLACE: Adam's Mark Hotel, 1550 Court Place, Denver, CO 80202.

TOPICS: The U.S. Election Assistance Commission (EAC) Standards Board, as required by the Help America Vote Act of 2002, will meet to consider and adopt bylaws, to consider and receive presentations on the Voluntary Voting System Guidelines proposed by EAC, to formulate recommendations to EAC, and to handle other administrative matters.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, telephone: (202) 566–3100.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

[FR Doc. 05–14911 Filed 7–22–05; 4:20 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

[Docket No. EA–283–A]

Application to Export Electric Energy; Public Service Company of Colorado

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Public Service Company of Colorado (PSCo) has applied to renew its authority to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 11, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Permitting, Siting and Analysis Division (OE–20), Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 19, 2003, the Department of Energy (DOE) issued Order No. EA–283 authorizing PSCo to export electric energy from the United States to Canada. That two-year authorization will expire on August 19, 2005. On July12, 2005, DOE received an application from PSCo to renew its export authority for a five-year term. PSCo is a Colorado corporation with its principal place of business in Denver, Colorado. PSCo is an investor-owned subsidiary of Xcel Energy, Inc., and is engaged in the generation, distribution and sale of electric energy. PSCo controls electric power generation and transmission facilities in the States of Arizona, Colorado, Kansas, New Mexico, Oklahoma, Texas, and Wyoming. As a regulated utility, PSCo produces and distributes electric power and conducts wholesale purchases and sales of capacity and energy.

In Docket No. EA–283–A, PSCo proposes to export electric energy that is in excess of the amounts required to meet its native load obligations or that is purchased from generators, power marketers or federal power marketing agencies. PSCo will arrange for the delivery of those exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Boise Cascade, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power Company, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by PSCo has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Because Order No. EA–283 will expire within the next 30 days, DOE has shortened the comment period to 15 days so that this proceeding can be concluded prior to the expiration of PSCo's existing authorization and prevent any gap in authority with respect to PSCo's current exports.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the PSCo application to export electric energy to Canada should be clearly marked with Docket EA–283–A. Additional copies are to be filed directly with Public Service Company of Colorado, 1099 18th Street, Suite 3000, Denver, CO 80202, Attn: Director, Contract Administration.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.de.gov*. Upon reaching the Home Page, select "Electricity Regulation," and then "Pending Proceedings" from the options menu.

Issued in Washington, DC, on July 21, 2005.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 05–14809 Filed 7–26–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0073, FRL–7944–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notice of Arrival of Pesticides and Devices (EPA Form 3540–1). EPA ICR Number: 0152.08, OMB Control Number 2070–0020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Before submitting the ICR to OMB for review and approval. EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 26, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0073, to EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: Enforcement and Compliance Docket and Information Center, Environmental Protection Agency, Mail Code 2201T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, telephone number: (202) 564–4146; fax number: (202) 564–0085; e-mail address: *howie.stephen@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2005–0073, which is available for public viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 564–1927. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of

information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are those which import pesticides and devices.

Title: Notice of Arrival of Pesticides and Devices (EPA Form 3540–1). EPA ICR Number: 0152.08, OMB Control Number 2070–0020. Scheduled to expire on January 31, 2006.

Abstract: The U.S. Customs regulations at 19 CFR 12.112 require that an importer desiring to import pesticides into the United States shall, prior to the shipment's arrival, submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to EPA who will determine the disposition of the shipment. After completing the form, EPA returns the form to the importer, or his agent, who must present the form to Customs upon arrival of the shipment at the port of entry. This is necessary to insure that EPA is notified of the arrival of pesticides and devices as required by the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 17(c) and has the ability to examine such shipments to determine that they are in compliance with FIFRA.

The form requires identification and address information of the importer or his agent and information on the identity and location of the imported pesticide or device shipment.

When the form is submitted to EPA regional personnel for review it is examined to determine whether the shipment should be released for entry upon arrival or alternatively whether it should be detained for examination. The responsible EPA official returns the form to the respondent with EPA instructions to the U.S. Customs Service as to the disposition of the shipment.

Upon the arrival of the shipment, the importer presents the completed NOA to the District Director of U.S. Customs at the port of entry. U.S. Customs compares entry documents for the shipment with the Notice of Arrival and notifies the EPA Regional Office of any discrepancies which the EPA will resolve with the importer or broker. At this point the shipment may be retained for examination. If there are no discrepancies Customs follows instructions regarding release or detention. If EPA inspects the shipment and it appears from examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions of FIFRA, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission into the United States.

This reporting requirement is needed to inform the Agency of pesticides arriving in the customs territory of the United States and to ensure compliance with FIFRA by the responsible party importing pesticides. This reporting requirement is needed to meet direct statutory requirements of FIFRA regarding notification of the Agency of such arrivals.

The information collected is used by EPA Regional pesticide enforcement and compliance staff and the Headquarters Office of Enforcement and Compliance Assurance and Office of Pesticide Programs. The U.S. Department of Homeland Security (Customs), the Department of Agriculture, the Food and Drug Administration, and other Federal agencies may also make use of this information.

EPA is exploring mechanisms whereby importers may respond electronically to this requirement. One of the EPA Regions has initiated an electronic NOA program, whereby respondents submit initial importation information to EPA for review and receive Agency sign-off through electronic means over the internet. The completed electronically transmitted NOA is then printed out and presented to Customs during entry of the shipment. Other Regions have expressed interest, and this program may therefore be expanded. EPA is particularly interested in receiving comments regarding this type of program, and electronic submission in general.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit 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 Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden: The average annual burden to the industry over the next three years is estimated to be 0.3 person hours per response.

Respondents/affected entities: 25,000.

Estimated number of respondents: 25,000.

Frequency of responses: 1.

Estimated total annual hour burden: 7,500.

There are no capital/startup costs or operating and maintenance (O&M) costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 22, 2005.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 05–14885 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0116; FRL–7944–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for Secondary Non-Ferrous Metals Processing Area Source Standard Development Questionnaire, EPA ICR Number 2200.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 26, 2005.

ADDRESSES: Submit your comments, referencing Docket ID number OAR–2005–0116, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Auby, Collection Strategies Division, Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1672; fax number: (202) 566–1639; e-mail address: *auby.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA has established a public docket for this ICR under Docket ID number OAR–2005–0116, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. The EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted information, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are secondary non-ferrous metals processing establishments, excluding plants that perform secondary processing of aluminum, copper, or lead. The standard industrial classification (SIC) code for this industry is primarily 3341, Secondary Smelting and Refining of Non-ferrous Metals; the North American Industry Classification System (NAICS) code is 331492, Secondary Smelting, Refining, and Alloying of Non-ferrous Metal (Except Copper and Aluminum).

Title: Secondary Non-Ferrous Metals Processing Area Source Standard Development Questionnaire.

Abstract: The proposed ICR will collect information and data from 110 existing secondary non-ferrous metal processing plants. Plants will be requested to complete a simple paper questionnaire on production processes and equipment, air pollution control systems, pollution prevention management practices, applicable regulatory requirements, and emissions test data. The questionnaire may be completed from existing information; no additional monitoring or testing is required. The EPA will use the collected information and data to develop area source standards for hazardous air pollutants required under section 112(d) of the Clean Air Act.

This collection of information is mandatory under section 114 of the Clean Air Act, (42 U.S.C 7414). All information submitted to EPA pursuant to this ICR for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit 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 Agency's estimate of the burden of the proposed collection of information, including the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The average annual respondent burden per facility is estimated at 62 hours at a cost of $4,894. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 18, 2005.

Sally L. Shaver,

Director, Emission Standards Division, Office of Air Quality Planning and Standards.

[FR Doc. 05–14900 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7943–9]

Science Advisory Board Staff Office; Notification of a Teleconference of the Science Advisory Board Superfund Benefits Analysis Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Superfund Benefits Analysis Advisory Panel.

DATES: A public teleconference of the SAB Superfund Benefits Analysis Advisory Panel will be held from 2 p.m. to 4 p.m. Eastern time on August 23, 2005 and September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference may contact Dr. Holly Stallworth, Designated Federal Officer, at telephone: (202) 343–9867 or via e-mail at: *stallworth.holly@epa.gov*. An agenda and any other background materials for this teleconference will be posted on the SAB Web site at *http://www.epa.gov/sab/panels/sba_adv_panel.htm* prior to the teleconference.

Technical Contact: The technical contact in EPA's Office of Solid Waste and Emergency Response for the Superfund Benefits Analysis is Ms. Melissa Friedland who can be reached at (703) 603–8864 or *friedland.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Office of Solid Waste and Emergency Response (OSWER) has issued a draft study of the benefits of the Superfund program. This draft study is entitled Superfund Benefits Analysis and may be found at *http://www.epa.gov/superfund/news/benefits.htm*. In response to OSWER's request for advice on this draft study, the Superfund Benefits Analysis Advisory Panel held a teleconference on February 11, 2005 and a face-to-face public meeting on February 24–25, 2005 for discussion of this draft study. The original "widecast" soliciting expertise for the Superfund Benefits Analysis Advisory Panel was published in a Notice on July 30, 2004 (69 FR 45705–45706), and a Notice announcing both the teleconference and face-to-face meetings was published on February 7, 2005 (70 FR 6436).

On August 23, 2005 and September 7, 2005, the SAB Panel will discuss its draft advisory report that responds to the charge questions to the Panel. This draft advisory will be posted at the SAB Web site at *http://www.epa.gov/sab/panels/sba_adv_panel.htm* prior to the meeting. Agendas for both teleconferences will also be posted on the SAB web site prior to the teleconference.

Procedures for Providing Public Comment

The EPA Science Advisory Board (SAB) Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at the Superfund Benefits Analysis Advisory Panel's meetings will not repeat previously submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Stallworth no later than August 16, 2005 in order to reserve time on the August 23, 2005 meeting agenda and no later than August 31, 2005 in order to reserve time on the September 7, 2005 meeting agenda. For teleconferences, opportunities for oral comment will usually be limited to no more than five minutes per speaker. *Written Comments:* Written comments should be received in the SAB Staff Office by the same dates specified above so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format).

Dated: July 21, 2005.

Anthony F. Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–14898 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0024; FRL–7726–5]

DCPA; Order to Amend to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amendments to terminate certain uses of products containing the pesticide DCPA, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This notice follows a February 16, 2005 **Federal Register** Notice of Receipt of Request from the DCPA registrant to voluntarily amend to terminate certain uses of their DCPA product registrations. These are not the last DCPA products registered for use in the United States. In the February 16 Notice, EPA indicated that it would issue an order implementing the amendments to terminate the subject uses, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of the request. The Agency received three substantive comments on the Notice, two of which requested that several use sites proposed for termination be retained. EPA hereby issues in this notice an order to amend the subject registrations to terminate a subset of the uses initially requested for termination by the registrant. Any distribution, sale, or use of the DCPA products subject to this order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The use terminations are effective on July 31, 2005.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–8041; e-mail address: *bloom.jill@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0024. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov//fedrgstr/.*

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

II. What Action is the Agency Taking?

This notice announces amendments to terminate uses of certain end-use and manufacturing-use DCPA products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—DCPA PRODUCT REGISTRATIONS AFFECTED BY AMENDMENT TO TERMINATE USES

EPA Registration No.	Product Name
5481-485	90% Dimethyl-T
5481–486	Dacthal 1.92F
5481–487	Dacthal Flowable Herbicide
5481–488	Dacthal G-2.5 Herbicide
5481–489	Dacthal G-5 Herbicide
5481–490	Dacthal W-75 Herbicide
5481–491	Dacthal W-75
5481–495	Technical Chlorthal Dimethyl

TABLE 2.—REGISTRANT OF SUBJECT DCPA PRODUCTS

EPA Company No.	Company Name and Address
5481	Amvac Chemical Corporation 4695 MacArthur Court Suite 1250 Newport Beach, CA 92660

The uses the registrant requested to delete from its product labels are: Alfalfa, arracacha, artichokes (Chinese and Jerusalem), beans, bean yam, beets, chestnuts (soil treatment and nursery stock), chufa, citron melon, cotton, crabapples (soil treatment and nursery stock), cucumber, edible canna, eggplant, garlic, ginger, kale, leren, peas, pepper, potatoes, residential uses (turf and ornamentals), squash (including pumpkin), sweet potatoes, tanier, turnips, walnuts (non-bearing and nursery stock), and yam. Amvac requested termination of a number of DCPA uses in response to concerns about the contamination of ground water with DCPA and especially its metabolite tetrachloroterephthalic acid (TPA) which came to light when the tolerances for DCPA were being reassessed. Although the Agency was unable to identify a specific health risk associated with TPA, its prevalence and widespread detection in ground water were the basis of discussions with Amvac on the use deletions.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period, EPA received three comments in response to the February 16, 2005 **Federal Register** notice announcing the Agency's receipt of the request for amendments to terminate uses of DCPA. These comments are available on the public docket, and are summarized herein.

The Department of Plant and Environmental Protection Sciences (DPEPS) of the University of Hawaii submitted comments on the potential impact the loss of DCPA would have on the production of beans, bean yam (actually yam bean), beets, cucumber, eggplant, turnips, and especially sweet potatoes, in Hawaii. The commenters subsequently indicated that DCPA is not registered in Hawaii for use on beets or yam bean, and they withdrew their request that the turnip use be retained. In addition, they noted that alternatives to DCPA are available and used in the production of beans and cucumber. The commenters also noted that the combined acreage in Hawaii of crops on which DCPA is used in less than 1,000 acres, so the potential for contamination of water sources with TPA is minimal.

The Pesticide Specialist at Ratto Brothers, a large specialty vegetable grower in the Central Valley of California, commented on the need for the continued availability of DCPA in growing kale and turnips, due to limited alternatives and the costs of hand-labor weeding. He also noted that cultural practices have been implemented by Ratto Brothers' to decrease run-off and surface water contamination. Leafy greens and cole crops such as kale have been identified as a critical uses for DCPA in information the Agency had gathered from the States.

Based on the comments of the University of Hawaii and Ratto Brothers, the Agency will allow Amvac to retain the uses for sweet potato, eggplant, kale, and turnip on the subject registrations. These uses, taken all together, represent less than 2% of total domestic agricultural usage of DCPA, and even less when turf and other residential uses are considered. Because no adverse health concerns have been identified for TPA, the Agency believes that the risks associated with TPA contamination of groundwater on the retained uses in Hawaii are probably negligible.

Amvac, the registrant of the DCPA manufacturing- and end-use products, submitted comments on the disposition

of already-printed labels containing language allowing the use of DCPA on sites proposed for deletion. Amvac indicated that it had many such labels on hand, and if they could not be used after the effective date of cancellation, they would represent a signficant expense for Amvac. Amvac proposed that no new labels with the affected use sites would be printed after the effective date of use termination, but that Amvac would be allowed to use existing inventories of current labeling until supplies are exhausted. The approach suggested by Amvac is inconsistent with how cancellations are effected. When a registration is cancelled, production of the affected product must cease; likewise, when a use is terminated, production of the affected product labeled for that use must cease. The Agency cannot allow Amvac to utilize labels with the terminated uses after the effective date of use termination. However, in consideration of the time which has passed since the proposal was published and revisions to the list of use sites to be cancelled, the Agency will extend the effective date of use termination (proposed as April 1, 2005) until a date after publication of this notice. As is typical, the Agency will allow a period of time for clearance of products labeled for use on the terminated sites from the registrant's inventory.

IV. Use Termination Order

Pursuant to FIFRA section 6(f), EPA hereby approves a subset of the use terminations originally requested by the registrant for the DCPA registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the DCPA product registrations identified in Table 1 of Unit II, are hereby amended to terminate the following uses: Alfalfa, arracacha, artichokes (Chinese and Jerusalem), beans, bean yam (yam bean), beets, chestnuts (soil treatment and nursery stock), chufa, citron melon, cotton, crabapples (soil treatment and nursery stock), cucumber, edible canna, garlic, ginger, leren, peas, pepper, potatoes, residential uses (turf and ornamentals), squash (including pumpkin), tanier, walnuts (non-bearing and nursery stock), and yam. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II, in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit VI. will be considered a violation of FIFRA.

V. 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 or amended to terminate one or more uses. 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, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation or use termination action. The use termination order issued in this Notice includes the following existing stocks provisions.

Amvac Chemical Corporation will be permitted to sell or distribute existing stocks of its products with EPA Registration Numbers as listed in Table I of Unit II, and bearing labels allowing uses including those uses which are the subject of the use termination order, through April 1, 2007. Consistent with the effective date of the use terminations, these existing stocks are products bearing labels which include the uses being cancelled, but to which the labels were affixed prior to July 31, 2005 only.

Sale, distribution, or use of these products bearing labels allowing uses which are the subject of the use termination order, by persons other than the registrant, may continue until supplies are exhausted, provided that such use is consistent with the terms of the previously approved labeling. Any use of existing stocks that is not consistent with such previously approved labeling is prohibited.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 15, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–14737 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0167; FRL–7719–6]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0167, must be received on or before August 26, 2005.

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: Carol Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 308–8810; e-mail address: *frazer.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0167. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.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–2005–0167. 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–2005–0167. 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), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0167.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB),

Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0167. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File symbol:* 82100–R. *Applicant:* PQ Corporation, P.O. Box 840, Valley Forge, PA 19482–0840. *Product name:* AgSilr 25. *Type of product:* Biochemical pesticide. *Active ingredient:* Potassium silicate at 29.1%. *Proposed classification/Use:* Fungicide, miticide and insecticide.

2. *File symbol:* 82100–E. *Applicant:* PQ Corporation, P.O. Box 840, Valley Forge, PA 19482–0840. *Product name:* Technical Potassium Silicate. *Type of product:* Biochemical pesticide. *Active ingredient:* Potassium silicate at 100%. *Proposed classification/Use:* Fungicide, miticide and insecticide.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 11, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–14881 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0139; FRL–7727–2]

Flucarbazone-sodium; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0139, must be received on or before August 26, 2005.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- 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–2005–0139. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

1. *Electronically.* If you submit an electronic comment 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–2005–0139. 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–2005–0139. 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–2005–0139.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0139. 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: July 18, 2005.

Donald R. Stubbs,

Acting 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 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.

Arvesta Corporation

PP 5F6949

EPA has received a pesticide petition (PP 5F6949) from Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of flucarbazone-sodium: 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[[2-(trifluoromethoxy)phenyl]sulfonyl]-1H-1,2,4-triazole 1-carboxamide, sodium salt; and its N-desmethyl metabolite in or on the raw agricultural commodities (RACs):

Commodity	Parts per million
Wheat, forage	0.30
Wheat, grain	0.01
Wheat, hay	0.10
Wheat, straw	0.05

And combined residues of flucarbazone-sodium and its metabolites converted to 2-(trifluoromethoxy)benzene sulfonamide and calculated as flucarbazone-sodium in or on the raw agricultural commodities:

Commodity	Parts per million
Milk	0.005
Meat and meat by-products except liver (cattle, goats, sheep, horses, hogs)	0.01
Liver (cattle, goats, sheep, horses, hogs)	1.50

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of flucarbazone-sodium in wheat was rapid and extensive. Little or no parent flucarbazone-sodium was found in the RACs. A primary metabolic pathway in wheat involved the N-demethylation of flucarbazone-sodium to give N-desmethyl flucarbazone-sodium. N-desmethyl flucarbazone-sodium was found in all of the wheat RACs. The N-desmethyl flucarbazone-sodium was then either hydrolyzed or conjugated with glucose. Another primary metabolic pathway was hydrolysis of flucarbazone-sodium yielding sulfonic acid and sulfonamide which were isolated, and N,O-dimethyl triazolinone which was not isolated. Other metabolites were then subsequently formed by oxidative reactions, hydrolytic reactions, and conjugation.

2. *Analytical method—i. Plants.* The proposed tolerance expression is parent flucarbazone-sodium and N-desmethyl flucarbazone-sodium. An analytical method was developed to measure these two analytes in plant matrices. This method was validated in wheat tissues. The flucarbazone-sodium and N-desmethyl flucarbazone-sodium residues are extracted from the wheat samples with 0.05 M NH_4OH by accelerated solvent extraction (ASE). The extracts are purified by a combination of C-18 solid phase extraction (SPE) and ethylene diamine-N-propyl (PSA) spe. The resultant analytes are detected by liquid chromatography/tandem mass spectroscopy (lc/ms/ms) and quantified against known amounts of deuterated internal standards. The method limit of quantitation (LOQ) is 0.01 milligram/kilogram (mg/kg) of either analyte in all wheat matrices. The method limit of detection (LOD) is 0.005 mg/kg of either analyte in all wheat matrices.

ii. *Animals.* An analytical method was developed to measure the residues of flucarbazone-sodium in animal tissues and milk. Since the flucarbazone-sodium-related residues were present in ruminant tissues as a mixture of bound, conjugated, and unconjugated residues, a method was developed that simultaneously extracted and hydrolyzed the majority of the flucarbazone-sodium-related residues to flucarbazone-sodium sulfonamide. The flucarbazone-sodium residues are simultaneously hydrolyzed to flucarbazone-sodium sulfonamide and extracted from the animal tissues and milk by heating with 8% trifluoroacetic acid (TFA) in water. The analysis of fat was complicated by the large quantities of lipids that were released during hydrolysis and extraction. Therefore, the flucarbazone-sodium residues are extracted into acetonitrile/water (9:1) before they are hydrolyzed to flucarbazone-sodium sulfonamide. After conversion to flucarbazone-sodium sulfonamide, the residues are purified and partitioned. The residues are detected by lc/ms/ms and quantified against known amounts of deuterated internal standards. The LOQ in the tissues and milk is 0.020 and 0.005 mg/kg, respectively. The estimated LOD (3x highest background response) in the liver, muscle, and milk is 0.014, 0.002, and 0.004 mg/kg, respectively. The recoveries of flucarbazone-sodium were determined in all tissues and milk after fortification with flucarbazone-sodium. The average recoveries of flucarbazone-sodium from liver fortified at 0.020 and 0.100 mg/kg were 104 and 100%, respectively. The average recoveries of flucarbazone-sodium from muscle fortified at 0.020 and 0.100 mg/kg were 97 and 102%, respectively. In milk, the average recoveries of flucarbazone-sodium at fortifications of 0.005, 0.010, and 0.050 mg/kg were 111 (after correction for background in the control samples, the average recovery was 92%), 97 and 91%, respectively. An independent laboratory validation of the analytical method was performed. The method was successfully validated indicating that the method could be satisfactorily run by following the written procedure.

3. *Magnitude of residues.* Field trials were conducted with wheat at 36 locations to evaluate the quantity of flucarbazone-sodium residues in wheat forage, hay, straw, and grain following treatment with flucarbazone-sodium 70WG at a rate of 30 grams active ingredient/hectacre (g ai/ha). The highest average field trial (HAFT) residue detected in forage, hay, and straw were 0.27, 0.08, and 0.04 mg/kg, respectively. Residues of flucarbazone-sodium were <0.01 mg/kg in wheat grain.

B. Toxicological Profile

1. *Acute toxicity*—i. Flucarbazone-sodium is not toxic to fasted rats following a single oral administration. The oral lethal dose (LD_{50}) is >5,000 mg/kg body weight (bwt) for males and females.

ii. Flucarbazone-sodium is not toxic to rats following a single dermal application. The dermal LD_{50} is >5,000 milligrams/kilogram/body weight (mg/kg/bwt) for males and females.

iii. An acute inhalation study with rats showed low toxicity with a 4–hour dust aerosol lethal concentration (LC_{50}) >5,130 mg/m^3 air for males and females.

iv. An eye irritation study in rabbits showed only very slight, reversible irritation.

v. A dermal irritation study in rabbits showed flucarbazone-sodium is not irritating to skin.

vi. Flucarbazone-sodium has no skin sensitizing potential under the conditions of the maximization test in guinea pigs.

2. *Genotoxicity.* The genotoxic action of flucarbazone-sodium was studied in bacteria and mammalian cells with the aid of various *in vitro* test systems (*Salmonella* microsome test, hypoxanthine guanine phophoribosyl transferase (HGPRT) test with Chinese hamster V79 cells, cytogenetic study with Chinese hamster V79 cells, and unscheduled DNA synthesis test) and in one *in vivo* test (micronucleus test). None of the tests revealed any evidence of a mutagenic or genotoxic potential of flucarbazone-sodium. The compound did not induce point mutation, DNA damage, or chromosome aberration.

3. *Reproductive and developmental toxicity.* In a 2–generation reproduction study, Wistar rats were administered dietary levels of flucarbazone-sodium at levels of 0, 50, 4,000, and 20,000/12,000 parts per million (ppm) (dose reduction week 6). The no observed adverse effect levels (NOAELs) for reproductive parameters was established at 4,000 ppm, based on slight reduction in pup weight development at 12,000 ppm. The NOAELs established for parental males and females were 4,000 and 50 ppm, respectively.

i. A developmental toxicity study was conducted with Sprague-Dawley rats via oral gavage of flucarbazone-sodium at levels of 0, 100, 300, and 1,000 milligrams/kilogram body weight/day (mg/kg bwt/day) on days 6 through 19 of gestation. There were no signs of maternal toxicity, embryotoxicity, fetotoxicity, or teratogenicity at the level of 1,000 mg/kg bwt/day. Therefore, the maternal and developmental NOAELs for rats were established at >1,000 mg/kg bwt/day, the limit dose for this study type.

ii. Himalayan rabbits were administered flucarbazone-sodium at levels of 0, 100, 300, 500, or 1,000 mg/kg/bwt by oral gavage days 6 through 28 post coitum in a test for developmental toxicity. A maternal NOAEL of 100 mg/kg bwt/day was established based on clinical findings, body weight loss, decreased feed consumption, gastrointestinal changes, increased liver weights, and fatty liver changes at 300 mg/kg bwt/day. The gestation rate NOAEL of 100 mg/kg bwt/day was based on one abortion (assessed as secondary due to maternal toxicity) at 300 mg/kg bwt/day. The NOAEL for fetal parameters of 300 mg/kg bwt/day was based on decreased fetal weights and delayed ossification at 500 mg/kg bwt/day. No teratogenic potential of flucarbazone-sodium was evident in rabbits.

4. *Subchronic toxicity*—i. A 28–day dermal rabbit study established a systemic NOAEL of >1,000 mg/kg bwt/day (the dermal limit dose) for males and females. The local dermal effects, skin thickening, seen at 1,000 mg/kg were regarded as a result of mechanical friction and of no toxicological relevance.

ii. A 90–day rat feeding study defined a NOAEL at 250 ppm (17.6 mg/kg bwt/day) for males and 1,000 ppm (101.7 mg/kg bwt/day) for females based on a decreased spleen weight in males at 1,000 ppm and on immunologic changes at 4,000 ppm in females.

iii. A 90–day feeding study with male and female B6C3F1 mice established a NOAEL of 7,000 ppm (equivalent to >2,083, and 3,051 mg/kg bwt/day for males and females, respectively). The dose of 7,000 ppm was the HDT.

iv. A 90–day dog feeding study at levels of 0, 1,000, 5,000, and 50,000 ppm established a NOAEL of 1,000 ppm (equivalent to 33.8 mg/kg bwt/day in males and 35.2 mg/kg bwt/day in females) based on decreased thyroxine levels and increased thyroxine-binding capacity, macroscopic and microscopic effects on the gastric mucosa and an eosinophilic hepatocellular cytoplasm occurring at 5,000 ppm and above. The liver enzyme induction at 1,000 ppm was assessed as a slight adaptive response in the detoxification process of flucarbazone-sodium but not as an adverse effect, due to the absence of clinical chemical changes that would indicate liver damage and due to the

absence of any histopathologic liver changes at this dietary level.

v. A 28–day (6 hours/day; 5 days/week) subacute inhalation toxicity study was conducted with male and female Wistar rats exposed to mean actual concentrations of 5.2, 30.0, 180.1 and 513.3 mg/m^3 air. A NOAEL of 5.2 mg/m^3 air was established based on histopathological changes observed at 30 mg/m^3 air and above.

5. *Chronic toxicity*—i. A 2–year chronic toxicity/oncogenicity study was conducted with male and female Wistar rats at dietary levels of 0, 2.5, 7.5, 125, and 1,000 mg/kg bwt. A NOAEL of 125 mg/kg was established based on increased food consumption (both sexes) and lower body weights (females) at 1,000 mg/kg. No carcinogenic potential was indicated.

ii. B6C3F1 mice were administered flucarbazone-sodium via the diet at levels of 0, 50, 1,000, and 7,000 ppm in a 2–year carcinogenicity study. The NOAEL was established in males and females at 1,000 ppm (equivalent to 275 and 459 mg/kg bwt/day, respectively) based on reduced body weight gain in both sexes and on increased feed consumption in males at the 7.000 ppm level. No carcinogenic potential was indicated.

iii. A 1–year feeding study in dogs at levels of 0, 200, 1,000, and 5,000 ppm established a NOAEL of 1,000 ppm for males (equal to 35.9 mg/kg bwt/day) based on decreased body weight development, increased ALAT- and ASAT-levels and slightly increased N-demethylase levels. The NOAEL of 1,000 ppm for females (equal to 37.1 mg/kg bwt/day) was based on body weight gain depression, increased N-demethylase levels, decreased T4 levels, and marginally increased liver weight.

6. *Animal metabolism*. Flucarbazone-sodium was metabolized via two pathways. The major pathway involved the hydrolysis of the urea linkage forming sulfonamide and N,O-dimethyltriazolinone. The sulfonamide was shown to be the major metabolite in the blood, fat, liver, and muscle at 4 to 6 hours following oral administration of phenyl-UL-14C flucarbazone-sodium. The sulfonamide was conjugated with glucuronic acid or acetate sulfonamide N-glucuronide or N-acetyl sulfonamide or hydroxylated and then conjugated with glucuronic acid to form hydroxysulfonamide-O-glucuronide prior to elimination in the urine. A minor pathway involved N-demethylation of flucarbazone-sodium to form N-desmethyl flucarbazone-sodium followed by hydrolysis to form the sulfonamide and O-methyltriazolinone. Demethylation of N,Odimethyltriazolinone led to the formation of N-methyltriazolinone, O-methyltriazolinone, and ultimately, urazole; methyl urethane was probably formed from the cleavage of O-methyltriazolinone.

7. *Metabolite toxicology*—i. The animal and plant metabolite flucarbazone-sodium sulfonamide (trifluoromethoxysulfonamide) has a low acute oral toxicity (LD_{50} >2,000 mg/kg/bwt) in fasted rats.

ii. The plant metabolite flucarbazone-sodium sulfonamide lactate conjugate has no acute oral toxicity (NOAEL: 5,000 mg/kg/bwt) in fasted rats.

iii. The plant metabolite flucarbazone-sodium sulfonamide alanine has no acute oral toxicity (NOAEL: 5,000 mg/kg/bwt) in fasted rats.

iv. The soil metabolite O-desmethyl flucarbazone-sodium has an acute oral LD_{50} value in fasted male and female rats of >2,500 - <5,000 mg/kg bwt.

v. The plant, animal, and soil metabolite, MKH 10868 (flucarbazone-sodium sulfonic acid Na-salt), has no acute oral toxicity (LD_{50} >5,000 mg/kg bwt) in fasted male and female rats.

vi. MKH 10868 was considered non-mutagenic with and without S9 mix in the plate incorporation as well as in the preincubation modification of the Salmonella/microsome test.

8. *Endocrine disruption*. There is no evidence to suggest that flucarbazone-sodium has an effect on the endocrine system. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- and long-term exposure. These studies revealed no endocrine effects due to flucarbazone-sodium.

9. *Other studies*—i. An acute neurotoxicity screening study in rats established an overall NOAEL for males and females of 500 mg/kg based on transient neurobehavioral effects. Evidence of toxicity was only slight at a limit dose of 2,000 mg/kg and complete recovery occurred within 7 days following treatment.

ii. A subchronic neurotoxicity screening study in rats established an overall NOAEL of 2,000 ppm for males (equal to 147 mg/kg bwt/day) and 20,000 ppm (equal to 1,736 mg/kg bwt/day) for females based on a slight decrease in body weight and food consumption. The NOAEL for microscopic lesions was 20,000 ppm for males and females, the highest dose tested (HDT). There was no evidence of neurotoxicity at any dietary level.

iii. A plaque-forming-cell assay (to investigate immunotoxicological potential) was performed on rats after a 4–week dietary exposure. The NOAEL of 20,000 ppm (equivalent to 2,205 and 2,556mg/kg bwt/day in males and females, respectively) was based on the lack of specific effects in the HGT.

iv. The immunotoxicity potential of flucarbazone-sodium was additionally investigated in antibody plaque-cell forming assays and in assays examining splenic T-cells, B-cells, and NK-cells after 4–week dietary administrations in male and female rats at levels up to and including 1,000 mg/kg bwt/day. There was no statistically significant effect on the humoral immune system and no effects on splenic cell populations, cell-mediated immune response, or the innate immune response in males or females. The NOAEL for immunotoxicity from these studies was 1,000 mg/kg bwt/day, the immunotoxicity limit dose.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Estimates of chronic dietary exposure to residues of flucarbazone-sodium utilized the proposed tolerance-level residues for wheat forage, wheat hay, wheat straw, wheat grain, meat, liver, and milk of 0.30, 0.10, 0.05, 0.01, 0.01, 1.50, and 0.005 ppm, respectively. Other assumptions were that 100% of the target crop would be treated with flucarbazone-sodium and that no loss of residue would occur due to processing and/or cooking. A chronic reference dose (RfD) of 0.36 milligrams/kilogram/day (mg/kg/day) was assumed based on the NOAEL of 35.9 mg/kg/day from the one year dog feeding study. A safety factor of 100 was used based on interspecies extrapolation (10x) and intraspecies variability (10x). Using these conservative assumptions, dietary residues of flucarbazone-sodium contribute 0.006659 mg/kg/day (2% of the RfD) for children 1-6 years, the most sensitive sub-population. For the U.S. population, the exposure was 0.002891 mg/kg/day (1% of the RfD). For acute dietary exposure, the same conservative assumptions were made. Based on the NOAEL of 300 mg/kg/day from the rabbit developmental toxicity study, an acute RfD of 3.0 mg/kg/day was used to calculate the acute dietary risk to the most exposed subgroup: females, 13 to 50 years old. The acute dietary exposure from food to flucarbazone-sodium will occupy <1% of the RfD for females, 13 to 50 years old.

ii. *Drinking water*. Given the post-emergence application pattern, low use rates and rapid soil degradation of flucarbazone-sodium, the risk of ground and surface water contamination and exposure via drinking water is negligible. The surface water model

generic expected environment concentration (GENEEC) and the ground water model (SCI-GROW) were used to determine whether drinking water from surface or ground water sources represented a worst-case exposure scenario. These models predict residues of flucarbazone-sodium would be higher in surface water. Assuming a worst-case GENEEC scenario where residues of flucarbazone-sodium occur in surface water used for drinking water at the highest predicted acute and chronic concentrations, the risk from exposure to residues of flucarbazone-sodium are well within EPA's acceptable limits.

The GENEEC model predicted an acute surface water concentration of flucarbazone-sodium of 1.45 µg/L. Assuming a 70 kilogram (kg) adult drinks 2 liters/day containing 1.45 µg/L, the acute exposure would be 0.0000414 mg/kg/day for adults. Assuming a 10 kg child drinks 1 liter/day containing 1.45 µg/L, the exposure would be 0.000145 mg/kg/day. Based on the NOAEL of 300 mg/kg/day from the rabbit developmental toxicity study and assuming a safety of 100 (10x for interaspecies variability and 10x for interspecies extrapolation), the MOE for adults of 72,500 and for children of 20,700 do not exceed EPA's level of concern for adults or children. This assessment is based on the GENEEC highest predicted acute concentration of flucarbazone-sodium in drinking water using worst-case assumptions.

Using GENEEC, the highest predicted chronic (60–day exposure) concentration of flucarbazone-sodium was 1.44 µg/L. EPA interim policy recommends that the 60–day GENEEC value to be divided by an adjustment factor of 3 to obtain a value for chronic risk assessment calculations. Therefore, a surface water value of 0.48 µg/L was used for chronic risk assessment. Assuming a 70 kg adult consumes 2 liters (L) of water per day containing 0.48 µg/L of flucarbazone-sodium residues for a period of 70 years, less than 0.004% of the RfD was consumed from residues of flucarbazone-sodium in surface water used for drinking water (worst-case scenario). For a 10 kg child drinking 1 L of water per day containing 0.48 µg/L of flucarbazone-sodium residues, only 0.01% of the RfD was consumed by drinking water.

2. *Non-dietary exposure.* There are no current non-food uses for flucarbazone-sodium registered under the Federal Insecticide,Fungicide, and Rodenticide Act (FIFRA), as amended. No non-food uses are proposed for flucarbazone-sodium. No non-dietary exposures are expected for the general population.

D. Cumulative Effects

Flucarbazone-sodium falls into the category of sulfonamide herbicides. There is no information to suggest that any of this class of herbicides has a common mechanism of mammalian toxicity or even produce similar effects so it is not appropriate to combine exposures of flucarbazone-sodium with other herbicides. Arvesta Corporation is considering only the potential risk of flucarbazone-sodium.

E. Safety Determination

1. *U.S. population.* As presented previously, the exposure of the U.S. general population to flucarbazone-sodium is low, and the risks, based on comparisons to the reference dose, are minimal. The margins of safety from the use of flucarbazone-sodium are well within EPA's acceptable limits. Arvesta Corporation concludes that there is a reasonable certainty that no harm will result to the U.S. population from aggregate exposure to flucarbazone-sodium residues.

2. *Infants and children.* The complete toxicological data base including the developmental toxicity and 2–generation reproduction studies were considered in assessing the potential for additional sensitivity of infants and children to residues of flucarbazone-sodium. The developmental toxicity studies in rats and rabbits revealed no increased sensitivity of rats or rabbits to in-utero exposure to flucarbazone-sodium. The 2–generation reproduction study did not reveal any increased sensitivity of rats to in-utero or postnatal exposure to flucarbazone-sodium. Furthermore, none of the other toxicology studies revealed any data demonstrating that young animals were more sensitive to flucarbazone-sodium than adult animals. The data taken collectively clearly demonstrate that application of a Food Quality Protection Act (FQPA) uncertainty factor for increased sensitivity of infants and children is not necessary for flucarbazone-sodium.

F. International Tolerances

A default Maximum Residue Limit (MRL) of 0.01 ppm has been established in Canada for residues of flucarbazone-sodium and its N-desmethyl metabolite on wheat grain. This value is consistent with the tolerance being proposed in the United States on wheat grain. There are no harmonized MRLs at the European Union level and no Codex MRLs for this compound on wheat at present. Therefore, no compatibility issues exist with Codex in regard to the proposed U.S. tolerances.

[FR Doc. 05–14736 Filed 7–26–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0166; FRL–7719–5]

Potassium Silicate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0166, must be received on or before August 26, 2005.

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: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address:*frazer.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0166. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

1. *Electronically.* If you submit an electronic comment 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–2005–0166. 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–2005–0166. 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–2005–0166.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0166. 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 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: July 11, 2005.

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.

PQ Corporation

PP 5F6905

EPA has received a pesticide petition 5F6905 from PQ Corporation, P.O. Box 840 Valley Forge, PA 19482–0840 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 biochemical pesticide potassium salt of silicic acid (potassium silicate).

Pursuant to section 408(d)(2)(A)(i) of FFDCA, as amended, PQ Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by PQ Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product name and Proposed Use Practices

The new active ingredient proposed in this petition is potassium silicate. The products formulated from this active ingredient will be sold under the product name Agsil. Potassium silicate is the potassium salt form of silicic acid. Dilute aqueous solutions of potassium silicate (about 1% or less when tank mixed), will be applied to fruit crops, nuts, vegetable crops, and vine crops, and as a fungicidal pesticide (against such diseases as powdery mildew) and as an insecticide (for use against the pests such as spider mites and whiteflies).

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* After aqueous formulating, potassium silicate consists of potassium and silicic acid ($Si(OH)_4$).

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* In plants $Si(OH)_4$ is rapidly absorbed and enhances growth and plant vigor. Currently potassium silicates are sold as fertilizer. Once absorbed, silicic acid is readily circulated throughout the plant and deposited as silicon dioxide.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* The primary function of silicon in plants is to enhance the absorption and translocation of macro and micro nutrients. The primary benefit of silicon is the even distribution of these nutrients through the plant, enhancing overall total plant vigor. Silicon also enhances plant structural strength by increasing rigidity within cell walls.

This also enhances plant thriving and vigor.

Since both potassium and silicic acid are rapidly absorbed and utilized by plants, it is not possible to detect residues of potassium silicate applied as an insecticide essentially 24 hours after application. Silicates such as potassium silicate are not discernable from silicates found ubiquitously within crops and the environment in general. Further given the significant percentage of crop tissues that contain silicon dioxide, it is unlikely that any significant increase in silica concentration due to silicate pesticide applications would occur.

C. Mammalian Toxicological Profile

Solutions of sodium silicate are used for corrosion control in potable water as allowed by the EPA. Potassium silicate is Generally Regarded as Safe (GRAS) by the Food and Drug Adminsitration (FDA). Silica is naturally present in municipal drinking water at about 8 parts per million (ppm). Because of their ubiquitous distribution in water, soil and plant, and animal tissue, they are consumed on a daily basis. The FDA has determined that potassium silicate is identical in chemical properties to sodium silicate. Sodium metasilicate (sodium silicate with a SiO_2/Na_2O weight ratio of 1:1) and sodium silicate are currently exempt from the requirement of a tolerance on crops (40 CFR 180.1001 (c)).

1. *Acute toxicity.* Neither sodium nor potassium silicate are orally toxic. Studies on both substances in Europe have found the LD_{50} to exceed 2,000 milligram/kilogram (mg/kg). The World Health Organization puts the oral LD_{50} in rats for silicic acid at 3.16 gram/kilogram (g/kg) body weight and for mice at >5 gram/kg body weight. Several studies on various concentrations of sodium silicate found LD_{50} values ranging from 1,300 mg/kg to >10,000 mg/kg. The estimated LD_{50} dose for silicic acid for man is >15 g/kg body weight. The estimated LD_{50} for a solution of sodium silicate (and therefore potassium silicate) is estimated between 0.5 and 5.0 g/kg body weight with toxicity due more to the higher alkalinity of the solution.

Potassium silicate will be applied to crops in dilute solutions. The end use products will contain 29% potassium silicate or less. The applications solutions will contain less than 1% potassium silicate. A full acute toxicology battery has been completed on a 29% w/w aqueous potassium silicate solution. The results of those studies are tabulated in the table in this unit.

Study	Guideline	Result	Category	Comments
Acute oral	81–1	>5 g/kg	IV	
Acute dermal	81–2	>5 g/kg	IV	
Acute inhalation	81–3	>2.06 mg/Liter (L)	IV	
Acute eye irritation	81–4	Score=12	III	
Acute dermal irritation	81–5	Slight	IV	Clears in 72 hours
Acute dermal sensitization	81–6	Not Sensitizing		

2. *Genotoxicity.*DNA damage and repair assay and reverse mutation assays conducted on sodium silicate were negative for genotoxic effects. A 2-year chronic toxicity study was negative for carcinogenicity.

3. *Reproductive and developmental toxicity.* A 1-generation rat reproduction study with the oral administration of 790 ppm and 1,580 ppm sodium silicate (equivalent to 600 ppm and 1,200 ppm silicon dioxide) was conducted for 180 days. No adverse effects were noted. A 2-generation reproduction study with the oral administration of 100 mg/kg body weight (bw) per day amorphous silica to rats was also conducted. The parent generation (one male and five females) produced five litters with a total of 25 rats. Half a year later, one male and five females of the first generation were mated; the number of animals in the second generation was 21. Neither malformation nor any other adverse effects were noted. In summary, no chronic detrimental effects were noted for intake of silicates. In fact positive nutritional aspects were noted in most of the studies.

4. *Animal metabolism.* Some amount of silica is normally present in all body tissues. Silicic acid is a normal constituent of urine with excreted values ranging from 10–30 mg/day. The silica content of human tissue varies from 10–200 mg/100 g dry weight.

D. Aggregate Exposure

1. *Dietary exposure*—i. Silicic acid salts are the most common form of silicon. Silicon is a nutritional trace element required for proper and strong growth of mammalian bones. In plants, silicic acid ($Si(OH)_4$) is rapidly absorbed. Once absorbed, silicic acid is readily circulated throughout the plant and deposited as silicon dioxide. Consequently, exposure to soluble silica occurs on a daily basis and is a property of all plant products in human diet. The concentration of silicon in vegetable plants varies greatly with cereals and grasses containing the highest concentrations (0.2–2.0%). Further, silica is approved by the FDA for use as an anti-caking agent in food.

ii. *Drinking water.* Silicate is used as a corrosion inhibitor for potable water. The use rate for municipal water supplies is 8 ppm.

2. *Non-dietary exposure.* Silicon comprises 31% of the Earth's crust. Silicic acid salts (silicates) are the most common form of silicon. Consequently, exposure to silicates is widespread in activities involving contact with soil and natural water.

E. Safety Determination for U.S. population, Infants and Children

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database, unless EPA determines that a different MOE will be safe for infants and children.

MOEs are often referred to as uncertainty (safety) factors. In this instance, the Agency believes that there are reliable data to support the conclusion that the subject active ingredient when used as a systemic acquired resistence (SAR) inducer, are practically non-toxic to mammals, including infants and children, and, thus, there are no threshold effects, and EPA has not used a MOE approach to assess their safety. As a result, the provision requiring an additional MOE does not apply. Consistent with FFDCA

section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Based on the information and data considered, the Agency has determined that use of this pesticide as a SAR inducer will not pose a dietary risk under reasonably foreseeable circumstances.

Accordingly, EPA concludes that, in amending 40 CFR part 180, to establish the exemptions as proposed, there is a reasonable certainty that no harm to the general population, including infants and children, will result from aggregate exposure to the pesticide chemical residues of the subject active ingredient, when used as a SAR inducer. The safety of infants and children is supported by oral toxicity data indicating that, for the subject active ingredient, the doses must exceed 5,000 mg/kg before toxicity occurs.

F. Endocrine Disruption

The Agency has no information that suggests silicates will have an effect on the immune or endocrine system. Given the widespread presence of natural silicates such effects are highly unlikely.

G. International Tolerances

There are no CODEX, national or international, tolerance exemptions established for the subject active ingredient at this time.

[FR Doc. 05–14864 Filed 7–26–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0207; FRL–7727–8]

Orthosulfamuron; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0207, must be received on or before August 26, 2005.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you 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–2005–0207. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

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ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0207. 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–2005–0207.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0207. 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: July 18, 2005.

Donald R. Stubbs,

Acting 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 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.

ISAGRO S.p.A.

PP 5F 6957

EPA has received a pesticide petition (5F 6957) from ISAGRO S.p.A.,Centro Uffici S. Siro — Fabbricato D — ALA 3, Via Caldera, 21, 20153 Milano, Italy 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 by establishing a tolerance for residues of orthosulfamuron in or on the raw agricultural commodity rice, grain and rice, straw at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* In plants, the metabolism of orthosulfamuron is adequately understood for the purposes of establishing the proposed tolerances. Trace levels of parent orthosulfamuron were the predominant residue. In addition, several identified metabolites were found at very low concentrations. All residues (parent and metabolites) found in the plant metabolism studies were also found in the animal metabolism studies. Based on the available metabolism data, parent orthosulfamuron is proposed to be considered as the residue of concern in plant matrices.

2. *Analytical method.* In plants, the residue of concern, parent orthosulfamuron, can be determined using High Pressure Liquid Chromatography (HPLC) with a Mass Spectrometer (MS) detector. The proposed limit of detection (LOD) and limit of quantitation (LOQ) for the method are 0.03 ppm and 0.05 ppm, respectively.

3. *Magnitude of residues.* For rice, a total of twenty residue trials were conducted to evaluate the magnitude of the residues of orthosulfamuron. Of the twenty trials, fourteen were conducted using the 50WDG (water dispersible granule) formulation and six were conducted using the 50WP (wettable powder) formulation. In all trials, the rice was treated with orthosulfamuron at a rate of 75 grams of active ingredient (a.i.) per hectare, which is equivalent to 0.067 pounds of a.i. per acre. No orthosulfamuron residues above the limit of detection of 0.02 ppm were found in any rice grain or straw sample treated with either the WDG or WP formulations. The rice processing study conducted at the exaggerated rate of 3X showed no detectable residues and therefore indicated no concentration in any processed rice commodities (polished rice, hulls, and bran).

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} was > 5,000 milligrams/kilogram body weight (mg/kg bw) for both male and female rats. The acute dermal LD_{50} was > 5,000 mg/kg bw for both male and female rats. The 4–hour inhalation LC_{50} was estimated to be greater than the highest technically achievable gravimetrically determined aerosol concentration of 2.19 mg per liter for male and female rats. Orthosulfamuron was non-irritating to rabbit skin, slightly irritating to rabbit eyes, and did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Numerous mutagenicity studies were conducted with orthosulfamuron and no genotoxic effects were reported.

3. *Reproductive and developmental toxicity.* In a two generation reproduction study, rats were administered dietary concentrations of 0, 22.2, 88.6, and 354.5 mg per kilogram body weight (mg/kg bw) for males and 0, 25.6, 102.2, and 408.8 mg/kg bw for females. These dietary concentrations correspond to 0, 350/225, 1,400/900, and 5,600/3,600 ppm. The no observed effect level (NOEL) for effects in the P and F1 generation adults was considered to be 1,400/900 ppm based on increased liver and kidney weights and accompanying histopathological changes, while the NOEL for reproductive and developmental effects was considered to be 5,600/3,600 ppm based on the absence of reproductive and developmental effects, while the NOEL for pup behavior was considered to be 1400/900 ppm based on reduced locomotor activity in the F1 male offspring.

Developmental toxicity studies were conducted in female rats and rabbits. A developmental toxicity study was conducted in female rats with orthosulfamuron using dose levels administered by gavage of 0, 100, 300, and 1,000 mg/kg bw. The NOEL was established at 100 mg/kg bw for maternal toxicity based on decreased body weight gain and at 1,000 mg/kg bw based on the absence of fetal and developmental effects. In the developmental toxicity study conducted in female rabbits, the dose levels administered by gavage were 0, 25, 75, and 250 mg/kg bw. The NOEL for maternal toxicity is established at 250 mg/kg bw, while the NOEL for developmental effects is 75 mg/kg bw based on slight developmental changes.

Developmental toxicity studies showed no primary developmental toxicity and no teratogenic potential was evident.

4. *Subchronic toxicity.* 90–day feeding studies were conducted in rats and dogs. The rat study was conducted at dietary concentrations of 0, 19, 113, and 706 mg/kg bw and the dog study was conducted at 0, 150, 450, and 1,000 mg/kg bw. The NOELs were established at 113 mg/kg bw for the rat based on effects in the liver and at 150 mg/kg bw for the dog based on liver and hematological effects. In addition, a preliminary 90–day feeding study was conducted in mice at dietary concentrations of 0, 36, 187, and 865 mg/kg bw for males and 0, 47, 228, and 1,096 mk/kg bw for females. The NOEL for this study was 187 mg/kg bw for males and 228 mg/kg bw for females based on body weight gain depression.

5. *Chronic toxicity.* A two year combined rat chronic/oncogenicity study at dietary concentrations of 0, 1, 5, 500, and 1,000 mg/kg bw demonstrated a NOEL of 5 mg/kg bw based on increased thyroid, liver, and kidney toxicity. A 78–week mouse oncogenicity study conducted at dietary concentrations of 0, 100, 500, and 1,000 mg/kg bw demonstrated a NOEL of 100 mg/kg bw for males and 1,000 mg/kg bw for females. The NOEL of 100 mg/kg bw for males was based on liver effects. No evidence of oncogencity was observed in the rat or the mouse. A 52–week chronic toxicity study in dogs conducted at dietary levels of 0, 75, 300, and 1,000 mg/kg bw demonstrated a NOEL of 75 mg/kg bw based on increased liver toxicity.

6. *Animal metabolism.* The nature of the orthosulfamuron residue in animals is adequately understood. Orthosulfamuron is extensively

metabolized very quickly and eliminated from the body by fecal and urinary routes.

7. *Metabolite toxicology*. IR5878 is extensively metabolized and quickly cleared from the body. Low dose single administration was 5 mg/kg bw and high was 1,000 mg/kg bw, and repeated doses at low dose was 5 mg/kg bw. Single low and high dose, as well as repeated low dose excretion was mainly via feces. Radioactivity was almost completely excreted via urine by 24 hours post dose and via feces by 48 hours post dosing. Excretion patterns following the three dose administrations were not markedly different, and there was no difference due to sex. Metabolites included at least 9 compounds. Metabolic profiles were almost the same following single oral low and high administration, and repeated oral administration, although the amounts of some compounds were different especially between low and high doses. The metabolic profiles for males and females were the same. Identical metabolites were found both in urine and feces. The identity of metabolites found showed that IR5878 was metabolized mainly by O-demethylation yielding compound C_6, N-demethylation yielding compound C_5, O and N-demethylations yielding compound C_4 and hydrolytic cleavage of the sulfamoylurea linkage yielding compounds C_3, C_8 and C_9.

8. *Endocrine disruption*. Orthosulfamuron did not have any effects on endocrine organs or tissues except in the rat at very high doses. In addition, there were no indications of effects on fetal developmental in either rats or rabbits, or on reproductive performance in rats. Therefore, at doses likely to be encountered, orthosulfamuron is not likely to be an endocrine disruptor.

C. Aggregate Exposure

1. *Dietary exposure*. The chronic reference dose (cRfD) and the acute reference dose (aRfD) of 0.05 mg/kg bw and 1.65 mg/kg bw, respectively, were used to assess chronic and acute dietary exposure. ISAGRO has conducted Tier 1 chronic and acute risk assessments which indicate that the highest chronic and acute exposure estimates never exceed 0.13% and 0.01% (at the 95th percentile of exposure) for the chronic and acute RFDs, respectively.

i. *Food*. The chronic reference dose (cRfD) and the acute reference dose (aRfD) of 0.05 mg/kg bw and 1.65 mg/kg bw, respectively, were used to assess chronic and acute dietary exposure. ISAGRO has conducted Tier 1 chronic and acute risk assessments which indicate that the highest chronic and acute exposure estimates never exceed 0.13% and 0.01% (at the 95th percentile of exposure) for the chronic and acute RFDs, respectively.

ii. *Drinking water*. For drinking water, the FIRST model (FQPA Index Reservoir Screening Tool) was used to conservatively estimate concentrations of orthosulfamuron in surface water. The chronic and acute drinking water estimated concentrations (DWECs) estimated with the FIRST model were 0.35 ppb (chronic) and 4.8 ppb (acute). These compare very favorably to the lowest drinking water level of comparison (DWLOC) values of 500 ppb (chronic) and 16,498 ppb (acute).

2. *Non-dietary exposure*. Orthosulfamuron is currently not registered for use on any residential non-food site. Therefore, residential exposure to orthosulfamuron residues will be through dietary exposure only.

D. Cumulative Effects

There is no information currently available to indicate that toxic effects produced by orthosulfamuron are cumulative with those of any other compound.

E. Safety Determination

1. *U.S. population*. Based on the conservative exposure assumptions described above and on the completeness of the toxicology database, it can be concluded that total aggregate exposure from food and water to the U.S. population and all evaluated population subgroups from orthosulfamuron from all proposed uses will be well below the chronic and acute RfDs. EPA generally has no concerns for estimated exposures below 100% of the RfD, since the RfD represents the level at or below which daily aggregate exposure will not pose an appreciable risk to human health. Thus, ISAGRO believes it can be concluded that there is reasonable certainty that no harm will result from aggregate exposure to orthosulfamuron residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of orthosulfamuron, the data from developmental toxicity studies in both the rat and rabbit and a two generation reproduction study in rats have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure to the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

Since none of the studies indicate the offspring to be more sensitive and all effects were secondary to severe maternal toxicity, ISAGRO believes that infants and children are protected and that an additional uncertainty factor for infants and children is not warranted.

F. International Tolerances

No CODEX maximum residue levels (MRL's) have been established for residues of orthosulfamuron on any crops at this time.

[FR Doc. 05–14606 Filed 7–26–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0079; FRL–7706–4]

Notice of Availability Regarding Activity-Based Reentry Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: To enhance transparency in the EPA's decision making, this notice announces the availability of its guidance, comments from interested parties, its response to stakeholder input, and several other documents related to the use of activity-based reentry restrictions. Based on consideration of the extensive stakeholder input, the EPA intends to continue with its case-by-case consideration in setting worker field reentry restrictions described in its 2001 guidance document.

FOR FURTHER INFORMATION CONTACT: Richard Dumas, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (703) 308–8015; fax number: (703) 308–8005; e-mail address: *dumas.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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 number OPP–2005–0079. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

II. Background

A. What Action is the Agency Taking?

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA (the Agency) is required to ensure that pesticides do not cause unreasonable adverse effects to the environment. Data are presented to the Agency regarding the safety of the pesticide and it is the Agency's responsibility to determine if a pesticide can be used consistent with the FIFRA standard. The Agency makes its safety determination based on the risks and benefits associated with the use of the pesticide. Using the best available data and information, the Agency conducts risk assessments for farmworkers exposed to pesticides from contact with treated surfaces while performing various tasks in the field. Risk assessments involved combining data on the hazard of the chemical, estimates of exposure for the tasks actually performed in the field for a particular crop and safety factors to account for extrapolating animal data to humans and differences among people. When a risk of concern is identified, the Agency considers ways to reduce exposure to pesticide residues by farmworkers. One of the measures used to mitigate the exposure of workers to pesticide residues is to restrict entry to areas recently treated with pesticides. These restricted entry intervals (REIs) take into account the types of activities conducted by farmworkers that cause them to come into contact with treated surfaces, high contact with treated plant surfaces vs. low contact with treated plant surfaces. The Agency determines when it is safe for workers to enter a treated area to conduct these activities.

In a few 1999 chemical decisions, the Agency set more than one REI for some crops. That is, it set one REI for higher contact activities and a shorter REI for all other activities for the same crop. Among other things, this approach created some confusion and concerns that allowing reentry during a REI erodes the effectiveness of over a decade of worker protection training. To address these concerns, a workgroup was formed to address implementation issues associated with REIs. This workgroup included risk-management, worker protection, and enforcement staff from EPA headquarters, EPA Regional offices and states. This effort contributed to a guidance document for Agency risk managers. The document dated September 6, 2001, provides guidance for Agency risk managers to consider in making activity-based reentry decisions, provides an alternative to setting more than one REI for a single crop by employing exceptions and prohibitions to REI on product labels, and encourages using the approach sparingly.

Several stakeholder groups have expressed concern and raised issues about the approach described in the guidance document. Over the past few years, the Office of Pesticide Programs (OPP) has actively sought input from interested parties to understand the range of perspectives on the approach and to get ideas for improving the overall approach. The Agency received input from state officials responsible for the implementation of pesticide labeling and the Worker Protection Standard (WPS), the pesticide industry who developed much of the activity-based worker exposure data in support of its registrations, advocacy groups who focus on worker protection issues, and grower groups who seek the maximum flexibility in the use of crop protection chemicals. Because of its broad stakeholder outreach, the Agency believes that at this time, it is unlikely that the public would provide significant new information if a formal public comment period were open on this matter.

Based on consideration of extensive stakeholder input, the Agency intends to continue its current practice of considering the use of activity-based reentry restrictions on a case-by-case basis. In reaching this conclusion, the Agency shares the concerns raised by some stakeholders regarding the enforceability and the potential reduction in the effectiveness of worker training programs that may result from the use of activity-based reentry labeling. However, the Agency believes there are circumstances when the use of such labeling is warranted because of a clear agronomic need and alternative approaches for balancing risks and benefits are less effective.

This notice announces the opening of a special docket describing the Agency's general approach for considering specific fieldworker activity information in setting restricted entry intervals. A docket has been established that includes the program's general approach and supporting documentation including written comments, the Agency response and other related documents. As mentioned above, based on its consideration of the extensive stakeholder input, the Agency intends to continue its case-by-case consideration in making reentry decisions, as described in its 2001 guidance document. The approach described in the guidance is non-binding and the Agency remains open to alternative approaches for addressing worker reentry risk concerns.

B. What is the Agency's Authority for Taking this Action?

The Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136, *et seq.*

List of Subjects

Environmental protection, pesticides and pests.

Dated: July 21, 2005.

James Jones,

Director, Office of Pesticides Programs.

[FR Doc. 05–14851 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7944–5]

Proposed CERCLA Administrative Cost Recovery Settlement; Shawn Callister, Plain City Drum Site, Weber County, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative order on consent; request for public comment.

SUMMARY: In accordance with section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order On Consent (AOC) for recovery of certain past response costs concerning the Plain City Drum Site in Weber County, Utah, with Mr. Shawn Callister, Respondent. The settlement requires Mr. Callister to pay $10,000.00 to the Hazardous Substance Superfund for partial payment of past response costs incurred by EPA. The AOC includes a covenant not to sue or to take judicial or administrative action against the Respondent pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). This covenant not to sue is conditioned upon the veracity and completeness of the Financial Information provided to EPA by Mr. Callister. The covenant not to sue extends only to Mr. Callister and does not extend to any other person.

In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to section 104 of CERCLA, 42 U.S.C. 9604, including emergency removal actions to overpack and properly dispose of twenty eight (28) 55-gallon drums containing flammable liquids. At the time of removal the drums were in poor condition. Some were bulging and some had rusting holes. On-site air monitoring showed the drums were releasing hazardous constituents in the air. The drums were located adjacent to a residence with horse corrals and were approximately 3.5 miles from the Harold's Crane Waterfowl Management Area.

DATES: Comments must be submitted on or before August 26, 2005.

ADDRESSES: The proposed settlement is available for public inspection at the Superfund Records Center, EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6473.

FOR FURTHER INFORMATION CONTACT: Katherine Letson Bradford, (8ENF–L), EPA Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Denver, CO 80202–2466, (303) 312–6641.

SUPPLEMENTARY INFORMATION: For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6473.

Dated: July 11, 2005.

Eddie A. Sierra,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 05–14899 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7940–5]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act (PRC Patterson Superfund Removal Site)

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent ("AOC, Region 9 Docket No. 2005–0005) pursuant to Section 122(h) of CERCLA concerning the PRC PATTERSON SUPERFUND REMOVAL SITE (the "Site"), located in Patterson, California. The respondent to the AOC is the Ramos Environmental Services ("Ramos"). Through the proposed AOC, Ramos will reimburse the United States $70,000 in response costs incurred at the Site. The AOC provides Ramos with a covenant not to sue and contribution protection for the removal action at the Site. This AOC follows three previous administrative settlements, and will be the last enforcement action regarding this Site. Ramos is the last remaining viable party that is potentially responsible for federal costs at the Site, and is resolving its liability after EPA determined its financial strength and ability to make a reimbursement payment. In total, EPA will have recovered $570,001 for this Site, leaving an unrecovered balance of approximately $200,000.

For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments received will be available for public inspection at EPA'S Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before 30 days following the date of publication of the Notice.

ADDRESSES: The proposed AOC may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the PRC Patterson Superfund Removal Site, Patterson, California, and USEPA Docket No. 2005–0005.

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: July 19, 2005.

Kay Lawerence,

Acting Director Superfund Division.

[FR Doc. 05–14897 Filed 7–26–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 15, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 26, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 720.

Estimated Time per Response: 6.75 hours per response.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 4,860 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming service, and equipment. The report must compare the prices charged by cable operators subject to effective competition and those not subject to effective competition. The data needed to prepare this report is collected using the Annual Survey of Cable Industry Prices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14419 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 18, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) 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. No person shall be subject to any penalty for failing to comply with a collection of information, subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 26, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0329.

Title: Equipment Authorization—Verification, 47 CFR Section 2.955.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; business or other for-profit entities.

Number of Respondents: 5,655.

Estimated Time per Response: 18 hours (avg.).

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 101,790 hours.

Total Annual Cost: $1,131,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission rules 47 CFR parts 15 and 18 require manufacturers of radio frequency (RF) equipment devices to gather and retain technical data on their equipment to verify compliance with established technical standards for each device operated under the applicable Rule part. Testing and verification aid in controlling potential interference to radio communications. The information may be used to determine that the equipment marketed complies with the applicable Commission rules and that the operation of the equipment is consistent with the initially documented test results. The information is essential to controlling potential interference to radio communications.

OMB Control Number: 3060–0905.

Title: Regulations for RF Lighting Devices, Section 18.307, ET Docket No. 98–42.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; business or other for-profit entities.

Number of Respondents: 30.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 30 hours.

Total Annual Cost: $2,250.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On June 16, 1999, the FCC released a *First Report and Order (First R&O)*, In the Matter of 1998 Biennial Regulatory Review—Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices, ET Docket No. 98–42, FCC 99–135. The *First R&O*, amended 47 CFR Section 18.307 of the Commission's Rules to add third party requirements. In addition, Section 18.213(d) was added to require manufacturers of RF lighting devices to provide an advisory statement either on the product packaging or with other user documentation, similar to the following: *This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz.*

The Commission will used the information to determine whether all RF lighting devices are in compliance with the applicable Commission rules and are capable of producing conducted emissions in the 0.45–30 MHz band, and have a simple warning label with a short advisory statement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14839 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 5, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1085.

OMB Approval date: 6/28/2005.

Expiration Date: 12/31/2005.

Title: Federal Communications Commisssion Proposes Collection of Location Information, Provision of Notice and Reporting on Interconnected voice over Internet protocol (VoIP) E911 Compliance.

Form No.: N/A.

Estimated Annual Burden: 14,238,254 responses; 435,894 total annual burden hours; approximately .09–16 hours average per respondent.

Needs and Uses: The Federal Communications Commission (Commission) requires providers of interconnected voice over Internet protocol (VoIP) services to obtain information regarding their end users' location as a condition of providing service. Interconnected VoIP providers must provide that information to entities that maintain databases used to ensure that the caller's location and a call back number are provided to requesting public safety answering points when a 911 call is placed. The Commission also requires interconnected VoIP providers to ensure that end users understand any limitations of their service, obtain from the end user evidence of such understanding, and submit a letter to the Commission detailing their compliance with its E911 rules no later than 120 days after the rules become effective.

OMB Control No.: 3060–1083.

OMB Approval date: 6/28/2005.

Expiration Date: 06/30/2008.

Title: Request to Update Default Compensation Rate for Dial-Around Calls from Payphones, WC Docket No. 03–225.

Form No.: N/A.

Estimated Annual Burden: 10 responses; 1,000 total annual burden hours; 100 hours average response time per respondent.

Needs and Uses: Pursuant to Section 276(b)(1)(A) of the Act, the Commission is required to ensure that all payphone service providers are fairly compensated. In order to calculate fair compensation for the payphones that are not supported by Flex ANI, the Commission must obtain monthly payphone call volume data. Once the impacted entities (primarily the Regional Bell Operating Companies and the large interexchange companies) submit this data, the Commission will calculate an average monthly call volume as one of the key inputs required to establish per-payphone monthly compensation.

OMB Control No.: 3060–1005.

OMB Approval date: 6/28/2005.

Expiration Date: 06/30/2008.

Title: Numbering Resource Optimization—Phase 3.

Form No.: N/A.

Estimated Annual Burden: 53 responses; 3,380 total annual burden hours; 50–85 hours average response time per respondent.

Needs and Uses: In the Third Report and Order and Second Order on Reconsideration in CC Docket No. 99–200, the Commission continued efforts to maximize the efficiency with which numbering resources in the North American Numbering Plan (NANP) are utilized. In order for price cap LECs to qualify for exogenous adjustment to access charges established under the federal cost recovery mechanism, they must demonstrate that pooling results in a net cost increase rather than a cost reduction. Applications to state commission from carriers must demonstrate that certain requirements are met before states may grant use of the safety valve mechanism. State commission seeking to implement service-specific and/or technology-specific area code overlays, must request delegated authority to do so.

OMB Control No.: 3060–1012.

OMB Approval date: 6/14/2005.

Expiration Date: 06/30/2008.

Title: Schools and Libraries Universal Service Support Mechanism, CC Docket 02–6. NPRM, Proposed ADA Certification.

Form No.: N/A.

Estimated Annual Burden: 30,000 responses; 1,200 total annual burden hours; .04 hours average response time per respondent.

Needs and Uses: In CC Docket 02–6, the Commission sought comment on certain rules governing the schools and libraries universal service support mechanism. The Commission goals in the proceeding are to: (1) Consider changes that would fine-tune its rules to improve program operation; (2) to ensure that the benefits of the universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable: and (3) to improve its oversight over the program. Among other things, affected respondents may be required to certify to compliance with the ADA and related statutes and to use a computerized list to identify services or products.

OMB Control No.: 3060–0986.

OMB Approval date: 6/28/2005.

Expiration Date: 06/30/2008.

Title: Competitive Carrier Line Count Report.

Form No.: FCC Form 525.

Estimated Annual Burden: 4,753 responses; 3,707 total annual burden

hours; .5–6 hours average response time per respondent.

Needs and Uses: On May 23, 2001, the Commission adopted rules for determining high-cost universal service support for rural telephone companies for the next five years based upon proposals made by the Rural Task Force. The commision also addressed certain proposals made by the Multi-Association Group for reforming universal services applicable to rural carriers. FCC form 525 will be used to gather some of the information needed in a standardized format to help eliminate duplication of information collected. The information collected will be used to determine whether and to what extent rural telecommunications carriers providing the data are eligible to receive universal service support.

OMB Control No.: 3060–0804.

OMB Approval date: 6/28/2005.

Expiration Date: 06/30/2008.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 466–A and 467.

Estimated Annual Burden: 12,840 responses; 17,720 total annual burden hours; .5–3 hours average response time per respondent.

Needs and Uses: In the Second Report and Order, Order on Recon., and FNPRM (FCC 04–289), the Commission changed it's definition of rural for purposes of the rural health care universal service support mechanism. The Commission also revised its rules to expand funding for mobile rural health care services and established a fixed deadline for filing FCC Forms 466 and 466–A. On reconsideration, the Commission permits states that are entirely rural to receive support for advanced telecom. and information services. The FNPRM seeks comment on whether to increase the percentage discount that rural health care providers receive for Internet access support and whether infrastructure development should be funded, and also whether to modify its rules to allow mobile rural health care providers to use services other than satellite.

OMB Control No.: 3060–0734.

OMB Approval date: 6/28/2005.

Expiration Date: 06/30/2008.

Title: Accounting Safeguards, CC Docket No. 96–150, 47 U.S.C. 260 and 271–276, Sections 53.209, 53.211 and 53.213.

Form No.: N/A.

Estimated Annual Burden: 38 responses; 131,523 total annual burden hours; 24–19,200 hours average response time per respondent.

Needs and Uses: In the R&O in CC Docket 96–150, the Commission prescribed the way ILECs, including the BOCs, must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications and information services, telecommunications equipment and CPE manufacturing and others pursuant to 47 U.S.C. 260 and 271 through 276. The Commission also adopted requirements for implementing section 272 of the Act, including, but not limited to, administering the section 272 independent audits.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14843 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2722]

Petitions for Reconsideration of Action in Rulemaking Proceeding

July 18, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by August 11, 2005. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Wireless Operations in the 3650–3700 MHz Band (ET Docket 04–151); In the Matter of Rules for Wireless Broadband Services in the 3650–3700 MHz Band (WT Docket 05–96); In the Matter of Additional Spectrum for Unlicensed Devices below 900 MHz and in the 3 GHz Band (ET Docket 02–380); In the Matter of Amendment of the Commission's Rules with Regard to the 3650–3700 MHz Government Transfer Band (ET Docket 98–237).

Number of Petitions Filed: 8.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14838 Filed 7–26–05; 8:45 am]

BILLING CODE 6712–01–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 may obtain copies of agreements by contacting the Commission's Office of Agreements at (202) 523–5793 or via e-mail at *tradeanalysis@fmc.gov*. 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.: 011654–013.

Title: Middle East Indian Subcontinent Discussion Agreement.

Parties: American President Lines; A.P. Moller-Maersk A/S; China Shipping Navigation Co., Ltd. d/b/a Indotrans; CMA CGM S.A.; Contship Containerlines, a division of CP Ships (UK) Ltd.; MacAndrews & Company Limited; P&O Nedlloyd Limited; The National Shipping Company of Saudi Arabia; and United Arab Shipping Company (S.A.G.).

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds MacAndrews & Company Limited as a party to the agreement.

Agreement No.: 011737–016.

Title: The MCA Agreement.

Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica Ltda.; Antillean Marine Shipping Corporation; A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Sud Americana de Vapores S.A.; CP Ships (UK) Limited d/b/a ANZDL and d/b/a Contship Containerlines; CP Ships USA LLC d/b/a Italia Line, Lykes Lines, and TMM Lines; Crowley Liner Services, Inc.; Dole Ocean Cargo Express, Inc.; Hamburg-Süd; Hapag-Lloyd Container Linie; Hoegh Autoliners; Montemar Maritima S.A.; Norasia Container Line Limited; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; and Wallenius Wilhelmsen Lines AS.

Filing Party: James R. Halley, Esq.; Halley & Halley, P.A.; 328 Crandon Boulevard; Suite 224–225; Key Biscayne, Florida 33149.

Synopsis: The amendment adds China Ocean Shipping (Group) Company, Mitsui O.S.K. Lines, Ltd., and United Arab Shipping Company (S.A.G.) as members. It also republishes the agreement.

Agreement No.: 011852–020.

Title: Maritime Security Discussion Agreement.

Parties: China Shipping Container Lines, Co., Ltd.; CMA CGM, S.A.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Maher Terminals, Inc.; Marine Terminals Corp.; Massachusetts Port Authority; P&O Ports North America, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Virginia International Terminals; and Yusen Terminals, Inc.

Filing Parties: Carol N. Lambos; The Lambos Firm; 29 Broadway, 9th Floor; New York, NY 10006 and Charles T. Carroll, Jr.; Carroll & Froelich. PLLC; 2011 Pennsylvania Avenue, NW.; Suite 301; Washington, DC 20006.

Synopsis: The amendment deletes APM Terminals North America, Inc., Maersk Pacific Ltd., and Universal Maritime Service Corp. from the membership of the agreement.

Agreement No.: 011884–001.

Title: Hampton Road Chassis Pool II Agreement.

Parties: Virginia International Terminals, Inc., and the Ocean Carrier Equipment Management Association, for itself and on behalf of the following of its member lines: A.P. Moller-Maersk A/S; APL Co. Pte. Ltd.; American President Lines, Ltd.; Atlantic Container Line; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; CMA CGM, S.A.; Compania Sudamericana de Vapores, S.A.; Contship Containerlines, a division of CP Ships (UK) Limited; COSCO Containerlines Company Limited; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; Hapag-Lloyd ContainerLinie GmbH; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; CP Ships USA, LLC; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; and Yangming Marine Transport Corp.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment changes Lykes Lines Limited LLC's name to CP Ships USA, LLC and deletes TMM Lines Limited LLC as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: July 22, 2005.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–14869 Filed 7–26–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses has 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 515.

License No.	Name/address	Date reissued
018304N	Comis Int'l Inc., 690 Knox Street, Suite 220, Torrance, CA 90502	June 20, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–14860 Filed 7–26–05; 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: 013445N.

Name: Delmas.

Address: 1 quai Colbert, 76600 Le Havre, France.

Date Revoked: July 1, 2005.

Reason: Surrendered license voluntarily.

License Number: 000429F.

Name: Reedy Forwarding Company, Inc.

Address: 631 Southwest 21 Road, Miami, FL 33129.

Date Revoked: June 10, 2005.

Reason: Surrendered license voluntarily.

License Number: 017976N.

Name: Sanwoo (America) Inc. dba Amos Cargo Service.

Address: 2100 91st Street, North Bergen, NJ 07047.

Date Revoked: June 30, 2005.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–14861 Filed 7–26–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Pacheco Express Shipping, Inc., 1570 Webster Avenue, Bronx, NY 10457.

Officers: Luis Hernandez, President, (Qualifying Individual), Niveka Rivera, Vice President.

Jade Sky Logistics Corp., 75 O'Neill Avenue, Bayshore, NY 11706.
Officer: Sidney Rosario, President, (Qualifying Individual).
AE Eagle Logistic Inc., 1145 N. Ellis Avenue, Bensenville, IL 60106.
Officers: Neal Lieu, Secretary, (Qualifying Individual), Ilton Cheung, President.
Menuet Maritime Services, Inc. dba Gbox Worldwide, 16714 Flamingo Way, Galveston, TX 77554.
Officers: Walter H. Menuet, President, (Qualifying Individual), Yvonne S. Menuet, Vice President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Customs & Logistics International Corp., 6555 NW., 36th Street, Suite #15, Miami, FL 33166.
Officer: Carlos A. Francisco, President, (Qualifying Individual).

Dated: July 22, 2005.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–14862 Filed 7–26–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225 28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Do Brasil, S.A., Brasilia, Brazil; to engage de novo through its subsidiary, Banco Do Brasil Securities LLC, New York, New York, in futures commission merchant activities, pursuant to section 225.28(b)(7)(iv) of Regulation Y.

Board of Governors of the Federal Reserve System, July 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.05–14775 Filed 7–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Privacy Act of 1974; New Routine Uses

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of new routine uses; request for comments.

SUMMARY: The FTC proposes to revise an existing system of records titled "Inspector General Investigative Files—FTC" to comply with requirements established by the Homeland Security Act of 2002. The major change to the system is the addition of new routine uses to allow the disclosure of information to authorized officials within the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), who are charged with the responsibility for conducting qualitative assessment reviews of investigative operations for the purpose of reporting to the President and Congress on the activities of the OIG.

DATES: Any interested persons may submit written comments on this proposal by August 26, 2005. Unless changes are made in response to comments received from the public, this action will become effective without further notice on September 12, 2005.

ADDRESSES: Comments filed in paper form should be mailed or delivered to Cynthia A. Hogue, Counsel to the Inspector General, Office of Inspector General, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments should refer to "Privacy Act of 1974; New Routine Uses, P052103" to facilitate the organization of comments, and should include this reference both in the text and on the envelope. Because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, by sending them to the following e-mail address: *chogue@ftc.gov*. The Privacy Act and the FTC Act permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and may be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*. If the comment, to the extent it is placed on the public record, contains any material for which confidential treatment is desired, the comment must be filed only in paper form, accompanied by a confidentiality request to the General Counsel as required by Commission Rule 4.9(c), 16 CFR 4.9(c), stating the specific legal or other justification, if any, for such treatment, and the first page of the document must be clearly labeled "Confidential." The General Counsel will grant or deny the request in accordance with applicable law and the public interest.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Hogue, Counsel to the Inspector General, Office of Inspector General, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2618; or Alex Tang, Attorney, Office of the General Counsel, FTC, (202) 326–2447.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change or addition. FTC's Office of Inspector General (OIG) has reviewed its systems of records notice for the "Office of Inspector General Investigative Files-FTC," *see* 55 FR 20527 (May 17, 1990) (FTC I–7), and has determined that it must be revised to add two new routine uses to permit disclosure of records for the purpose of assessment reviews. The Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002) requires certain Inspectors General to "establish an

external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office * * *."

The PCIE and the ECIE are establishing peer review processes that are designed to provide qualitative measurement to ensure that adequate internal safeguards and management procedures are maintained, foster high-quality investigations and investigative processes, ensure that the highest level of professionalism is maintained and promote consistency in investigative standards and practices within the IG community. The FTC OIG has committed to undergoing qualitative assessment reviews of its investigations. Proposed routine use (5) will allow disclosure of information to authorized officials within the PCIE, the ECIE, the Department of Justice and the Federal Bureau of Investigation, as necessary, for the purpose of conducting qualitative assessment reviews of the OIG's investigative operations. Proposed routine use (6) will allow the disclosure of information to the PCIE and the ECIE for their preparation of reports to the President and Congress on the activities of the Inspectors General. As required by the Privacy Act at 5 U.S.C. 552a(r), we have notified the Office of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on (Homeland Security and) Governmental Affairs of the Senate of the new routine uses.

The FTC is also taking this opportunity to make various technical changes and corrections to the system notice to improve its clarity and accuracy. None of these changes will affect the existing or new proposed routine uses.

The system notice is published in its entirety below.

FTC–I–7

SYSTEM NAME:

Office of Inspector General Investigative Files-FTC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

FTC Office of Inspector General, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the Federal Trade Commission. Subject individuals include, but are not limited to, current and former employees; current and former agents or employees of contractors or subcontractors, as well as current and former contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the FTC, its programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents, records or copies obtained during the investigation; interview notes, documents and records relating to the investigation; opening reports, information or data relating to alleged or suspected criminal, civil or administrative violations or similar wrongdoing by subject individuals and final reports of investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. 100–504, amending the Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. app.

PURPOSE(S):

To document the conduct and outcome of investigations; to report results of investigations to other components of the FTC or other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for an action deemed appropriate and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the activities of the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the disclosure provisions described in Appendix I of the notice published at 57 FR 45678 (Oct. 2, 1992) (compiling various FTC system notices), records or information in these records may be specifically disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use:

(1) Disclosed to agencies, offices, or establishments of the executive, legislative, or judicial branches of the federal or state government

(a) Where such agency, office, or establishment has an interest in the individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, and loyalty to the United States Government, or

(b) Where such agency, office, or establishment conducts an investigation of the individual for the purposes of granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or

(c) Where the records or information in those records are relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee, or

(d) Where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter, including, but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment actions where such record would be germane to a determination of the propriety or necessity of such action, or disclosure to the United States General Accounting Office, the General Services Administration Board of Contract Appeals, or any other Federal contract board of appeals in cases relating to an agency procurement;

(2) Disclosed to the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, of records or portions thereof relevant and necessary to carrying out their authorized functions, such as, but not limited to, rendering advice requested by the OIG, investigations of alleged or prohibited personnel practices (including unfair labor or discriminatory practices), appeals before official agencies, offices, panels or boards, and authorized studies or review of civil service or merit systems or affirmative action programs;

(3) Disclosed to independent auditors or other private firms with which the Office of the Inspector General has contracted to carry out an independent audit or investigation, or to analyze, collate, aggregate or otherwise refine data collected in the system of records,

subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records;

(4) Disclosed to a direct recipient of federal funds such as a contractor, where such record reflects serious inadequacies with a recipient's personnel and disclosure of the record is for purposes of permitting a recipient to take corrective action beneficial to the Government;

(5) Disclosed to any official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation; and

(6) Disclosed to members of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency for the preparation of reports to the President and Congress on the activities of the Inspectors General.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3), in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes and CD–ROMs containing audio recordings of investigative interviews, and data maintained on computer diskettes and hard drives. The folders, cassette tapes, CD–ROMs and diskettes are stored in file cabinets in the OIG. The hard drives are retained in the OIG safe.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

Records are maintained in lockable file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

RETENTION AND DISPOSAL:

As prescribed in National Archives and Records Administration General Records Schedule 22, item 1b, OIG Investigative Files are destroyed 10 years after a case is closed. Cases that are unusually significant for documenting major violations of criminal law or ethical standards are offered to the National Archives for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE:

Under the provisions of 5 U.S.C. 552a(d), an individual may request notification as to whether a system of records contains records retrieved using his or her personal identifier, may request access to records in a system of records, and may contest the accuracy or completeness of records. Each of those actions may be initiated by the individual by mailing or delivering a written request bearing the individual's name, return address, and signature, addressed as follows: Privacy Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. *See* 16 CFR 4.13(c)–(k).

RECORD ACCESS PROCEDURES:

See above.

CONTESTING RECORD PROCEDURE:

See above.

RECORD SOURCE CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, FTC and non-FTC records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552(a), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11) and (i) and corresponding provisions of 16 CFR 4.13, to the extent that a record in the system of records was compiled for criminal law enforcement purposes.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f) and the corresponding provisions of 16 CFR 4.13, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

See 16 CFR 4.13(m), as amended.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–14904 Filed 7–26–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0212]

Proposed Data Collections Submitted for Public Comment and Recommendations

The centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Discharge Survey (OMB No. 0920–0212)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Hospital Discharge Survey (NHDS) has been conducted continuously by CDC, National Center for Health Statistics since 1965. It is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnosis, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating the health status of the population,

planning of programs and policy to elevate the health status of the Nation, studying morbidity trends, and research activities in the health field. NHDS data have been used extensively in the development and monitoring of goals for the Year 2000 and 2010 Health Objectives. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States.*

Data for the NHDS are collected annually on approximately 300,000 discharges from a nationally representative sample of non-institutional hospitals exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS) in addition to two data items (admission type and source) which are identical to those needed for billing of inpatient services for Medicare patients. in the 2003 NHDS 426 hospitals participated. Data for approximately forty-four percent of the responding hospitals (186) are abstracted from medical records. The remaining hospitals supply data through in-house tapes or printouts (80 hospitals) or are hospitals that belong to commercial abstract service organizations or state data systems (160 hospitals) from which electronic data files are purchased. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time. The total estimated annualized burden hours are 2,131.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Medical record abstracts	Number of respondents (hospitals)	Number of responses/respondent	Avg. burden/response (in hrs.)
Primary Procedure Hospitals	62	250	5/60
Alternate Procedure Hospitals	124	250	1/60
In-House Tape or Printout Hospitals	80	12	12/60
Induction Forms	15	1	2
Non-response Study	50	1	2

Dated: July 20, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–14787 Filed 7–26–05; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0437X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Program Evaluation and Monitoring System (PEMS)—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC),

Background and Brief Description

CDC is requesting OMB approval of this data collection to collection HIV prevention evaluation data from health departments and directly funded community-based organizations (CBOs). The proposed data collection will incorporate data elements from three other OMB-approved data collections: Evaluating CDC Funded Health Department HIV Prevention Programs (OMB Control No. 0920–0497, expiration date 4/30/2006); Assessing the Effectiveness of CBOs for the Delivery of HIV Prevention Programs (OMB Control No. 0920–0525, expiration date 10/31/2004); and HIV/AIDS Prevention and Surveillance Project Reports for counseling, testing, and referral (CTR) (OMB Control No. 0920–0208, expiration date 10/31/2005).

CDC needs non-identifying, client-level, standardized evaluation data from health departments and CBO grantees to: (1) More accurately determine the extent to which HIV prevention efforts have been carried out by assessing what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided, and how these efforts have contributed to a reduction in HIV transmission; (2) improve ease of reporting to better meet that goal; and (3) be accountable to stakeholders by informing them of efforts made and use of funds in HIV prevention nationwide.

Although CDC receives evaluation data from grantees, the data received to date is insufficient for evaluation and accountability. Furthermore, there has not been standardization of required evaluation data from both health departments and CBOs. Changes to the evaluation and reporting process have become necessary to ensure CDC receives standardized, accurate, thorough evaluation data from both health departments and CBOs. For these reasons, CDC developed PEMS and consulted with representatives from health departments, CBOs, and the National Alliance of State and Territorial AIDS Directors during development of PEMS.

Respondents will report general agency information, program model and budget; intervention plan and delivery characteristics; and client demographics and behavioral characteristics. After initial set-up of the PEMS, data collection will include searching existing data sources, gathering and maintaining data, document compilation, review of data, and data entry into a Web-based system. Respondents will submit data quarterly. Respondents may choose one of the three options to enter and submit the required PEMS data variables: (1) Use the PEMS software provided and installed by CDC at no cost to the respondent; (2) revise their own existing HIV prevention information technology system and use the import-export data transfer process in PEMS; or (3) deploy PEMS locally, within the respondent facility using equipment purchased by the respondents. In addition, respondents may choose to utilize the optional CDC scan form for the data collection. If the respondent chooses the

scan form, the annual cost to respondents is approximately $1,700 for the purchase of a scanner and scanning software. The total estimated annualized burden hours are 122,172.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health Departments	59	4	137
Health Departments (CTR)	30	4	174
Health Departments (Training)	59	4	10
Community-Based Organizations	160	4	84
Community-Based Organizations (CTR)	70	4	23
Community-Based Organizations (Training)	160	4	10

Dated: July 21, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–14788 Filed 7–26–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 05077]

Directors of Health Promotion and Education; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The purpose of this program is to establish, develop, and coordinate the training, and programs required to build health promotion and public health education capacity at the state and territorial level. This will include continuing the strategic planning process for the Association to strengthen the infrastructure for assessment of constituent needs to build health education capacity at the state and territorial level; coordinating capacity at the state and territorial level; coordinating the annual National Conference on Health Education and Health Promotion; strengthening collaborations with national and international level partners; implementing research to practice demonstration activities; developing continuing education and distance-based training; developing leadership and training opportunities; initiating effective communication systems to ensure translation of national initiatives and research to directors of health promotion and education; defining the science-base and skill set for public health practice of health education; and identifying and monitoring state and national trends impacting effective implementation of health promotion and education within state health agencies.

The Catalog of Federal Domestic Assistance number for this program is 93.945.

B. Eligible Applicant

Assistance will only be provided to the Directors of Health Promotion and Education (DHPE). No other applications are solicited. DHPE is the only organization that can provide the services specified under this announcement. Eligibility is limited to DPHE because of its unique relationship with the Association of State and Territorial Health Officials (ASTHO) and other ASTHO affiliates. DHPE is the only national nonprofit health education organization of which program directors and staff representing all states and territories are members. As such, it is uniquely capable, and organized specifically to serve as a leader and a confer of activities relative to State health education programs. DHPE has developed unique knowledge and understanding of the needs and operations of State health agencies. This affiliation with ASTHO is extremely important for the purposes of this cooperative agreement. It enables close coordination of national initiatives, identification of state trends that may impact national programs, and enables partnering with other state health agency departments on cross cutting issues. DHPE is the only affiliate whose primary mission is to promote education and health promotion as core disciplines of public health practice and to advocate for quality health education and health promotion programs and strategies to address the nation's leading health problems. The organization represents both fields of health promotion and health education, as opposed to other public health organizations which have a primary focus on the profession of health education. Health promotion looks more broadly at public health systems, health policy, environmental change, and enhances traditional professional development in health education.

C. Funding

Approximately $1,300,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before September 30, 2005, and will be made for a 9 ½–month budget period for the first year, but each subsequent budget period will be 12 months in length within a project period of up to five years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: John M. Korn/Sue Darnell, Project Officer, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, NE., MS K30, Telephone: 770–488–5427, 770–488–5305, E-mail: *JMK3@cdc.gov, SAD2@CDC.GOV.*

Dated: July 21, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–14786 Filed 7–26–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Developmental Disabilities State Plan.

OMB No.: 0980–0162.

Description: A Plan developed by the State Council on Developmental Disabilities is required by federal statute. Each State Council on Developmental Disabilities must develop the plan, provide for public comments in the State, provide for approval by the State's Governor, and finally submit the plan on a five-year basis. On an annual basis, the Council must review the plan and make any amendments. The State Plan will be used (1) by the Council as planning document; (2) by the citizenry of the State as a mechanism for commenting on the plans of the Council; and (3) by the Department as a stewardship tool, for ensuring compliance with the Development Disabilities Assistance and Bill of Rights Act, as one basis for providing technical assistance (*e.g.*, during site visits), and as a support for management decision making.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan on Developmental Disabilities	55	1	80	4,400

Estimated Total Annual Burden Hours: 4,400.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collection; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 21, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–14847 Filed 7–26–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State Council on Developmental Disabilities Program Performance Report.

OMB No.: 0980–0172.

Description: A Developmental Disabilities Council Program Performance Report is required by federal statute. Each State Developmental Disabilities Council must submit an annual report for the preceding fiscal year of activities and accomplishments. Information provided in the Program Performance Report will be used (1) in the preparation of the biennial Report to the President, the Congress, and the National Council on Disabilities and (2) to provide a national perspective on program accomplishments and continuing challenges. This information will also be used to comply with requirements in the Government Performance and Results Act of 1993.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Council on Developmental Disabilities Program Performance Report	55	1	44	2,420

Estimated Total Annual Burden Hours: 2,420.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 21, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–14848 Filed 7–26–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002E–0344] (formerly Docket No. 02E–0344)

Determination of Regulatory Review Period for Purposes of Patent Extension; ATS Open Pivot Bileaf Heart Valve

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ATS Open Pivot Bileaf Heart Valve and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA approved for marketing the medical device ATS Open Pivot Bileaf Heart Valve. ATS Open Pivot Bileaf Heart Valve is indicated for the replacement of diseased, damaged, or malfunctioning native or prosthetic aortic or mitral valves. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ATS Open Pivot Bileaf Heart Valve (U.S. Patent No. 5,354,330) from ATS Medical, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 30, 2002, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of ATS Open Pivot Bileaf Heart Valve represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ATS Open Pivot Bileaf Heart Valve is 1,418 days. Of this time, 980 days occurred during the testing phase of the regulatory review period, while 438 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act involving this device became effective*: November 27, 1996. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective November 27, 1996.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: August 3, 1999. FDA has verified the applicant's claim that the premarket approval application (PMA) for ATS Open Pivot Bileaf Heart Valve (PMA P990046) was initially submitted August 3, 1999.

3. *The date the application was approved*: October 13, 2000. FDA has verified the applicant's claim that PMA P990046 was approved on October 13, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 505 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 26, 2005. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 23, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 2005.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 05–14748 Filed 7–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 6, 2005, from 8:30 a.m. to 4:30 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827-6776, e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss biologics license application (BLA) 125118/0, proposed trade name ORENCIA (abatacept), Bristol Myers Squibb, proposed indication for the treatment of moderately to severely active rheumatoid arthritis. When available, background materials for this meeting will be posted 1 business day before the meeting on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Arthritis Advisory Committee.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 26, 2005. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 26, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Johanna Clifford at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 20, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–14751 Filed 7–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 8 and 9, 2005, from 8 a.m. to 5 p.m.

Location: Holiday Inn Washington Silver Spring, The Ballrooms, 8777 Georgia Ave., Silver Spring, MD. The hotel telephone number is 301–589–0800.

Contact Person: Cathy Groupe, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *groupec@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting. When available, background materials for this meeting will be posted one business day prior to the meeting on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Endocrinologic and Metabolic Drugs Advisory Committee.)

Agenda: On September 8, 2005, the committee will discuss new drug application (NDA) 21–868, proposed trade name EXUBERA (insulin recombinant deoxyribonucleic acid (rDNA) origin powder for oral inhalation), 1 milligram (mg) and 3 mg powder for inhalation, Pfizer, Inc., for the treatment of adult patients with diabetes mellitus. On September 9, 2005, the committee will discuss NDA 21–865, proposed trade name PARAGLUVA (muraglitazar) Tablets, 2.5 mg and 5 mg, Bristol-Myers Squibb, for the treatment of type II diabetes mellitus.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 31, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 31, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lauttman at least 7 days in advance of the meeting at 301–827–7001.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 20, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–14750 Filed 7–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 25 and 26, 2005, from 8 a.m. to 6 p.m on both days.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512519. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 25, 2005, the committee will hear a presentation on the FDA Critical Path Initiative and a presentation by the Office of Surveillance and Biometrics in the Center for Devices and Radiological Health outlining their responsibility for the review of postmarket study design. On August 25 and 26, 2005, the committee will discuss and make recommendations on the classification of five preamendments medical devices: Bone wax, medical maggots, medicinal leeches, tissue expander, and wound dressing with a drug. Background information for this meeting, including the agenda and questions for the committee, will be made available at least 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 11, 2005. On August 25, 2005, oral presentations from the public will be scheduled between approximately 10:15 a.m. and 10:45 a.m., 1:45 p.m. and 2:15 p.m., and 4:30 p.m. and 5 p.m. On August 26, 2005, oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m., 1 p.m. and 1:30 p.m., and 3:45 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before 5 p.m. on August 11, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at 240–276–0450, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 20, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–14749 Filed 7–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0261]

Draft Guidance for Industry on Nucleic Acid Testing for Human Immunodeficiency Virus Type 1 and Hepatitis C Virus: Testing, Product Disposition, and Donor Deferral and Reentry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry," dated July 2005. The draft guidance document provides information for blood and plasma establishments, manufacturers, and testing laboratories that are implementing a licensed method for NAT on pooled or individual samples of human blood and blood component donations for HIV–1 ribonucleic acid (RNA) and HCV RNA. The draft guidance document is intended to encourage more effective testing of whole blood and blood component samples, and improved product and donor management based on the results of NAT and concurrent serologic testing for markers of HIV and HCV infection on donated whole blood and blood components.

DATES: Submit written or electronic comments on the draft guidance by October 25, 2005 to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the 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*.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for

Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry'' dated July 2005. There has been a dramatic reduction during the past decade in the transmission of HIV–1 and HCV by human blood and blood components. The reduction is a result of the implementation of sensitive tests for viral antibody, antigen (for HIV–1), and nucleic acids, and the use of effective virus removal and inactivation methods. The sources of remaining risk of HIV–1 and HCV transmission are marker-negative ''window period'' donations, donors infected with immunovariant viral strains, persistent antibody-negative (immunosilent) carriers, and laboratory test procedure errors. Because donations during the window period constitute most of the risk of HIV–1 and HCV transmission, measures to close the ''window period'' further could reduce significantly the low residual risk of HIV–1 and HCV transmission by human blood and blood components. Studies using seroconversion panels indicate the value of NAT in reducing the ''window period'' for HIV–1 and HCV.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 19, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14746 Filed 7–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ADDERALL XR (mixed salts of a single-entity amphetamine product), AVANDIA (rosiglitazone), AVAPRO (irbesartan), RAPAMUNE (sirolimus), and ZOFRAN (ondansetron). These summaries are being made available consistent with section 9 of the Best Pharmaceuticals for Children Act (BPCA). For all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

ADDRESSES: Submit written requests for single copies of the summaries to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

FOR FURTHER INFORMATION CONTACT: Grace Carmouze, Center for Drug Evaluation and Research (HFD–960), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–7337, e-mail: *carmouzeg@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies conducted for ADDERALL XR (mixed salts of a single-entity amphetamine product), AVANDIA (rosiglitazone), AVAPRO (irbesartan), RAPAMUNE (sirolimus), and ZOFRAN (ondansetron). The summaries are being made available consistent with section 9 of the BPCA (Public Law 107–109). Enacted on January 4, 2002, the BPCA reauthorizes, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a). Section 505A of the act, permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.

One of the provisions the BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement (21 U.S.C. 355a(m)(1)). The summaries are to be made available not later than 180 days after the report on the pediatric study is submitted to FDA (21 U.S.C. 355a(m)(1)). Consistent with this provision of the BPCA, FDA has posted on the Internet at *http://www.fda.gov/cder/pediatric/index.htm*, summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ADDERALL XR (mixed salts of a single-entity amphetamine product), AVANDIA (rosiglitazone), AVAPRO (irbesartan), RAPAMUNE (sirolimus), and ZOFRAN (ondansetron). Copies are also available by mail (see **ADDRESSES**).

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pediatric/index.htm*.

Dated: July 20, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14747 Filed 7–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Emergency Agency Information Collection Activity Under OMB Review: Corporate Security Review (CSR)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: This notice announces that TSA has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for emergency processing and approval under the Paperwork Reduction Act. The ICR describes the nature of information collection and its expected burden.

DATES: Send your comments by August 26, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), 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. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Corporate Security Review (CSR).

Type of Request: Emergency processing request of new collection.

OMB Control Number: Not yet assigned.

Forms(s): Corporate Security Review Form.

Affected Public: Surface Transportation System Owners and Operators.

Abstract: The Aviation and Transportation Security Act of 2001 (ATSA) (Public Law 107–71) requires TSA to oversee the security of the nation's surface transportation system. Specifically, ATSA grants TSA authority to execute its responsibilities for:

- Enhancing security in all modes of transportation (49 U.S.C. 114(d));
- Assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats (49 U.S.C. 114(f)(1)–(5), (h)(1)–(4)); and
- Identifying and coordinating countermeasures to address threats to the transportation system (49 U.S.C. 114(f)(4)), including the authority to receive, assess, and distribute intelligence information related to transportation security; (49 U.S.C. 114(f)(1)–(4)).

To support these requirements, TSA assesses the current security practices in the surface transportation sector by way of site visits and interviews through it's Corporate Security Review (CSR) program, one piece of a much larger domain awareness, prevention, and protection program in support of TSA's and Department of Homeland Security's missions. TSA is requesting emergency approval for this collection to allow TSA to ascertain minimum-security standards and identify coverage gaps, activities that are critical to its mission of ensuring transportation security.

The CSR is an "instructive" review that provides the TSA with an understanding of each surface transportation owner/operator's ability to protect its critical assets. In carrying out CSRs, teams of modal experts from TSA conduct site visits of critical highway, mass transit, pipeline, and rail assets throughout the nation. The TSA team analyzes the owner's/operator's security plan and determines if the mitigation measures included in the plan are being implemented. In addition to reviewing the security plan document, TSA tours the site and interviews the owner's/operator's security coordinator, employees, and contractors. TSA collects information on eleven topics: Threat assessments, vulnerability assessments, security planning, credentialing, secure areas, infrastructure protection, physical security countermeasures, cyber security, training, communications, and exercises. TSA conducts this collection through voluntary face-to-face visits, which last an average of two days, at the company/agency headquarters of surface transportation owners/operators. Typically, TSA sends three employees to conduct a two-day discussion/interview with representatives from the company/agency owner/operator. At the conclusion of these site visits, TSA completes the Corporate Security Review form, which asks questions concerning the above mentioned topics. TSA does not plan to collect information from small businesses or other small entities at this time.

The annual hour burden for this information collection is estimated to be 1,200 hours. While TSA estimates a total of 500 potential respondents, this estimate is based on TSA conducting 75 visits per year, each visit lasting 2 days (2 8-hour work days). The total annual cost burden to respondents is $0.00.

TSA assures respondents that their responses will be handled as Sensitive Security Information, as described in 49 CFR parts 15 and 1520.

Number of Respondents: 500.

Estimated Annual Burden Hours: An estimated 1,200 hours annually.

Issued in Arlington, Virginia, on July 21, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–14817 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2001–11120]

Extension of Agency Information Collection Activity Under OMB Review: Imposition and Collection of Passenger Civil Aviation Security Service Fees (September 11th Security Fee)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval

of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 6, 2005, 70 FR 24108.

DATES: Send your comments by August 26, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), 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. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Imposition and Collection of Passenger Civil Aviation Security Service Fees (September 11th Security Fee).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0001.

Forms: September 11th Security Fees Quarterly Report Form.

Frequency: Quarterly.

Abstract: On December 31, 2001, TSA published an interim final rule imposing a security service fee (September 11th Security Fee) (see 66 FR 67698). Imposition of the fee began on February 1, 2002. Approximately 196 domestic and foreign air carriers are expected to collect and remit the September 11th Security Fee. Each of these carriers is then required to: (1) Establish and maintain an accounting system to account for the September 11th Security Fees that are imposed, collected, refunded, and remitted; (2) report this information to TSA on a quarterly basis; and (3) retain the data used for these reports for a six-year rolling period (so that information for Fiscal Year 2005 must be retained until Fiscal Year 2011 expires, and so on).

Each air carrier that collects security service fees from more than 50,000 passengers annually is also required under 49 CFR 1510.15 to submit to TSA an annual independent audit, performed by an independent certified public accountant, of its security service fee activities and accounts. Although, the annual independent audit requirements were suspended January 23, 2003 (68 FR 3192), TSA conducts its own audits of the air carriers (49 CFR 1510.19).

TSA is seeking renewal of this collection to require air carriers to continue submitting the quarterly reports to TSA, and to retain the information for a six-year rolling period. This requirement includes retaining the source information for the quarterly reports remitted to TSA, and the calculations and allocations performed to remit reports to TSA. Should the auditing requirement be reinstated, the requirement would include information and documents reviewed and prepared for the independent audit. Although TSA suspended the independent audits, TSA conducts audits of the air carriers, and therefore, requires air carriers to retain and provide the same information as required for the quarterly reports and independent audits. TSA estimates 105 carriers of the 196 total respondent domestic and foreign air carriers would be responsible for this audit should the requirement be reinstated.

Number of Respondents: 196.

Estimated Annual Burden Hours: An estimated 2884 hours annually.

Issued in Arlington, Virginia, on July 21, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–14818 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–21956]

Privacy Act of 1974: System of Records; Safety Information System (SIS)

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice to establish a system of records; request for comments.

SUMMARY: The Transportation Security Administration (TSA) is establishing one new system of records under the Privacy Act of 1974, the Safety Information System (SIS) (DHS/TSA 020). TSA will maintain this system to provide an information source to comply with the occupational health and safety recordkeeping and reporting requirements of the Department of Labor, Occupational Safety and Health Administration (OSHA).

DATES: Submit comments by August 26, 2005.

ADDRESSES: You may submit comments, identified by TSA docket number to this document, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Lisa S. Dean, Privacy Officer, Office of Transportation Security Policy, TSA–9, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3947; facsimile (571) 227–2555.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate by submitting written comments, data, or views. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments

reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES,** but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of your comments submitted by mail. include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI),[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the document. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation address, previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Law and Policy Web page at *http://www.tsa.gov* and accessing the link for "Law and Policy" at the top of the page.

In addition, copies are available by writing or calling the office in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this notice.

Background

On November 26, 2004 (69 FR 68793), the Occupational Safety and Health Administration (OSHA) issued a final rule amending the occupational injury and illness recording and reporting requirements applicable to Federal agencies. This final rule makes the Federal sector's recordkeeping and reporting requirements essentially identical to the private sector's by adopting applicable OSHA recordkeeping provisions for Federal agencies. In addition to ensuring that injuries and illnesses suffered by all groups of employees are recorded, the final rule is intended to: Produce more useful injury and illness records; collect better information about the incidence of occupational injuries and illnesses at the establishment level; create reporting and recording criteria that are consistent among Federal agencies; enable injury and illness comparisons between the Federal and private sectors; and promote improved employee awareness and involvement in the recording and reporting of job-related injuries and illnesses. The final rule will also assist in achieving the stated goal of Executive Order (E.O.) 12196 (45 FR 12769, Feb. 27, 1980) that Federal agencies comply with all OSHA standards, and generally, assure worker protection in a manner comparable to the private sector.

System of Records
DHS/TSA 020

SYSTEM NAME:

Safety Information System (SIS). .

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATIONS:

TSA's Information Technology contractor maintains and stores official records in electronic form on secure servers at their office locations. TSA occupational safety and health personnel may access the official records from their individual workstations at TSA field locations or Headquarters offices at 601 South 12th Street, Arlington, VA 22202–4220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TSA employees and contractors under direct supervision of TSA, who are involved in or report an incident resulting in an occupationally-caused injury, illness, or death; employees and contractors involved in or reporting incidents not resulting in, but having the potential to have caused damage, injury, or death; employees and contractors (or their survivors) who file a claim for benefits under the Federal Employees' Compensation Act; and employees and contractors who report unsafe or unhealthful working conditions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include: Reports of occupational injuries and illnesses; workers' compensation claims information filed by, or on behalf of, injured employees or contractors; medical bill payment records; notes of telephone conversations conducted in connection with claims; general information relating to the status of vocational and/or medical rehabilitation. Specific data elements may include personally identifying information, such as: Name, Social Security Number, birth date, gender,

[1] "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

home address, occupation, and salary (for employees of the Department only); date and location of the incident; and information received from various investigative agencies.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 7902; 29 U.S.C. 651 *et seq.*; 49 U.S.C. 114; E.O. 12196 (45 FR 12769, Feb. 27, 1980), 3 CFR, 1980 Comp., p. 145; 29 CFR part 1960.

PURPOSE(S):

TSA will use this system to:

(1) Provide an information source for compliance with the Occupational Safety and Health Act and other legal requirements;

(2) Provide a documented record of job-related incidents, injuries, and illnesses for measuring safety and health programs' effectiveness;

(3) Provide summary data of accident, injury, and illness information to TSA and DHS management in a number of formats for analytical purposes in establishing programs to reduce or eliminate loss producing hazards or conditions; and

(4) Use as a reference when adjudicating tort and employee claims.

TSA will use the summary data of occupational injuries or illnesses maintained in this system for analytical purposes to improve TSA's accident prevention policies, procedures, standards, and operations, as well as ensure internal data quality assurance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where TSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) To contractors, grantees, experts, consultants, or other like persons, when necessary, to perform a function or service related to this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

(3) To a Federal, State, local, tribal, territorial, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit.

(4) To a Federal, State, local, tribal, territorial, foreign, or international agency, if necessary, to obtain information relevant to a TSA decision concerning the hiring or retention of an employee, the issuance of a security clearance, license, contract, grant, or other benefit.

(5) To third parties during the course of an investigation into any matter associated with an occupationally-related accident, injury, or illness, to the extent necessary to obtain information pertinent to the investigation.

(6) To the Department of Justice (DOJ) or other Federal agency for purposes of conducting litigation or proceedings before any court, adjudicative or administrative body, when (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or proceeding, or has an interest in such litigation or proceeding.

(7) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

(8) To the National Archives and Records Administration or other appropriate Federal agency, in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(9) To any agency or instrumentality charged under applicable law with the protection of the public health or safety under exigent circumstances where the public health or safety is at risk.

(10) To the Department of Justice, United States Attorney's Office, or other appropriate Federal agency for further collection action on any delinquent debt when circumstances warrant, or to a debt collection agency for the purpose of debt collection.

(11) To prepare periodic statistical reports on employees' health and injury status for transmission to and review by the Department of Labor;

(12) To the Secretary of Labor or an authorized representative under duly promulgated regulations;

(13) To the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and/or similar agencies as required to litigate or otherwise process individual claims;

(14) To physicians, the Department of Labor, various state departments of labor and industry groups, and contractors who use information to: (a) Ascertain suitability of an employee for job assignments with regard to health (b) provide benefits under Federal programs or contracts, and (c) maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

(15) To doctors, pharmacies, and other health care providers for the purpose of treating the injured party investigating the claim, conducting medical examinations, physical rehabilitation or other services, or obtaining medical evaluations.

(16) To public or private rehabilitation agencies to whom the injured party has been referred for vocational rehabilitation services so that they may properly evaluate the injured party's experience, physical limitations and future employment capabilities.

(17) To Federal, state, and local agencies conducting similar or related investigations to verify whether prohibited dual benefits were provided, whether benefits have been or are being paid properly, including whether dual benefits prohibited by Federal law are being paid; and salary offset and debt collection procedures including those actions required by the Debt Collection Act of 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Contractors maintain and store official records in electronic form in the system location office. Employees or contractors designated to enter and access data create and update the information on their individual workstations, and make it accessible to TSA occupational safety and health personnel.

RETRIEVABILITY:

Personnel may retrieve data records electronically stored by employee name, social security number or other personal identifier, or case number; and paper records, where applicable, by case number or alphabetically by name. TSA field offices will access and retrieve information maintained in the system pertaining only to employees under their supervision. TSA Headquarters personnel responsible for administration of the Occupational Safety and Health program will have access to SIS data.

SAFEGUARDS:

Information in this system is protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Unauthorized personnel are denied physical access to the location where records are stored. For computerized records, safeguards are in accordance

with generally acceptable information security guidelines via use of security codes, passwords, Personal Identification Numbers (PINs), and other similar safeguards.

RETENTION AND DISPOSAL:

Employee case files are destroyed when 30 years old in accordance with TSA Records Schedule 2400 *et seq.* Computer files are deleted after the expiration of the retention period authorized for the disposal of the hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Occupational Safety, Health, and Environment, Office of Administration, TSA–17, 701 South 12th Street, Arlington, VA 22202–4220.

NOTIFICATION PROCEDURE:

To determine if this system contains a record relating to you, write to the system manager at the address indicated above and provide your full name, current address, date of birth, place of birth, and a description of information that you seek, including the time frame during which the record(s) may have been generated. You may also provide your social security number or other unique identifier(s), but you are not required to do so. Individuals requesting access must comply with the Department of Homeland Security's Privacy Act regulations on verification of identity (6 CFR 5.21(d)).

RECORD ACCESS PROCEDURE:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

(1) The individual or their representative;
(2) Their dependents;
(3) Witnesses;
(4) Employing agency;
(5) Medical personnel and institutions;
(6) Departmental Records;
(7) Office of Workers' Compensation Program;
(8) Office of Personnel Management;
(9) State and Federal records;
(10) Motor Vehicle Accident Reports (SF–91); and
(11) Excerpts of police reports, witness statements, and general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Issued in Arlington, Virginia, on July 21, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–14819 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Cameron Prairie National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Cameron Prairie National Wildlife Refuge in Cameron Parish, Louisiana.

SUMMARY: The notice announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for Cameron Prairie National Wildlife Refuge is now available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Proposed goals for the refuge include:

- Preserving, restoring, and enhancing diverse habitats to provide favorable conditions for migratory and native wildlife species;
- Maintaining healthy and viable native fish and wildlife populations on the refuge to contribute to the purpose for which it was established and to the mission of the National Wildlife Refuge System;
- Providing opportunities for safe, quality, compatible, wildlife-dependent public use and recreation, which includes hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation;
- Protecting cultural resources in accordance with Federal and state historic preservation legislation and regulations; and
- Developing and maintaining the Southwest Louisiana National Wildlife Refuge Complex Headquarters in a manner that supports, directs, and manages the needs, resources, and staff of Cameron Prairie, Sabine, and Lacassine National Wildlife Refuges.

Also available for review are the draft compatibility determinations for: recreational fishing; recreational hunting; environmental education and interpretation; wildlife observation and photography; commercial alligator harvest; commercially guided wildlife viewing, photography, environmental education, and interpretation; research and monitoring; commercial video and photography; adjacent property access; and beneficial use of dredge material.

Proposed Action

The proposed action is to adopt and implement a 15-year comprehensive conservation plan for management that best achieves the refuge's purpose, vision, and goals; contributes to the National Wildlife Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. The Service analyzed three alternatives for future management and chose Alternative B as the one to best achieve all of these elements.

Alternatives

The draft comprehensive conservation plan and environmental assessment evaluates three alternatives for managing the refuge over the next 15 years. These alternatives are briefly described as follows:

Alternative A represents the status quo; *e.g.*, no changes from current management of the refuge. The refuge would continue with approximately the same direction, emphases, constraints, and priorities that have characterized management decisions and actions in recent years. Habitats would be managed under current policies. Removal of undesirable plants and animals would occur as funding and staffing permit. Cultural resources would be protected at current levels. Public use opportunities would remain the same as current levels.

Under Alternative B, the Service's proposed action, the quality and quantity of habitat for wintering waterfowl would be maximized by focusing on a more adaptive

management approach through improved biological monitoring. Alternative B would best support the purpose for which the refuge was established.

The refuge would be managed with an active hands-on, labor intensive approach. The refuge would intensely manage up to 1,500 acres of early successional wetlands. Succession would be controlled with more aggressive drawdown cycles, more frequent soil disturbance, and by implementing a more focused fire management program. Public use opportunities would generally increase under this alternative but hunting and fishing opportunities would remain at the same level that is currently occurring with the exception of rabbit hunting. Facilities such as trails, boardwalks, observation platforms, and photography blinds would be improved. The refuge would increase its emphasis on environmental education and interpretation.

Archery hunting for resident deer would continue to manage populations and provide hunting opportunities for archers. Snipe and dove hunting would continue. A lottery waterfowl hunt would be allowed for youth with parental or guardian supervision. The purpose of the youth hunt is to provide opportunities for public access to waterfowl hunting because these opportunities are limited state-wide and would introduce young hunters to a safe controlled hunting environment. The experimental rabbit hunt would be discontinued due to declining public interest and conflicting management activities. Habitat that is managed for wintering waterfowl is not favorable for a quality rabbit hunt and harvest. Commercial alligator harvest would continue in cooperation with Louisiana Department of Wildlife and Fisheries and would be by lottery only. Commercial guides for wildlife viewing, photography, and environmental education and interpretation would be permitted. Existing fishing areas on the refuge would be improved. Research and monitoring would be enhanced. Programs that promote the beneficial use of dredge material would be allowed. Current partnerships that assist the refuge in accomplishing its conservation objectives would continue under this alternative, however, the refuge would strive to develop new partnerships with conservation groups and state agencies. Communication with local landowners and community groups would continue in order to promote wildlife conservation and the National Wildlife Refuge System. A more aggressive approach to removal of undesirable plants and animals would be implemented. Cultural resources would continue to be protected and interpretation of cultural resources would be improved.

Under Alternative C, the refuge would degrade all levees to an extent defined as the "neareast marsh elevation found in the area." The refuge would then be in custodial form. No active habitat management would be applied. Staff would serve as caretakers of the refuge, observing and monitoring the natural forces and ecological succession that would shape its habitats and effectively determine their suitability for wildlife. Water management capability would cease and no mechanical or prescribed fire disturbances would occur. Use of fire would be limited to hazardous fuel reduction and suppression of wildfires. Removal of undesirable plants and animals would be minimal. Enjoyment of opportunities for public use may decline because wildlife diversity and abundance may be reduced under this alternative. Cultural resources would continue to be protected and interpretation of cultural resources would be improved.

Actions Common to All Alternatives

All three alternatives share the following management concepts and techniques for achieving the goals of the refuge:

- Protecting a variety of freshwater marsh and upland prairie habitat;
- Serving as a critical resting area for waterfowl in a heavily hunted area;
- Establishing, maintaining, and improving partnerships with landowners and local, state, and Federal agencies and organizations;
- Coordinating management actions with local and state land and resource managment agencies; and
- Encouraging scientific research on the refuge.

DATES: An Open House will be held at the refuge on August 18, 2005, from 2 p.m. to 7 p.m. to present the plan to the public. The refuge headquarters is located at 1428 Highway 27, Bell City, Louisiana. Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for Cameron Prairie National Wildlife Refuge should do so no later than September 12, 2005. Public comments were requested, considered, and incorporated throughout the planning process. Public outreach has included public scoping meetings, technical workgroups, planning updates, and a **Federal Register** notice.

ADDRESSES: Requests for copies of the Draft Comprehensive Conservation Plan and Environmental Assessment should be addressed to Judy McClendon, Natural Resource Planner, Southwest Louisiana National Wildlife Refuge Complex, Cameron Prairie National Wildlife Refuge, 1428 Highway 27, Bell City, Louisiana 70630; Telephone 337/598–2216; Fax 337/598–2492. Comments on the draft may be sumitted to the above address or via electronic mail to *judy_mcclendon@fws.gov*. Please include your name and return address in your internet message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: Cameron Prairie National Wildlife Refuge, located in southwestern Louisiana, consists of 9,621 acres of freshwater marsh, coastal prairie, and early successional wetlands, and is managed to preserve and protect wintering waterfowl and their habitat. Cameron Prairie is one of three refuges comprising the Southwest Louisiana National Wildlife Refuge Complex. Annually, about 30,000 visitors participate in refuge activities, including recreational fishing, recreational hunting, wildlife photography, wildlife observation, and environmental education and interpretation.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: January 6, 2004.

Cynthia K. Dohner,

Acting Regional Director.

Editorial note:

This document was received at the Office of the Federal Register July 22, 2005.

[FR Doc. 05–14785 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Pelican Island National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Pelican Island National Wildlife Refuge in Sebastian, Florida.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental

Assessment for Pelican Island National Wildlife Refuge are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitat, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

ADDRESSES: Requests for copies of the Draft Comprehensive Conservation Plan and Environmental Assessment should be addressed to Mr. Paul Tritaik, Refuge Manager, Pelican Island National Wildlife Refuge, 1339 20th Street, Vero Beach, Florida 32960; Telephone 772/562–3909, extension 275; Fax 772/299–3101. The draft plan and environmental assessment may be accessed and downloaded from the Service's Web site *http://southeast.fws.gov/planning/*.

DATES: Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for Pelican Island National Wildlife Refuge should do so no later than September 26, 2005. Comments on the draft plan and environmental assessment may be submitted to Ms. Cheri Ehrhardt, Planning Team Leader, Merritt Island National Wildlife Refuge, P.O. Box 6504, Titusville, Florida 32782–6504; Telephone 321/861–2368; Fax 321/861–1276, or may be submitted via electronic mail to *cheri_ehrhardt@fws.gov*. Please include your name and return address in your message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may requests that we withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: The draft plan identifies and evaluates three alternatives for managing the refuge over the next 15 years. Under Alternative A, management would continue with programs following the same direction, emphasis, and intensity as historically occurred. No active management would address threatened and endangered species; neotropical migratory birds; shorebirds; natural and spoil islands; estuarine habitats; fish species; fish and wildlife disturbance; aquatic exotic, invasive, and nuisance species; seagrass beds; commercial operations on the refuge; and research activities occurring on the refuge. Few wildlife surveys would be conducted by the refuge. Limited management activities would address exotic, invasive, and nuisance species in transitional and upland habitats. Under Alternative A, the Kroegel Homestead would not be protected by the Fish and Wildlife Service. Further, no visitor center facility would be developed. Little or no patrol and enforcement would be provided to vulnerable archaeological sites of the refuge. Recreational activities would continue as currently offered, under the current lease with the State of Florida. Recreational activities (*e.g.*, jet skiing and island camping) that are currently negatively impacting refuge wildlife and habitat would continue to occur under the current lease with the State of Florida. Refuge staff would continue at 6 or fewer staff members.

Under Alternative B, management activities would minimally expand. Management activities would complete shoreline restoration of Pelican Island proper, expand the buffer of Pelican Island proper in accord with current research, and conduct regular patrol and enforcement activities. Further, management activities would expand to conduct baseline surveys for neotropical migratory birds; shorebirds; exotic, invasive, and nuisance species; and native wildlife using the refuge. Special use permits would be required for all research and commercial activities on the refuge. The refuge would pursue partnerships to protect key fish and spawning and settlement sites, to limit disturbance. The refuge would enhance opportunities for passive recreative, including observing and photographing wildlife, providing environmental education opportunities through partners, and interpreting the refuge. Fishing activities would continue to occur, under the current lease with the State of Florida. Other recreational activities (e.g., jet skiing and island camping) that are currently negatively impacting refuge wildlife and habitat would continue to occur under the current lease with the State of Florida. Regular patrol and enforcement activities would help limit negative impacts to archaeological sites on the refuge. Under Alternative B, the Kroegel Homestead would not be protected by the Fish and Wildlife Service. Further, no visitor center facility would be developed. To accomplish the outlined expansions in the biological, public use, and law enforcement programs, the staff level would expand to a total of nine.

Alternative C, the preferred alternative, moderately expands refuge management activities to a level more in keeping with resources protected in the developed and developing landscape that surrounds the refuge. Under Alternative C, the biological program would expand to encompass management activities addressing rare, threatened, and endangered species; migratory birds; and wildlife diversity, including managing research projects, restoring and creating appropriate habitats, mapping key sites, collecting data, coordinating with education and management partners, and monitoring occurrences. Baseline data collection and habitat management activities would be directed towards neotropical migratory birds, shorebirds, native wildlife, and fish and wildlife disturbance. To limit wildlife and habitat disturbance and to provide better management of and protection for wildlife and habitats of the refuge, the refuge would work with the State of Florida and other governmental partners to alter existing agreements to enable the enforcement of Service regulations on all refuge managed lands and waters. Key fish spawning and settlement sites would be protected. Only compatible public use activities would be allowed to occur on all refuge owned or managed lands and waters. All uses not meeting the requirements of compatibility would be eliminated from the refuge (*e.g.*, jet skiing and island camping). Fishing activities would include bank fishing from select upland sites. Signs, boardwalks, additional trails, and a wildlife drive would enhance existing recreational opportunities, including wildlife observation and photography and interpretation. All other activities on the refuge, such as research activities and commercial operations, would be required to obtain and maintain refuge special use permits. The refuge would work with the partners to acquire, manage, and list in the National Historic Register the Kroegel Homestead, home to the first refuge manager. The refuge would develop a modest visitor center and other visitor use facilities. Regular patrol and enforcement activities would help limit negative impacts to wildlife,

habitats, historical resources, and archaeological sites of the refuges. To enable the implementation of management activities outlined under Alternative C, the refuge volunteer program would more than double from current levels and refuge staff would be expanded to eleven.

Pelican Island National Wildlife Refuge was established in 1903 by President Roosevelt "as a preserve and breeding ground for native birds" through an unnumbered Executive Order. Located across the Intracoastal Waterway from Sebastian, Florida, in Indian River County in southeastern Florida, the refuge manages over 5,400 acres of estuarine, transitional, and upland habitats supporting 14 federally listed species and 45 state listed species, as well as a wide variety of mammals, birds, reptiles and amphibians, fishes, invertebrates, and plants. Although the refuge exists in an increasingly developed landscape, it supports key fish spawning sites, a globally important juvenile sea turtle habitat, and important bird rookeries. Given its location in a transitional zone between subtropical and temperate climates, refuge supports highly diverse resident and migratory species. Over 600 wildlife species have been confirmed on the refuge with hundreds more expected to occur with more extensive surveys. Over 130 species of birds, over 200 species of fish, and 250 species of plants have been confirmed on the refuge.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: January 25, 2005.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register, July 22, 2005.

[FR Doc. 05–14796 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Pocosin Lakes National Wildlife Refuge

ACTION: Notice of application for a natural gas pipeline right-of-way on Pocosin Lakes National Wildlife Refuge, Washington and Hyde Counties, North Carolina.

SUMMARY: Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449: 30 U.S.C. 185), as amended by Public Law 93–153, the Eastern North Carolina Natural Gas Company has applied for a permit to construct an 8-inch natural gas pipeline in a 35 foot wide right-of-way. The right-of-way will start at where Canal E Road enters Pungo Unit of the Pocosin Lakes National Wildlife Refuge and running approximately for 8.1 miles. This pipeline right-of-way will be on, under, and across a strip of land lying in Washington and Hyde Counties, in the State of North Carolina. The Fish and Wildlife Service is currently considering the merits of approving this application.

DATES: Interested persons desiring to comment on this application must do so by August 26, 2005.

ADDRESSES: Comments or requests for additional information should be addressed to Ms. Jackie Cumpton, Refuges and Wildlife (Realty), Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345, telephone (404) 679–7160; fax (404) 679–7273.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may do so by one of the following methods. You may mail comments to the above address. You may also comment via the Internet at the following address: *Jackie_Cumpton@fws.gov*. Please include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us at the above phone number or address. Our practice is to make comments, including names and address of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

The Fish and Wildlife Services is the principal Federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

Authority: The authority to publish this notice is contained in 30 U.S.C. 185(k).

Dated: June 29, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–14795 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on a Proposed New Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request for a new information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

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

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: National Water Information System Survey.

OMB Approval No.: New collection.

SUMMARY: The collection of information referred herein applies to a World-Wide Web site questionnaire to be placed on the U.S. Geological Survey NWISWeb Web site (*http://waterdata.usgs.gov/nwis*). The optional survey will assist in identifying the types of customers who use the NWISWeb system, their needs and their satisfaction levels. In particular it will request detailed feedback from users who use the NWISWeb to electronically collect the system's data, so that their needs can be incorporated into future changes to NWISWeb.

Estimated Completion Time: 10 minutes.

Estimated Annual Number of Respondents: 10,000.

Frequency: No frequency. Filling out the survey is wholly voluntary but would normally be done only once per user.

Estimated Annual Burden Hours: 1,667 hours.

Affected Public: The general public.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: July 21, 2005.

Robert M. Hirsch,

Associate Director for Water.

[FR Doc. 05–14784 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–05–4310–40–P]

Notice of Intent To Prepare an Environmental Impact Statement for Geothermal Leasing for the Truckhaven and Superstition Mountains

AGENCY: U.S. Department of the Interior, Bureau of Land Management, California Desert District, California.

ACTION: Notice of intent to prepare an environmental Impact Statement for Geothermal Leasing for Truckhaven and Superstition Mountains.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA), and 42 U.S.C. 4321 *et seq.*, the Bureau of Land Management (BLM) will prepare an Environmental Impact Statement (EIS) to analyze the proposed leasing of approximately 16,640 acres of BLM-managed public lands for geothermal exploration, development, and utilization in the Truckhaven and Superstition Mountain areas located in Western Imperial County, California. The leasing of public lands for geothermal resources is consistent with the California Desert Plan. Comments are being solicited to help identify significant issues or concerns related to the proposed action, determine the scope of issues, and identify and refine alternatives to the proposed action.

DATES: This notice initiates the public scoping process. Federal, State, and local agencies and the public that may be interested in or affected by the BLM's decision for the proposed action are invited to participate in the scoping process for the EIS. Scoping meetings to encourage and facilitate public participation are proposed to be held in San Diego, Anaheim, Long Beach, and El Centro, California. Times and locations of the scoping meetings will be announced in the local news media. Public scoping will be open for 60 days after the publication of this notice.

ADDRESSES: *For Comments:* In addition to the public scoping meetings, the BLM is inviting written comments and suggestions on the proposed action and the scope of the analysis. Written comments or requests should be received within 60 days after publication and must be submitted to the Bureau of Land Management, California Desert District Office, Attn: John Dalton, Truckhaven/Superstition Mountain Geothermal Leasing Coordinator, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Comments may also be submitted via e-mail to *John_Dalton@ca.blm.gov.*

FOR FURTHER INFORMATION CONTACT: John Dalton at (951) 697–5311, *John_Dalton@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: BLM has received 11 geothermal lease applications for public lands within the Truckhaven and Superstition Mountains area in western Imperial County, California. The proposed action is to lease these lands under the authority of the Geothermal Steam Act of 1970, as Amended. The public lands being considered for geothermal leasing are located in the Truckhaven area in sections 2, 10, and 12 in Township 11 South, Range 9 East, sections 6, 8, 18, 20, 22, 28, 30, 32, 34 in Township 11 South, Range 10 East , in sections 2, 10, and 12 in Township 12 South, Range 9 East , and 4, 6, 8, and 10 in Township 12 South, Range 10 East, and in the Superstition Mountain area in portions of sections 2, 3, 4, 9, 10, 11, 12, 13, 14, and 15 in Township 14 South, Range 11 East, San Bernardino and Base Meridian.

Alternatives thus far identified for evaluation in the EIS will include: (1) Approving all lease applications (16,640 acres), (2) the no action alternative (no leasing), and (3) leasing less than the proposed 16,640 acres of public land. The principal issues identified thus far for consideration in the EIS include: Native American concerns; cumulative impacts considering existing, proposed, and potential geothermal projects in the area; cultural resources; wildlife; land use conflicts, including recreation, military land use, the Salton Sea Authority area planning, development and restoration, county land use planning, State request for transfer of land north of State Route (SR) 78 and west of SR 86 to California for recreation and other public uses; visual resources; and surface water and groundwater resources, and sensitive species. The EIS will also address other issues such as geology, geothermal resources, vegetation, threatened or endangered species, air quality, noise, transportation, human health and safety, and socioeconomics as well as any issues raised during the scoping process.

Dated: June 21, 2005.

Linda Hansen,

District Manager.

[FR Doc. 05–14771 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, August 29, 2005, from 8 a.m., to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet at the Embassy Suites Hotel Denver Aurora, 4444 N. Havana Street, Denver, Colorado 80239 or call (303) 375–0400. Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business, August 24, 2005. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Neal, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. Neal at any time by calling the Federal Information Relay Service at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of

the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, August 29, 2005 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions:
8:15 a.m. Old Business:
Approval of May 2005 Minutes
BLM Action on March Recommendations
Update Pending Litigation
8:45 a.m. Program Updates:
Gathers
Adoptions
Facilities
Forest Service Update
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Program Updates (continued):
Adoption Strategy
Program Accomplishments
Lunch (11:45 a.m.–1 p.m.)
1 p.m. New Business:
Break (2:30 p.m.–2:45 p.m.)
2:45 p.m. Board Recommendations
4 p.m. Public Comments
4:45 p.m. Recap/Summary/Next Meeting/Date/Site
5–6 p.m. Adjourn: Roundtable Discussion to Follow

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on August 29, 2005, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon on August 29, 2005, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Neal@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: July 21, 2005.

Edward W. Shepard,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 05–14816 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995; this notice announces the intentions of the Bureau of Reclamation to seek extension of the information collection for the Lower Colorado River Well Inventory. The current OMB approval expires on January 31, 2006.

DATES: Comments on this notice must be received by September 26, 2005.

ADDRESSES: To obtain copies of the information collection form and to submit comments on this information collection contact: Mr. Jeffrey Addiego, Boulder Canyon Operations Office, PO Box 61470, Boulder City, NV 89006–1470; or e-mail at *JAddiego@lc.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Addiego, 702–293–8525.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical utility; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and sugestions submitted within 60 days of this publication.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public disclosure in their entirety.

Title: Lower Colorado River Well Inventory.

OMB No.: OMB No. 1006–0014.

Abstract: The Secretary of the Interior is responsible for accounting for all diversions of mainstream Colorado River water along the lower Colorado River, and for assuring that all Colorado River water use is in accordance with a water use entitlement. This requires an inventory of wells and river pumps along the lower Colorado River, and the gathering of specific information concerning these wells.

Description of respondents: All diversions of mainstream Colorado River water along the lower Colorado River must be accounted for in accordance with a water use contract with the Secretary of the Interior for non-Indian water uses, or accounted for in compliance with a Secretarial reserved right or decreed water right for federal reservations. This will affect every well and river-pump owner and operator along the lower Colorado River in Arizona, California, and Nevada. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined.

Frequency: These data will be collected only once for each well or river-pump owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made.

Estimated completion time: An average of 20 minutes is required for Reclamation to interview individual well and river-pump owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

Annual responses: 1,500.

Annual burden hours: 500 hours.

Dated: July 15, 2005.

Ruth M. Thayer,

Acting Area Manager.

[FR Doc. 05–14804 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0043

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: Comments on the proposed information collection must be received by September 26, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to John S. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John S. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require 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 activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Bond and Insurance Requirements for surface Coal Mining and Reclamation Operations Under Regulatory Programs—30 CFR 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR Part 800 primarily implement section 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with section 519 of the Act, liability insurance requirements pursuant to section 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 14,175.

Total Annual Burden Hours: 133,364 hours.

Total Annual Non-Wage Costs: $2,123,454.

Dated: July 22, 2005.

Dennis G. Rice,

Acting Chief, Division of Regulatory Support.

[FR Doc. 05–14820 Filed 7–26–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–469 (Second Review)]

Electroluminescent Flat Panel Displays From Japan

AGENCY: International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in March 2005 to determine whether revocation of the antidumping duty order on electroluminescent flat panel displays from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On June 2, 2005, the Department of Commerce published notice that it was revoking the order effective April 11, 2005 because "no interested domestic party responded to the sunset review notice of initiation by the applicable deadline * * *" (70 FR

32289). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: April 11, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *http://www.usitc.gov*.

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: July 22, 2005.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–14878 Filed 7–26–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: claim for damage, injury, or death.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 81, page 22061 on April 28, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 26, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. 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:* Claim for Damage, Injury, or Death.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: CIV SF 95. Civil Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, not-for-profit institutions, and State, local, or tribal governments. *Abstract:* This form is utilized by those persons making a claim against the United States Government under the Federal Tort Claims Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 300,000 respondents who will each require 6 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 1,800,000 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 20, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–14777 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed Consent Decree Amendment Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that a proposed amendment to the consent decree in *United States,* et al. v. *BP Exploration & Oil Co.,* et al., Civil No. 2:96 CV 095 RL, was lodged with the United States District Court for the Northern District of Indiana on July 14, 2005.

The original settlement was for civil penalties and injunctive relief pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991), covering seven refineries, and was entered by the Court on August 29, 2001, as part of EPA's Petroleum Refinery Initiative. Since entry, BP has sold three of its refineries. The proposed Amendment modifies the consent decree to set final emissions limits for NO_X and SO_2 at the fluid catalytic cracking units at the BP refineries and adds several other changes to update the consent decree to conform to provisions that have been negotiated with refiners since the entry of the BP decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Fourth Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *BP Exploration & Oil Co., D.J. Ref. 90–5–2–1–07109/3.*

The proposed Addendum may be examined at the Office of the United States Attorney, Northern District of Indiana, U.S. District Court, 5400

Federal Plaza, Hammond, Indiana 46320, and at U.S. EPA Headquarters, Air Enforcement Division, Office of Enforcement and Compliance Assurance, Washington, DC. During the public comment period the Fourth Amendment to the Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Amendment may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–14893 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgments Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 11, 2005, two proposed Consent Judgments in *United States* v. *City of Glen Cove,* et al. Civil Action No. CV–05–3279, were lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgments will settle the United States' claims on behalf of the U.S. Environmental Protection Agency ("EPA") brought against defendants City of Glen Cover ("City") and Wah Chang Smelting and Refining Company of America, Inc. ("WCSRCA") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, with respect to the Li Tungsten Superfund Site in Glen Cove, New York.

Pursuant to the Consent Judgments, based on their respective abilities to pay, the City will pay $1.6 million (in addition to the $3.6 million in funds and in-kind services it has already provided to EPA) and WCSRCA and certain affiliated entities will pay $700,000 to a Li Tungsten Site Special Account within the Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to either or both of the proposed Consent Judgments. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Glen Cove,* et al., Civil Action No. CV–05–3279, D.J. Ref. 90–11–3–06561/2.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgments may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. Copies of the proposed Consent Judgments may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of a proposed Consent Judgment, please so note and enclose a check in the amount of $9.00 ($0.25 per page reproduction cost) for the City of Glen Cove Consent Judgement, $10.25 ($0.25 per page reproduction cost) for the WCSRCA Consent Judgment, or $19.25 for both Consent Judgments, payable to the United States Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–14892 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 12, 2005, a proposed Consent Decree in *United States and State of Louisiana* v. *City of New Iberia,* Civil Action No. 04–1351 was lodged with the United States District Court for the Western District of Louisiana.

In this action the United States, and its co-plaintiff the State of Louisiana, sought injunctive relief and a civil penalty to address sanitary sewer overflows and other violations of the Clean Water Act and the National Pollutant Discharge Elimination System ("NPDES") permits issued to the City of New Iberia for the Admiral Doyle and Tete Bayou publicly owned treatment works. Under the proposed Consent Decree, the City of New Iberia has agreed to build a new treatment works to replace the Admiral Doyle treatment works. The City will perform a comprehensive characterization, evaluation, and rehabilitation of its collection system and expedite the elimination of certain high priority sewer overflows from the system. In addition, the City will share in the cost associated with the construction, operation and maintenance of an equalization basin for the Tete Bayou sewage treatment works, which is being built by the Sewerage District No 1 of Iberia Parish, the co-owner of the Tete Bayou Plant. The Consent Decree also requires the City to adopt and implement a plan for identifying and eliminating illegal storm water connections on private property to the publicly owned or operated collection system; implement a maintenance program for the collection system to provide for the proper operation and maintenance of equipment while minimizing failures, malfunctions, and line blockages; and develop and implement an emergency response plan to adequately protect the health and welfare of persons in the event of any sanitary sewer overflows. The City will pay a civil penalty of $235,000 for past effluent and sewer overflow violations, one half of which will be paid to the United States and half of which will be paid to the State.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of New Iberia,* D.J. Ref. No. 90–5–1–1–07473/1.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check

in the amount of $28.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–14891 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Murray Pacific Corp.*, Civil Action No. CO5–5473FDB, was lodged on July 19, 2005, with the United States District Court for the Western District of Washington. The consent decree requires defendants Murray Pacific Corp., Boardman Brown and Mary Jane Anderson, to compensate natural resource trustees for natural resource damages in Commencement Bay, Washington, resulting from releases of hazardous substances. The trustees are the State of Washington, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of the Interior. Under the consent decree, defendants will pay $302,00 for natural resource damages and assessment costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Murray Pacific Corp.*, DOJ Ref. #90–11–2–1049.

The proposed consent decree may be examined at the office of the United States Attorney, 601 Union Street, Seattle, WA 98101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*, and at the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Ass't Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–14890 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 23, 2005, and published in the **Federal Register** on March 4, 2005, (70 FR 10683), Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxy-amphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (TCP) (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for laboratory reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Sigma Aldrich Research Biochemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Sigma Aldrich Research Biochemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14834 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 17, 2005, and published in the **Federal Register** on February 28, 2005, (70 FR 9677), Boehringer Ingelheim Chemical Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture the listed controlled substance in bulk for use in analysis and drug test standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Boehringer Ingelheim Chemical Inc. to

manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Boehringer Ingelheim Chemical Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14831 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2005 and published in the **Federal Register** on April 20, 2005 (70 FR 20600), Clinical Trial Services (US), Inc., 2661 Audubon Road, Audubon, Pennsylvania 19403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801), a basic class of controlled substance listed in Schedule II.

The company plans to import small quantities of the listed controlled substance in dosage form to conduct clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Clinical Trial Services (US), Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Clinical Trial Services (US), Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14825 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 23, 2005, and published in the **Federal Register** on March 4, 2005, (70 FR 10679), JFC Technologies, LLC, 100 West Main Street, Bound Brook, New Jersey 08805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Diphenoxylate (9170)	II
Hydrocodone (9193)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of JFC Technologies, LLC to manufacture the listed basic class of controlled substances is consistent with the public interest at this time. DEA has investigated JFC Technologies, LLC to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14836 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated February 23, 2005, and published in the **Federal Register** on March 4, 2005 (70 FR 10680), Lin Zhi International Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085 made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II

The company plans to manufacture the listed controlled substances in bulk for use in analysis and drug test standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lin Zhi International Inc. to manufacture the listed basic class of controlled substances is consistent with the public interest at this time. DEA has investigated Lin Zhi International Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14828 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 23, 2005 and published in the **Federal Register** on March 4, 2005, (70 FR 10680–10681), Lipomed Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedules I and II.

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Gamma-Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2-5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxphene (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The company plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for distribution to its customers for drug testing and pharmaceutical research and development.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Lipomed Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Lipomed Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14832 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated March 25, 2005 and published in the **Federal Register** on April 4 2005, (70 FR 17125), Mallinckrodt Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Raw Opium (9600)	II
Poppy Straw (9650)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Mallinckrodt Inc. to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14833 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 22, 2005 and published in the **Federal Register** on March 4, 2005 (70 FR 10681–10682), Noramco Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco Inc. to import the basic class of controlled substances is consistent with the public interest and with United

States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14824 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 25, 2005 and published in the **Federal Register** on April 4 2005, (70 FR 17126), Roche Diagnostics Operations Inc., Attention: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II
Alphamethadol (9605)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Roche Diagnostics Operations Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Operations Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14827 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 23, 2005, and published in the **Federal Register** on March 4, 2005, (70 FR 10683), Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage form) (9273).	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siegfried (USA), Inc. to manufacture the listed basic class of controlled substances is consistent with the public interest at this time. DEA has investigated Siegfried (USA), Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substances listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14835 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2005 and published in the **Federal Register** on April 6, 2005, (70 FR 17474), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance for the manufacture of bulk controlled substances and distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. Sections 823(a) and 952(a) and determined that the registration of Stepan Company to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. Sections 952(a) and 958(a), and in

accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14837 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 25, 2005 and published in the **Federal Register** on April 4, 2005, (70 FR 17126), Wildlife Laboratories, 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Etorphine Hydrochloride (9059), a basic class of controlled substance listed in Schedule II.

The company plans to import small quantities of the listed controlled substance for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Wildlife Laboratories to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Wildlife Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: July 19, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–14826 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: monthly return of arson offenses known to law enforcement.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 26, 2005. 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: Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, Custer Hollow Road, Clarksburg, West Virginia 26306, or fax to (304) 625–3566.

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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1–725. Criminal Justice Information Services Division (CJIS), Federal Bureau of Investigation.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local, or tribal government. The collection is needed to determine the number of arson offenses committed throughout the United States. The tabulated data is published in the annual, Crime in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 17,499 law enforcement employees will take approximately 9 minutes to complete the report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 31,498 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–14779 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Bureau of Justice Assistance: National opinion poll on white collar crime.

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

the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 96, page 28957 on May 19, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 26, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. 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:* Reinstatement, with change, of a previously approved collection.

(2) *Title of the Form/Collection:* Bureau of Justice Assistance: National Opinion Poll on White Collar Crime.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* None. Office of Justice Programs, Bureau of Justice Statistics.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. BJA, in a cooperative agreement (Grant Number: 2004–WCCX–1199), will conduct a national survey of public opinion on the public's ever changing experiences with, and perceptions of white-collar crime.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 1500 applicants surveyed approximately 18 minutes to respond to the questions.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the certification form is 450 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 21, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–14776 Filed 7–26–05; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–123)]

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, August 18, 2005, 1 p.m. to 3 p.m. eastern daylight time.

ADDRESSES: Washington Office Center, 409 3rd Street, SW., 3rd Floor, Suite 330, Washington, DC 20024–3212.

FOR FURTHER INFORMATION CONTACT: Mr. John D. Marinaro, 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: Goddard Space Flight Center Programs and NASA Headquarters areas of interest. 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 (20). Seating will be on a first-come basis. Please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance to reserve a seat. Upon entering the lobby, visitors will be requested to sign a visitor's register at the Security Desk where you will be issued a temporary building pass. A photo ID is required at sign-in. Indicate that you are visiting SAIC in Suite 330. Take the elevator to the 3rd Floor and follow the signs to SAIC. There will be a receptionist at the entrance of the Suite. Indicate that you are there for the ASAP Public Meeting and you will be escorted to the meeting. 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.

Dated: July 20, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–14884 Filed 7–26–05; 8:45 am]

BILLING CODE 7510–13–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Study of IMLS Funded Digital Collections and Content, Collections Registry Survey, Comment Request

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of request for new information collection.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed collection of information from grantee institutions that received National Leadership Program digitization grants since 1998 and continuing through 2005. A copy of this proposed information collection may be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be received by the office listed in the addresses seciton of this notice by September 26, 2005.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036; telephone 202–653–4680, fax 202–653–4625, e-mail *rdanvers@imls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant program, IMLS funds the digitization of library and museum collections. The survey is a web-based form to collect electronically collection level data about digitization projects funded by the Institute of Museum and Library Services through the National Leadership Grant program.

II. Current Actions

To collect information from grantee institutions that received National Leadership Grant digitization grants from 1998 and continuing to 2005.

Agency: Institute of Museum and Library Services.

Title: IMLS Digital Collections and Content—Collection Registry Survey.

OMB Number: none.

Agency Number: 3137.

Frequency: Once.

Affected Public: Museums and libraries that created digital collections with IMLS funding.

Number of Respondents: 96.

Estimated Time Per Respondent: 7 hours.

Total Burden Hours: 67.2.

Total Annualized capital/startup costs: n/a.

Total Costs: $1680.

FOR FURTHER INFORMATION CONTACT: For a copy of the form contact: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036, by telephone at (202) 653–4680, by fax at (202) 653–4625, or by e-mail at *rdanvers@imls.gov.*

Dated: July 21, 2005.

Rebecca Danvers,

Director, Research and Technology.

[FR Doc. 05–14780 Filed 7–26–05; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1979, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978, NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 26, 2005. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), as amended by the Antarctic Science Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas,

The applications received are as follows:

1. *Applicant:* Permit Application No. 2006–018. Sarah Andrews, 8687 Graton Road, Sebastopol, CA 95472.

Activity for Which Permit Is Requested: Enter Antarctic Specially Protected Areas. The applicant proposes to enter the following protected sites: Back Door Bay, Cape Royds (ASPA #156), Cape Evans (ASPA #154), Cape Royds (ASPA #121), and Discovery Hut, Hut Point (ASPA #157). The applicant is a member of the Artists and Writers Program and plans to write a murder mystery that takes place in Antarctica and would like to visit the historic huts and observe penguin behavior to better grasp the experience of the early explorers. The observations will enhance the writer's ability to translate to her readers the experience of place and time of the early explorers.

Location: Back Door Bay, Cape Royds (ASPA #156), Cape Evans (ASPA #154),

Cape Royds (ASPA #121), and Discovery Hut, Hut Point (ASPA #157.

Dates: November 01, 2005 to December 31, 2005.

2. *Applicant:* Permit Application No. 2006–019. Rebecca J. Gast, MS#32 3–24 Redfield Bldg., Woods Hole Oceanographic Institute, Woods Hole, MA 02543.

Activity for Which Permit Is Requested: Introduce Non-Indigenous Species into Antarctica. The applicant proposes to introduce live cultures of marine phytoplankton to study the feeding rates of Antarctic protistan grazers. The cultures are composed exclusively of species (*Phaeocystis antarctica, Thalassiosira antarctica, Mantoniella sp., Parauronema, Pyramimonas tychotreta, Paraphysomonas inperforate, Geminigera cryophila*, and *Mallomonas*) that were originally collected to previous research cruises in Antarctica. All cultures will be destroyed after use.

Location: Antarctic water including the Ross Sea.

Dates: October 17, 2005 to December 15, 2005.

3. *Applicant:* (Permit Application No. 2006–020. George Steinmetz, 190 Linden Avenue, Glen Ridge, NJ 07028.

Activity for Which Permit Is Requested: Introduce Non-Indigenous Species into Antarctica. The applicant proposes to enter a number of Antarctic Specially Protected Areas for the purpose of photographing scenic shots, historic huts, Adelie and Emperor penguins and seals. The applicant is a photographer and member of the Artists and Writers Program who plans to enter the following sites: Cape Royds (ASPA #121), Arrival Heights (ASPA #122), Cape Crozier (ASPA #124), Canada Glacier (ASPA #131), Cape Evans Hut (ASPA #154), Cape Royds Hut (ASPA #156), Discovery Hut (ASPA #157), and the Dry Valleys.

Location: Cape Royds (ASPA #121), Arrival Heights (ASPA #122), Cape Crozier (ASPA #124), Canada Glacier (ASPA #131), Cape Evans Hut (ASPA #154), Cape Royds Hut (ASPA #156), Discovery Hut (ASPA #157), and the Dry Valleys.

Dates: October 08, 2005 to December 03, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 05–14821 Filed 7–26–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No 72–17]

Portland General Electric Company, Trojan Nuclear Plant, Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Proposed Corporate Restructuring And Opportunity For A Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of approval of proposed corporate restructuring and opportunity for hearing.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering the issuance of an order under 10 CFR 72.50 approving the indirect transfer of Special Nuclear Materials License No. (SNM) –2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI) currently held by PacifiCorp Holdings, Inc. (PacifiCorp) as minority owner and non-operating licensee of the Trojan ISFSI. The indirect transfer would be to MidAmerican Energy Holdings Company (MidAmerican).

The indirect transfer will occur in connection with the sale of PacifiCorp, a wholly-owned indirect subsidiary of Scottish Power plc, to NWQ, LLC, a Delaware limited liability corporation and a wholly-owned subsidiary of MidAmerican. PacifiCorp will continue to be a 2.5% non-operating licensee of the Trojan ISFSI and as such PacifiCorp's license is not being transferred to another party. Instead, under the transaction, MidAmerican will acquire all of the issued and outstanding common stock of PacifiCorp.

According to an application for approval filed by PacifiCorp, MidAmerican would acquire all of the issued and outstanding common stock of Pacificorp to the Trojan ISFSI following approval of the proposed indirect license transfer. No physical changes to the Trojan ISFSI or operational changes are being proposed in the application.

Pursuant to 10 CFR 72.50, no license, or any part included in the license issued under 10 CFR Part 72 for an ISFSI shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any motion relevant to the license of an ISFSI which does no more than reflect the indirect transfer action involves no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to such determinations are being solicited.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the indirect license transfer application, are discussed below.

Within 20 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of approval of the indirect transfer for the subject ISFSI operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing

or petition for leave to intervene is filed within 20 days after the date of publication of this notice, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/ requestor seeks to have litigated at the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/ requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/ requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)-(viii). A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) 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. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. Requests for a hearing and petitions for leave to intervene should be served upon Douglas L. Anderson and Jon A. Andreasen of MidAmerican Energy Holdings Company, 666 Grand Avenue, Des Moines, Iowa 50303; M. Douglas Dunn, Steven M Kramer, and Carla J. Urquhart of Milbank, Tweed, Hadley & McCloy L.L.P., 1 Chase Manhatten Plaza, New York, New York, 10005, ph.: (212) 530–5000; Jeffery B. Erb of PacifiCorp, Suite 1900, 825 N.E. Multnomah, Portland, Oregon, 92732; and Sam Behrends IV and Robert M. Andersen of LeBoeuf, Lamb, Greene & MacRae, L.L.P., 1875 Connecticut Avenue, NW., Suite 1200, Washington, DC 20009–5728, ph.: (202) 986–8000, facsimile: (202)986–8102.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the presiding officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by August 26, 2005, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

Further Information

For further details with respect to this action, see the application dated June 30, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

For The Nuclear Regulatory Commission.

Dated in Rockville, Maryland this 20th day of July 2005.

Christopher M. Regan,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–3994 Filed 7–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power And Light Company, H. B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 68, "Criticality Accident Requirements," subsection (b)(1) for Facility Operating

License No. DPR–23 issued to the Carolina Power and Light Company (the licensee) for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2) located in Darlington County, South Carolina. The NRC is issuing this environmental assessment pursuant to 10 CFR 51.21 and is making a finding of no significant impact (FONSI).

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.68, "Criticality Accident Requirements," subsection (b)(1) during the spent fuel pool activities related to the underwater handling, loading, and unloading of the dry shielded canister (DSC) NUHOMS -24PTH as described in proposed Amendment No. 8 to Certificate of Compliance No. 1004 listed in 10 CFR 72.214. The proposed action is in accordance with the licensee's application dated February 22, 2005, as supplemented on May 10 and July 6, 2005.

The Need for the Proposed Action

In 10 CFR 50.68(b)(1), the Commission sets forth the following requirement that must be met in lieu of a monitoring system capable of detecting criticality events:

> Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

Section 50.12(a) of 10 CFR allows licensees to request an exemption from the requirements of 10 CFR Part 50 if the application of the regulation is not necessary to achieve the underlying purpose of the rule and special conditions are met. The licensee stated that compliance with 10 CFR 50.68(b)(1) is not necessary for underwater handling, loading, and unloading of the DSC NUHOMS–24PTH in the HBRSEP2 spent fuel pool to achieve the underlying purpose of the rule. The NRC has completed its safety evaluation of the proposed action and concludes that the underlying purpose of 10 CFR 50.68(b)(1) will still be satisfied if the exemption is granted. The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

Environmental Impacts of the Proposed Action

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for HBRSEP2 dated April 1975, and the Final Supplemental Environmental Impact Statement (NUREG–1437 Supplement 13) dated December 2003.

Agencies and Persons Consulted

On July 11, 2005, the staff consulted with the South Carolina State official, Mr. Michael Gandy of the South Carolina Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment set forth above, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment and is therefore issuing this FONSI. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated February 22, May 10, and July 6, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 20th day of July, 2005.

For The Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3995 Filed 7–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–13]

Entergy Operations, Inc., Arkansas Nuclear One Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering a request dated March 21, 2005, from Entergy Operations, Inc. (applicant or Entergy Operations) for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214 pursuant to 10 CFR 72.7, for the Arkansas Nuclear One (ANO),

Unit 1 and Unit 2 Independent Spent Fuel Storage Installation, located 6 miles west-northwest of Russellville, Arkansas. In consideration of the request, the NRC would also grant exemption from the requirements of 10 CFR 72.212(b)(2)(I) and 72.212(b)(7). The exemption would authorize the applicant to store damaged spent nuclear fuel (SNF) assemblies in a Holtec HI–STORM 100, Amendment 1 design, Multi-Purpose Canister (MPC) –32.

Environmental Assessment (EA)

I. Identification of Proposed Action

By letter dated March 21, 2005, Entergy Operations requested an exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214, specifically, exemption from complying with Appendix B, Section 2.1, of the HI–STORM 100 Cask System CoC (1014), Fuel Specifications and Loading Conditions. The NRC action would also include granting exemption from the requirements of 10 CFR 72.212(b)(2)(I) and 72.212(b)(7). Approval of the exemption request would allow storage of uncanned damaged SNF assemblies in a HI–STORM 100, Amendment 1 design, MPC–32. Damaged SNF assemblies may be stored in an HI–STORM 100, Amendment 2 design, MPC–32 when properly canned. Entergy Operations has identified five previously loaded intact fuel assemblies that have been reclassified as damaged SNF assemblies. A damaged SNF assembly is defined in the HI–STORM 100, Amendment 1 CoC in part as one with greater than pinhole leak or hairline cracks. Each of the five SNF assemblies classified as damaged contain one interior rod characterized as defective. In accordance with Amendment 1 to CoC 1014 granted to Holtec for the HI–STORM 100 cask system, and as codified in 10 CFR 72.214, the MPC–32 is not permitted to store damaged fuel assemblies. ANO as a general licensee, is authorized by the NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

For the NRC to permit Entergy Operations to continue to store the five uncanned damaged SNF assemblies in four HI–STORM 100, Amendment 1 design, MPC–32's, the NRC, must grant Entergy Operations an exemption from the general license conditions defined in 10 CFR 72.212. The regulations in 10 CFR 72.212 state that the general license for storage of SNF at power reactor sites is limited to storage of SNF in casks approved under the provisions in 10 CFR Part 72. By exempting Entergy Operations from 10 CFR 72.214 and 72.212(a)(2), 72.212(b)(2)(I), and 72.212(b)(7), Entergy Operations will be authorized to use its general license to store uncanned damaged SNF assemblies in the HI–STORM 100, Amendment 1 design, MPC–32. The proposed action before the Commission is whether to grant the exemption under 10 CFR 72.7.

The ISFSI is located 6 miles west-northwest of Russellville, Arkansas, on the ANO Power Plant site. The ANO ISFSI is an existing facility constructed for interim dry storage of spent ANO nuclear fuel.

II. Need for the Proposed Action

Five uncanned damaged SNF assemblies are currently loaded into four HI–STORM 100, Amendment 1 design, MPC–32's stored at the ANO ISFSI. Unloading of the damaged SNF assemblies would subject personnel to a significant unnecessary dose, generate additional contaminated waste, increase the risk of a possible fuel handling accident, and increase the risk of a heavy load handling accident. Discharge of the damaged SNF assemblies from storage in the MPCs would result in inadequate storage capacity in the ANO Unit 2 Spent Fuel Pool. If the damaged SNF assemblies are discharged into the spent fuel pool, storage of new fuel and the restoration of normal full core offload capability prior to and after the next refueling outage would be challenged. Recovery of spent fuel pool space could be significantly hindered due to double handling of ANO Unit 2 fuel in addition to material and scheduling conflicts with ANO Unit 1 activities to the extent that ANO Unit 2 core offloads could be jeopardized.

III. Environmental Impacts of the Proposed Action

The potential environmental impact of using the HI–STORM 100 system was initially presented in the Environmental Assessment for the final rule to add the HI–STORM 100 system to the list of approved spent fuel storage casks in 10 CFR 72.214 (65 FR 25241; May 1, 2000). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2)(iii). This section requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, "Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation]."

The HI–STORM 100 system is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents. Considering the specific design requirements for each accident condition, the design of the HI–STORM 100, Amendment 1, cask system using an MPC–32 basket design, would prevent loss of containment, shielding, and criticality control. The loading of damaged SNF has no impact on the structural aspects of the containment boundary. The HI–STORM 100, Amendment 1 design permits storage of damaged SNF assemblies in the MPC–24 and MPC 68 which utilize the same outer containment boundary as the MPC–32. Dose surveys performed prior to placing each cask in service, including those MPC–32s containing the damaged SNF assemblies, demonstrated that each cask satisfied the dose requirements defined in the HI–STORM 100 Amendment 1 CoC. Any relocation of the damaged fuel rods, in the fuel assembly, within the MPC has a negligible effect on the k_{eff} (criticality control) of the system predominantly due to the fact that there are no more than two individual damaged fuel rods per MPC. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety from the continued storage of five damaged SNF assemblies in four HI–STORM 100, Amendment 1 design, MPC–32s, is not compromised.

By permitting the continued storage of five uncanned damaged SNF assemblies using HI–STORM 100 system, Amendment 1 design, MPC–32s, there will be no additional occupational exposure due to unloading activities, and offsite dose rates will remain well within the 10 CFR Part 20 limits. Therefore, the NRC staff has determined that an acceptable safety margin is maintained and that there are no significant environmental impacts as a result of continuing to store five damaged SNF assemblies in four HI–STORM 100, Amendment 1, MPC–32s at the ANO ISFSI.

IV. Alternatives to the Proposed Action

The staff evaluated the alternative to the proposed action to deny approval of the exemption. Denial of the exemption request would result in unloading of the

damaged SNF assemblies subjecting personnel to unnecessary dose, the generation of additional contaminated waste, an increase in the risk of a possible fuel handling accident, an increase in the risk of a heavy load handling accident, and result in inadequate storage capacity in the ANO Unit 2 Spent Fuel Pool jeopardizing the ability to fully offload the ANO Unit 2 core.

V. Agencies and Persons Consulted

On July 11, 2005, Bernard Bevill from the Radiation Control Work Unit, Arkansas Department of Health, was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(I), 72.212(b)(7), and 72.214 so that Entergy Operations may continue to store uncanned damaged SNF assemblies in a Holtec HI–STORM 100, Amendment 1 design, MPC–32, at the ANO, Units 1 and 2 ISFSI, will not significantly impact the quality of the human environment.

Further Information

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents regarding this proposed action, including the exemption request dated March 21, 2005, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, 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 or who encounter problems in accessing the documents located in 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 at Rockville, Maryland, this 20th day of July 2005.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–3993 Filed 7–26–05; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

July 28, 2005, Board of Directors Meeting; Correction

AGENCY: Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC.

ACTION: Correction to meeting notice published in Vol. 70, No. 137/Tuesday, July 19, 2005, page 41449.

SUMMARY: OPIC's Board or Directors meeting previously scheduled for 10 a.m. on Thursday, July 28, 2005, has been moved to 9:30 a.m.

New Time and Date: Thursday, July 28, 2005, 9:30 a.m. (open portion); 9:45 a.m. (closed portion).

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: July 22, 2005.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation

[FR Doc. 05–14922 Filed 7–25–05; 10:30 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12282]

Issuer Delisting; Notice of Application of Corrpro Companies, Inc. to Withdraw its Common Stock, no par value, from Listing and Registration on the American Stock Exchange LLC

July 21, 2005.

On June 29, 2005, Corrpro Companies, Inc., an Ohio corporation ("Issuer"), 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, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On April 14, 2005, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated that in making its decision to withdraw the Security from Amex, the Board considered the following factors, among others: (i) The expectation that delisting and deregistering the Security will significantly reduce expenses, avoid potentially higher future expenses, enable management to focus more of its time on operating the company, and create greater value for the holders of the Security; (ii) uncertainty over the Issuer's continued listing on Amex; (iii) the increased costs and administrative burdens associated with being a reporting company, particularly in light of new Commission and Sarbanes-Oxley requirements; (iv) the lack of an active trading market for the Security; and (v) the Issuer's intent not to access the public markets for its foreseeable financing needs. The Board stated that it is desirable and in the best interest of the Issuer and its shareholders to terminate listing of the Security on Amex.

The Issuer stated that it has met the requirements of Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration by complying with all the applicable laws in effect in Ohio, in which it is incorporated.

The Issuer's application relates solely to the withdrawal of the Security from listing on 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 August 15, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–12282 or;

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

[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).

All submissions should refer to File Number 1–12282. 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/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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. E5–3996 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03671]

Issuer Delisting; Notice of Application of General Dynamics Corporation to Withdraw its Common Stock, $1.00 par value, from Listing and Registration on the Chicago Stock Exchange, Inc.

July 21, 2005.

On June 29, 2005, General Dynamics Corporation, a Delaware corporation ("Issuer"), 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, $1.00 par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The Board of Directors ("the Board") of the Issuer approved resolutions on May 4, 2005 to withdraw the Security from listing on CHX. The Issuer stated that the following reasons factored into the Board's decision to withdraw the Security from CHX: (i) The administrative burden of continued listing on CHX does not justify the Issuer's continued listing on such exchange; and (ii) the principal listing for the Security is the New York Stock Exchange, Inc. ("NYSE") and the Security will continue to be listed on NYSE.

The Issuer stated in its application that it has complied with applicable rules of CHX by providing CHX with the required documents governing the withdrawal of securities from listing and registration on CHX. The Issuer's application relates solely to the withdrawal of the Securities from listing on CHX and shall not affect its continued listing on NYSE or the Pacific Exchange, Inc., or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before August 15, 2005 comment on the facts bearing upon whether the application has been made in accordance with the rules of CHX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic comments:

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–03671 or;

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE.,Washington, DC 20549–9303.

All submissions should refer to File Number 1–03671. 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/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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. E5–3997 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Kimberly-Clark Corporation to Withdraw its Common Stock, $1.25 Par Value, From Listing and Registration on the Chicago Stock Exchange, Inc. File No. 1–00225

July 20, 2005.

On June 27, 2005, Kimberly-Clark Corporation, a Delaware corporation ("Issuer"), 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, $1.25 par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The Board of Directors ("the Board") of the Issuer approved a resolution on April 28, 2005 to withdraw the Security from listing on CHX. The Board decided to withdraw the Security from CHX because the benefits of continued listing on CHX do not outweigh the incremental cost of the listing fees and administrative burden associated with listing on CHX. In addition, the Issuer stated that the Security is currently traded on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with applicable rules of CHX by providing CHX with the required documents governing the withdrawal of securities from listing and registration on CHX. The Issuer's application relates solely to the withdrawal of the Securities from listing on CHX and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before August 12, 2005 comment on the facts bearing upon whether the application has been made in accordance with the rules of CHX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b).

[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).

submitted by either of the following methods:

Electronic comments:

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–00225 or;

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–00225. 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/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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. E5–3976 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–00640]

Issuer Delisting; Notice of Application of NL Industries, Inc. To Withdraw its Common Stock, $.125 par Value, From Listing and Registration on the Pacific Exchange, Inc.

July 20, 2005.

On June 22, 2005, NL Industries, Inc., a New Jersey corporation, ("Issuer"), 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, $.125 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

On May 19, 2005, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on PCX. The Board determined that the compliance burdens on the Issuer to maintain the listing of the Security on PCX exceeded the benefits of such listing. The Issuer stated that the Security is currently listed on the New York Stock Exchange, Inc. ("NYSE") and will continue to trade on NYSE after the Security is withdrawn from PCX.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of the Security from listing on PCX, and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before August 12, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–00640 or;

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–00640. 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/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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. E5–3991 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13905]

Issuer Delisting; Notice of Application of Valhi, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc.

July 20, 2005.

On June 22, 2005, Valhi, Inc., a Delaware corporation, ("Issuer"), 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 Pacific Exchange, Inc. ("PCX").

On May 26, 2005, the Board of Directors ("Board") of the Issuer approved certain resolutions to withdraw the Security from listing and registration on PCX. The Board determined that the compliance burdens on the Issuer to maintain the listing of the Security on PCX exceeded the benefits of such listing. The Issuer stated that the Security is currently listed on the New York Stock Exchange, Inc. ("NYSE") and will continue to trade on NYSE after the Security is withdrawn from PCX.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of the Security from listing on PCX, and shall not affect its continued listing on NYSE or its

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before August 12, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–13905 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington. DC 20549–9303.

All submissions should refer to File Number 1–13905. 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/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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. E5–3988 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 781(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–09258]

Issuer Delisting; Notice of Application of The Zweig Fund, Inc. To Withdraw its Common Stock, $.10 par Value, From Listing and Registration on the Pacific Exchange, Inc.

July 20, 2005.

On June 21, 2005, The Zweig Fund, Inc., a Maryland corporation, ("Issuer"), 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, $.10 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

On May 10, 2005, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Security from listing and registration on PCX. The Board stated that the reason for its decision to withdraw the Security from PCX is that the volume of trading in the Security on PCX has been very modest. The Board determined that the benefits of continued listing on the PCX do not outweigh the incremental costs of the listing fee and administrative time and expense associated with listing on PCX. The Security is currently listed and traded on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Security from listing on PCX, and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before August 12, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–09258 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–09258. 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/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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. E5–3990 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–10016]

Issuer Delisting; Notice of Application of The Zweig Total Return Fund, Inc. to Withdraw Its Common Stock, $.001 Par value, From Listing and Registration on the Pacific Exchange, Inc.

July 20, 2005.

On June 21, 2005, The Zweig Total Return Fund, Inc., a Maryland corporation, ("Issuer"), 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, $.001 par value ("Security"), from

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

listing and registration on the Pacific Exchange, Inc. ("PCX").

On May 10, 2005, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Security from listing and registration on PCX. The Board stated that the reason for its decision to withdraw the Security from PCX is that the volume of trading in the Security on PCX has been very modest. The Board determined that the benefits of continued listing on PCX do not outweigh the incremental costs of the listing fee and administrative time and expense associated with listing on PCX. The Security is currently listed and traded on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Security from listing on PCX, and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before August 12, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–10016 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–10016. 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/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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. E5–3975 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52074; File No. 4–429]

Joint Industry Plan; Notice Filing of Amendment No. 17 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Regarding Modifying the 80/20 Test for Determining Limitations on Principal Order Access to Linkage

July 20, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on April 20, 2005, May 20, 2005, May 12, 2005, April 13, 2005, April 27, 2005 and May 11, 2005, the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange ("ISE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") Joint Amendment No. 17 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").[3] In Joint Amendment No. 17, the Participants propose to modify the "80/20 Test" to determine limitations on principal order access to Linkage.[4]

I. Description and Purpose of the Proposed Amendment

The purpose of the Joint Amendment is to modify the so-called "80–20 Test" ("Test") contained in Section 8(b)(iii) of the Linkage Plan, which provides that market makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business.[5] The Test implements this general principle by prohibiting a market maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the market maker's Principal Order contract volume is disproportionate to the market maker's contract volume executed against customer orders in its own market.

The Participants believe that applying the Test has resulted in anomalies for market makers with limited volume in an eligible option class. Specifically, if a market maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the market maker failing to meet the Test. This would bar the market maker from using the Linkage to send Principal Orders for the following calendar quarter. The Participants contend that it was not their intent to bar market makers with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly was not "a primary aspect of their business." Thus, Joint Amendment No. 17 proposes to create a *de minimis* exemption from the Test for market makers that have total contract volume of less than 1000 contracts in an options class for a calendar quarter.

II. Implementation of the Proposed Amendment

The Participants intend to make the Joint Amendment to the Linkage Plan reflected in this filing effective when the Commission approves the Joint Amendment.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether proposed Joint Amendment No. 17 is consistent with

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] Specified in Section 8(b)(iii) of the Linkage Plan.

[5] A Principal Order is an order for the principal account of an eligible market maker that does not relate to a customer order the market maker is holding. See Section 2(16)(b) of the Linkage Plan.

the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–429 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 4–429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to proposed Joint Amendment No. 17 that are filed with the Commission, and all written communications relating to proposed Joint Amendment No. 17 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 filings also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, PCX and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number 4–429 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–3986 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52061; File No. SR–Amex–2005–55]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to the Continuation of a Quote Assist Feature in Options on a Pilot Basis

July 19, 2005.

On May 19, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") 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 extend its pilot program implementing a quote-assist feature retroactively from April 30, 2005 to May 18, 2005. The proposed rule change was published for comment in the **Federal Register** on June 16, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. Specifically, the Commission finds the proposal to be consistent with Section 6(b)(5) of the Act,[6] in that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The quote assist feature provides a mechanism to ensure that eligible customer limit orders are displayed within the appropriate time frame. Additionally, by extending the pilot program retroactively from April 30, 2005 to May 18, 2005, the Exchange rules will accurately reflect the fact that the pilot program was in place during this time.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–2005–55), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3984 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51815 (June 9, 2005), 70 FR 35142 (June 16, 2005) (SR–Amex–2005–55).

[4] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52067; File No. SR–Amex–2005–048]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Establishing a De Minimis Exception to the 80/20 Test

July 20, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 944 to provide a de minimis exception to the limitation on principal order access imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")[3] and related rules.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex, Chicago Board Options Exchange, Inc., and International Securities Exchange, Inc. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., Pacific Exchange, and Boston Stock Exchange, Inc. joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, would establish a "de minimis" exception to the "80/20 Test" set forth in section 8(b)(iii) of the Linkage Plan and Amex Rule 944.

Section 8(b)(iii) of the Linkage Plan provides that Eligible Market Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business. The 80/20 Test implements this policy in the Linkage Plan and Amex Rule 944 by prohibiting a specialist or registered options trader ("ROT") from sending Principal Orders in an eligible option class if, in the last calendar quarter, the specialist or ROT's Principal Order contract volume is disproportionate to the specialist or ROT's contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for ROTs with limited volume in an eligible option class. In particular, if a ROT has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the ROT failing to meet the 80/20 Test. This would then prohibit the ROT from using the Linkage to send Principal Orders in that options class for the following calendar quarter. The Exchange believes that it is not the intent of the Linkage Plan and Exchange rules to prohibit ROTs with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly is not "a primary aspect of their business." Accordingly, the proposed rule change seeks to establish a "de minimis" exception from the 80/20 Test in Amex Rule 944 for specialists and ROTs that have total contract volume of less than 1,000 contracts in an option class for a calendar quarter.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml* or send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2005–048 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–Amex–2005–048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2005–048 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3999 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52071; File No. SR–BSE–2005–16]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Establishing a De Minimus Exception to the 80/20 Test Relating to Linkage Trades on the Boston Options Exchange

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing its operation of intermarket linkage ("Linkage") on the Boston Options Exchange ("BOX"). Specifically, the Exchange is proposing to amend Chapter XII, Section 5(b) of the BOX Rules to establish a "*de minimis*" exception to the limitation on Principal Order access imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")[3] and related rules. The proposed change would provide a *de minimis* exception from the 80/20 Test, which provides that Market Makers effecting transactions that represent 20 percent or more of their contract volume in a particular calendar quarter by sending Principal Orders[4] to other exchanges via the Linkage may not send Principal Orders in that option during the following calendar quarter.

The text of the proposed rule change is available on the BSE's Web site at *http://www.bostonstock.com*, the BSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Section 8(b)(iii) of the Linkage Plan provides that Eligible Market Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business. Joint Amendment No. 17, together with this proposed rule change, would change Chapter XII, Section 5(b) of the BOX Rules to establish an exemption from the provision in the rule that states that a Market Maker that effected 20 percent or more of its volume in a particular option by sending Principal Orders through the Linkage in a calendar quarter is prohibited from sending Principal Orders via the Linkage in such option during the following calendar quarter.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically, if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the 80/20 Test. This would bar the Market Maker from using the Linkage to send Principal Orders for the following calendar quarter. It was not the intent of the BOX to bar Market Makers with limited volume from sending Principal Orders through the Linkage in these circumstances, since such trading does not constitute a primary aspect of their business.

Thus, the Exchange's proposed rule would create a *de minimus* exemption from the 80/20 Test for Market Makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the International Securities Exchange, Inc. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc. and the BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] The Exchange defines a Principal Order as an order for the principal account of a market maker that does not relate to a customer order the market maker is holding. *See* Chapter XII, Section I (j)(ii) of the BOX Rules.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Electronic Comments

• Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml* or send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2005–16 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–BSE–2005–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BSE–2005–16 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3982 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52068; File No. SR–CBOE–2005–57]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the 80/20 Test of the Plan for the Purpose of Creating and Operating an Intermarket Linkage

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the operation of the Intermarket Linkage ("Linkage"). The Exchange is proposing to modify the "80/20 Test" in determining limitations on Principal Order access. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to modify the so-called "80–20 Test" ("Test") in Exchange Rule 6.85. The Rule states that Market-Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business.[3] The Test implements this general principle by prohibiting a Market-Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market-Maker's Principal Order contract volume is disproportionate to the Market-Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the Test has resulted in anomalies for Market-Makers with limited volume in an eligible option class. Specifically, if a Market-Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market-Maker failing to meet the Test. This would bar the Market-Maker from using the Linkage to send Principal Orders in that options class for the following calendar quarter. The Exchange believes that it was not the intent of the Participants to bar Market-Makers with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly was not "a primary aspect of their business." Thus, the filing proposes to create a *de minimis* exemption from the Test for Market-Makers that have total contract volume of less than 1000 contracts in an options class for a calendar quarter.

This filing comports to Linkage Plan Joint Amendment No. 17, which is currently pending Commission approval.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system,

[3] A Principal Order is an order for the account of an Eligible Market-Maker that does not relate to a customer order the Market-Maker is holding. *See* Exchange Rule 6.80(12)(ii).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–57 and should be submitted by August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–3983 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52073; File No. SR–CBOE–2005–54]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to an Extension of the Linkage Fee Pilot Program

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to extend until July 31, 2006 the current pilot program applicable to options intermarket linkage ("Linkage") fees. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE 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, Proposed Rule Change

1. Purpose

The Exchange's fees for Principal ("P") and Principal Acting as Agent ("P/A") orders[3] are operating under a pilot program scheduled to expire on July 31, 2005.[4] The Exchange proposes to amend its Fees Schedule to extend the pilot program until July 31, 2006.[5]

Pursuant to the current pilot program, the Exchange assesses its members the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan") and Exchange Rule 6.80(12), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "P/A Order," which is an order for the principal account of a specialist (or equivalent entity an another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "P Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[4] *See* Securities Exchange Act Release No. 50048 (July 20, 2004), 69 FR 45102 (July 28, 2004) (SR–CBOE–2004–40).

[5] The Exchange also proposes the correction of a typographical error in the text of Footnote 8 of the CBOE Fees Schedule.

following Linkage order fees: (i) $.24 per contract transaction fee for equity, QQQQ and SPDR options, (ii) $.35 or $.20 per contract, depending on the premium, for OEF options and $.45 or $.25 per contract, depending on the premium, for other index options, (iii) $.04 per contract floor brokerage fee, if any portion of a Linkage order is manually handled, (iv) $.30 per contract RAES access fee, if a linkage order is executed in whole or in part on RAES, and (v) $.10 license fee on transactions in MNX and NDX options.[6] Satisfaction Orders are not assessed Exchange fees.

The Exchange believes that extension of the Linkage fee pilot program until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate the appropriateness of Linkage fees.

2. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4)[8] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–54 and should be submitted on or before August 17, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[9] and, in particular, with the requirements of Section 6(b) of the Act[10] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register.** The Commission believes that granting accelerating approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the CBOE and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[13] that the proposed rule change (SR–CBOE–2005–54) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–3985 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52062; File No. SR–CHX–2004–03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Standards for Manual Execution of Market and Marketable Limit Orders

July 19, 2005.

On February 11, 2004, the Chicago Stock Exchange, Incorporated ("CHX"), 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 Article XX, Rule 37 to eliminate a specific requirement that a specialist execute eligible orders at the price and size associated with the national best bid or offer ("NBBO") and

[6] *See* CBOE Fees Schedule, Footnote 15.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

replace it with a requirement that specialists use reasonable diligence to ascertain the best available price for the security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions. The new rule sets out factors that will be considered by the CHX in determining whether the specialist used reasonable diligence. On December 14, 2004, the CHX filed Amendment No. 1 to its original submission. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 22, 2004.[3] The Commission received no comment letters with respect to the proposal.

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.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specialists who execute market and marketable limit orders must, among other things, satisfy their duty of best execution by executing customer trades at the most favorable terms reasonably available under the circumstances. As amended, Article XX, Rule 37 will require specialists to use reasonable diligence to find the best available price for the security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions. Furthermore, although CHX specialists no longer would be explicitly required to execute eligible orders at the NBBO, if the amended standard results in specialists effecting orders at a prices worse than the NBBO, this information would be reflected in the statistics that the CHX must produce pursuant to Rule 11Ac1–5.[6] Broker-dealers that route orders to the CHX would have to consider this information in connection with their duty to obtain best execution on behalf of their customers.

In addition, the Commission notes that the Exchange has committed to continue surveillance over order executions to ensure that specialists are using reasonable diligence to find the best available price for their customers. The Commission expects that such surveillance will be proactive and that meaningful disciplinary action will be taken against specialists found to have violated the rule.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, Section 6(b)(5) of the Act.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2004–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–3980 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 50865 (December 16, 2004), 69 FR 76804.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 240.11Ac1–5.

[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. 34–52085; File No. SR–FICC–2005–13]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Procedure for Fine Waivers and To Make Other Technical and Administrative Amendments

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 15, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the: (1) Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") rules to allow the Membership and Risk Management Committee ("Committee") to delegate fine waiver decisions to management while retaining the ability to override management's decision; (2) GSD and MBSD rules to eliminate the automatic placement on the Watch List of FICC members who fail to notify FICC within two business days of first learning of their non-compliance with FICC's membership standards; (3) MBSD rules to broaden the reference to "net worth;" (4) MBSD rules by adding a confidentiality clause; and (5) GSD rules to make a technical change by moving an incorrectly placed "and."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Management Waiver of Fines

Currently, pursuant to GSD Rule 37 ("Hearing Procedures"), Section 1 ("General") and MBSD Article V ("Miscellaneous"), Rule 3 ("Fines and Other Sanctions"), each time a member requests that an assessed fine be waived, FICC management makes a determination to accept or reject the waiver request based on a review of the circumstances leading to the disputed fine. FICC management then presents its determination to the Committee for ratification at its next regularly scheduled meeting. Final determinations by the Committee may be appealed according to the GSD and MBSD rules.

The need for Committee approval of management decisions with respect to fine assessments delays final decisions for members because the Committee only meets approximately every two months. The Committee has routinely agreed with management's decisions regarding fine waivers. For these reasons, the Committee at this time feels comfortable delegating decisions on fine waiver requests to management.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

Management will continue to inform the Committee at each regularly scheduled meeting of those waivers approved or denied by management. The Committee will retain the ability to override management's decision on any waiver granted. Each member will continue to have the opportunity to avail themselves of the formal hearing process contained in the GSD and MBSD rules.

2. Failure To Notify of Non-Compliance With Membership Standards

Members that have fallen out of compliance with a stated membership standard are required to notify FICC within two business days of first learning of their non-compliance pursuant to GSD Rule 3 ("Financial Responsibility, Operational Capability, and Other Membership Standards of Comparison-Only Members and Netting Members"), Section 5 ("General Continuance Standards") and MBSD Article III ("Participants"), Rule 1 ("Requirements Applicable to Participants and Limited Purpose Participants"), Section 17 ("Additional Assurances"). Failure to timely notify FICC results in a $1,000 fine and in the member firm being placed on FICC's internal Watch List.

FICC's Watch List was created to isolate firms that may present an increased credit risk to FICC. FICC believes it is unnecessary to automatically put all non-compliant firms that fail to timely notify FICC on the Watch List because many of these firms are highly creditworthy and do not warrant monitoring from a credit risk perspective. However, FICC will continue to assess a fine against those members that fail to timely notify FICC of their non-compliance with membership standards.

3. MBSD Minimum Financial Requirements

MBSD Article III ("Participants"), Rule 1 ("Requirements Applicable to Participants and Limited Purpose Participants"), Section 2 states that FICC may use various financial indicia to determine if clearing members meet minimum financial requirements. However, the rules also state that for all members other than brokers, the minimum financial requirement is $10 million in "net worth." The reference to "net worth" needs to be broadened because the "net worth" criterion is not always applicable to the various types of MBSD applicants and members. For example, FICC looks at net asset value for mutual fund members. FICC proposes to modify the MBSD rules to take into account these different criteria.

In addition FICC is making a technical change to Article III, Rule 1, Section 2. The rule states that financial indicia considered by FICC would include but is not limited to both "net capital" and "regulatory net capital." Because these terms refer to the same criterion, references to "net capital" will be changed to "liquid capital." The reference to "regulatory net capital" will be retained.

4. MBSD Confidentiality Provision

The MBSD is adding a confidentiality provision, new Section 8 ("Confidentiality"), to Article VIII ("EPN Users"), Rule 1 ("Requirements Applicable to EPN Users") of the EPN rules. While the MBSD has always kept EPN user information confidential, FICC believes it is appropriate to amend the rules to reflect current practice. Both the GSD and the MBSD have a confidentiality provision in their respective rules, and FICC will mirror these provisions for purposes of the EPN rules.

5. Technical Change to GSD Rules

GSD is making a technical change to Rule 11 ("Netting System"), Section 2 ("Eligibility for Netting") to correct a grammatical error caused by an incorrectly placed "and."

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to FICC because it assures the safeguarding of securities and funds in its custody or control or for which it is responsible by clarifying rules for applicants and members. As a result, FICC's ability to maintain a financially and operationally sound participant base should be enhanced.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

[3] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because the proposed rule change effects a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2005–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–FICC–2005–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2005-13 and should be submitted on or before August 17, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3987 Filed 7-26-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52065; File No. SR-FICC-2005-12]

Self Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Interpretation of a Rule Change Submission and Making Certain Technical Changes

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 20, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and on July 13, 2005, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC proposes to clarify the meaning of the narrative of a prior FICC rule change submission and to make technical rule changes to the rules of its Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 16, 2005, the Commission approved an FICC rule filing that, among other things, established new minimum financial requirements for netting and clearing members in both Divisions.[3] Specifically, members that use U.S. generally accepted accounting principles ("GAAP") to prepare their financial statements continue to be required to meet the minimum financial requirements that were in the rules prior to the rule change. Members that use a different kind of GAAP must meet minimum financial requirements that are 1½, 5, or 7 times greater than the financial requirements for users of U.S. GAAP, depending on the type of GAAP used by the member.

FICC is concerned that the narrative of FICC's rule filing submission was phrased in a way that might be confusing. For example, the rule filing narrative stated that a member that uses UK GAAP would have to meet a minimum financial requirement of "a premium of 1½ times the existing requirement." FICC is concerned that the use of the term "premium" could be misinterpreted to mean that the minimum financial requirement of such a member would be the total of the requirement for a user of U.S. GAAP plus 1½ times that requirement. FICC wishes to clarify that the new financial requirement for such members is 1½ times the U.S. GAAP requirement, as was correctly and accurately worded in the text of each Division's rules and the narrative of the Commission's order approving the rule change.

In addition, FICC believes that the fine schedule for failure to timely provide required information to FICC does not adequately reflect the fact that members will be fined by FICC for not meeting the information requirements contained in GSD Rule 2, Sections 5 and 6 and MBSD Rule 1, Article II, Sections 10 and 12. While the fine schedule refers to the correct rule sections, it only refers to financial and regulatory reports, whereas those sections contain requirements to submit other types of information such as certain notifications, legal opinions, and updates to legal opinions. Members have been notified both in the relevant rule filings and in important notices that they will be fined if they do not timely submit this other type of required information as well. FICC proposes to change the fine schedule of each division to clearly reflect this.

FICC is also deleting provisions in GSD's rules relating to DK functionality for bilateral comparison because this functionality was never implemented. Lastly, FICC is correcting certain alpha-numerical references within GSD's rules.

FICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it clarifies FICC's rules and makes necessary technical corrections.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission if it receives any written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and Rule 19b-4(f)(1)[5] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or

[6] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] Securities Exchange Act Release No. 51385, 70 FR 14736 (Mar. 23, 2005) [File No. SR-FICC-2004-14].

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b-4(f)(1).

enforcement of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2005–12 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–FICC–2005–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query=*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2005–12 and should be submitted on or before August 17, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–3989 Filed 7–26–05; 8:45 am]

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[6] The date of the original proposed rule change is May 20, 2005, and the date of the amendment is July 13, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 13, 2005, the date on which FICC submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52066; File No. SR–ISE–2005–35]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Extend the Pilot Program for Preferenced Orders

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2005, 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 and II below, which Items have been prepared by the Exchange. On July 19, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis, for a pilot period through June 10, 2006.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for preferenced orders until June 10, 2006. The text of the proposed rule change is set forth below. *Italics* indicate additions; [brackets] indicate deletions.

* * * * *

Rule 713. Priority of Quotes and Orders

(a) through (f) no change.

Supplementary Material to Rule 713

.01 through .02 no change.

.03 Preferenced Orders. For a pilot period ending [July 22, 2005] *June 10, 2006*, an Electronic Access Member may designate a "Preferred Market Maker" on orders it enters into the System ("Preferenced Orders").

(a) through (c) no change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The pilot period for preferenced orders provided in paragraph .03 of the Supplementary Material to Exchange Rule 713 expires on July 22, 2005.[4] The Exchange initially adopted this rule on a six-week pilot basis. The Exchange believes that the short pilot period gave the Commission an opportunity to seek public comment on the Exchange's proposal to preference orders to Exchange market makers ("Proposal") before determining whether the Proposal should be approved for a longer pilot period. The approval order and notice for the Proposal was published in the **Federal Register**.[5] The comment period for the Proposal expired on July 7, 2005, and the Commission did not receive any new comments on the Proposal.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated July 19, 2005 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (notice of filing and order approving SR–ISE–2005–18).

[5] *Id.*

[6] The Commission received one comment letter on the Proposal before the approval order and notice relating to the Proposal was published in the

Continued

Accordingly, the Exchange believes it is now appropriate for the Commission to extend the pilot period so that the Exchange and the Commission can evaluate the rule change over a one-year period.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that the proposed rule change is designed to promote just and equitable principles of trade, 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 Exchange believes that extension of the pilot period will allow the Exchange and the Commission to evaluate the rule change over a one-year period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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 the proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act and whether the pilot time frame is appropriate. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–35 and should be submitted on or before August 17, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange,[9] and, in particular, the requirements of Section 6(b)(5) of the Act.[10] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the current pilot was approved on a six-week basis to allow the Commission an opportunity to solicit comments on the proposed rule change prior to considering whether to approve such pilot program for an extended period. The Commission did not receive any new comments regarding the Proposal.[11] The Commission believes that extending the pilot period will provide the Commission with additional time to evaluate the impact of the Proposal on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request for permanent approval of the pilot program. In addition, the Commission notes that it has recently approved proposals similar to ISE's preferenced order proposal for one-year pilot periods for other options markets.[12]

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change would allow the pilot program to continue without disruption while the Commission and the Exchange continue to review the pilot program's impact on the options market. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[13] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2005–35), as amended, which extends the pilot program until June 10, 2006, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–3992 Filed 7–26–05; 8:45 am]

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Federal Register. *See* Letter from Matthew B. Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated April 6, 2005.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 6.

[12] *See* Securities Exchange Act Release Nos. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (order approving SR–Phlx–2004–91); and 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (order approving SR–CBOE–2004–71).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52084; File No. SR–ISE–2005–27]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards and Position Limits for Broad-Based Index Options

July 20, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2005, 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 July 13, 2005, the ISE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE hereby proposes to amend its rules to adopt generic listing standards and position limits for broad-based index options. The text of the proposed rule change appears below. Additions are *italicized*.

Rule 2002. Designation of an Index

(a)–(c) No Change.

(d) The Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:

(1) The index is broad-based, as defined in Rule 2001(j);

(2) Options on the index are designated as A.M.-settled;

(3) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted;

(4) The index consists of 50 or more component securities;

(5) Component securities that account for at least ninety-five percent (95%) of the weight of the index have a market capitalization of at least $75 million, except that component securities that account for at least sixty-five percent (65%) of the weight of the index have a market capitalization of at least $100 million;

(6) Component securities that account for at least eighty percent (80%) of the weight of the index satisfy the requirements of Rule 502 applicable to individual underlying securities;

(7) Each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period;

(8) No single component security accounts for more than ten percent (10%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than thirty-three percent (33%) of the weight of the index;

(9) All component securities are "reported securities," as defined in Rule 11Aa3–1 under the Exchange Act;

(10) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;

(11) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange;

(12) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current ISCA allocation and the number of new messages per second expected to be generated by options on such index;

(13) An equal dollar-weighted index is rebalanced at least once every calendar quarter;

(14) If an index is maintained by a broker-dealer, the index is calculated by a third-party who is not a broker-dealer, and the broker-dealer has erected an informational barrier around its personnel who have access to information concerning changes in, and adjustments to, the index;

(15) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

(e) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d) above:

(1) The requirements set forth in subparagraphs (d)(1)–(d)(3) and (d)(9)–(d)(15) must continue to be satisfied. The requirements set forth in subparagraphs (d)(5)–(d)(8) must be satisfied only as of the first day of January and July in each year;

(2) The total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing.

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the SEC under Section 19(b)(2) of the Exchange Act.

Rule 2004. Position Limits for Broad-Based Index Options

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by this Rule 2004. There may be no position limit for certain Specified (as provided in Rule 2000) broad-based index options contracts. *Except as otherwise indicated below, the position limit for a broad-based index option shall be 25,000 contracts.* All other broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in the chart below.

Broad-based underlying index	Standard limit (on the same side of the market) (contracts)	Restrictions
S&P SmallCap 600 Index	100,000	No more than 60,000 near-term.
S&P MidCap 400 Index	45,000	No more than 25,000 near-term.
Reduced Value S&P 1000 Index	50,000	No more than 30,000 near-term.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the ISE made technical corrections to the filing and clarified certain issues raised by Commission Staff.

Broad-based underlying index	Standard limit (on the same side of the market) (contracts)	Restrictions
Micro S&P 1000 Index	500,000	No more than 300,000 near-term.
Nasdaq 100 Index	75,000	None.
Mini Nasdaq 100 Index	750,000	None.
Russell 3000 Index	50,000	No more than 30,000 near-term.
Mini Russell 3000 Index	500,000	No more than 300,000 near-term.
Russell 3000 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 3000 Value Index	500,000	No more than 300,000 near-term.
Russell 3000 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 3000 Growth Index	500,000	No more than 300,000 near-term.
Russell 2500 Index	50,000	No more than 30,000 near-term.
Mini Russell 2500 Index	500,000	No more than 300,000 near-term.
Russell 2500 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 2500 Value Index	500,000	No more than 300,000 near-term.
Russell 2500 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 2500 Growth Index	500,000	No more than 300,000 near-term.
Russell 2000 Index	50,000	No more than 30,000 near-term.
Mini Russell 2000 Index	500,000	No more than 300,000 near-term.
Russell 2000 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 2000 Value Index	500,000	No more than 300,000 near-term.
Russell 2000 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 2000 Growth Index	500,000	No more than 300,000 near-term.
Russell 1000 Index	50,000	No more than 30,000 near-term.
Mini Russell 1000 Index	500,000	No more than 300,000 near-term.
Russell 1000 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 1000 Value Index	500,000	No more than 300,000 near-term.
Russell 1000 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 1000 Growth Index	500,000	No more than 300,000 near-term.
Russell Top 200 Index	50,000	No more than 30,000 near-term.
Mini Russell Top 200 Index	500,000	No more than 300,000 near-term.
Russell Top 200 Value Index	50,000	No more than 30,000 near-term.
Mini Russell Top 200 Value Index	500,000	No more than 300,000 near-term.
Russell Top 200 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell Top 200 Growth Index	500,000	No more than 300,000 near-term.
Russell MidCap Index	50,000	No more than 30,000 near-term.
Mini Russell MidCap Index	500,000	No more than 300,000 near-term.
Russell MidCap Value Index	50,000	No more than 30,000 near-term.
Mini Russell MidCap Value Index	500,000	No more than 300,000 near-term.
Russell MidCap Growth Index	50,000	No more than 30,000 near-term.
Mini Russell MidCap Growth Index	500,000	No more than 300,000 near-term.
Russell Small Cap Completeness Index	50,000	No more than 30,000 near-term.
Mini Russell Small Cap Completeness Index	500,000	No more than 300,000 near-term.
Russell Small Cap Completeness Value Index	50,000	No more than 30,000 near-term.
Mini Russell Small Cap Completeness Value Index	500,000	No more than 300,000 near-term.
Russell Small Cap Completeness Growth Index	50,000	No more than 30,000 near-term.
Mini Russell Small Cap Completeness Growth Index	500,000	No more than 300,000 near-term.
Mini NYSE U.S. 100 Index	50,000	No more than 30,000 near-term.
Micro NYSE U.S. 100 Index	500,000	No more than 300,000 near-term.
Mini NYSE International 100 Index	50,000	No more than 30,000 near-term.
Micro NYSE International 100 Index	500,000	No more than 300,000 near-term.
Mini NYSE World Leaders Index	50,000	No more than 30,000 near-term.
Micro NYSE World Leaders Index	500,000	No more than 300,000 near-term.

* * * * *

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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to adopt generic listing standards and position limits for broad-based index options. In particular, the Exchange proposes to adopt (i) ISE Rule 2002(d), which contains generic initial listing standards for broad-based index options, (ii) ISE Rule 2002(e), which contains generic maintenance standards for broad-based index options listed pursuant to proposed ISE Rule 2002(d), and (iii) an amendment to ISE Rule 2004(a), to provide position limits for broad-based index options listed pursuant to proposed ISE Rule 2002(d). This rule change would enable the Exchange to list broad-based index options pursuant to Rule 19b–4(e)[4] of

[4] 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule

the Act if each of the conditions set forth in ISE Rule 2002(d) are satisfied. The proposed rule change would further provide ongoing maintenance standards and position limits for broad-based index options listed pursuant to proposed ISE Rule 2002(d). Such options would, in all other respects, be traded pursuant to the Exchange's trading rules and procedures applicable to index options and be covered under the Exchange's surveillance program for index options. The Exchange notes that it and other options exchanges currently have rules that ain "generic" listing standards pursuant to Rule 19b–4(e) and position limits for narrow-based index options.[5] The Exchange also notes that CBOE currently has rules that contain generic listing standards and position limits for micro narrow-based index options.[6] The standards contained in these proposed generic listing standards and position limits for broad-based index options are based on the standards contained in the generic listing standards and position limits for narrow-based index options and micro narrow-based index options that were previously approved by the Commission but have been adapted to reflect the characteristics of broad-based index options.

Generic Initial Listing Standards for Broad-Based Index Options

In order to list broad-based index options pursuant to the generic Rule 19b–4(e) listing standards, the underlying index must satisfy all of the conditions contained in proposed ISE Rule 2002(d). If the underlying index does not satisfy all of the conditions, the Exchange would be required to file a proposed rule change with the Commission on Form 19b–4 pursuant to Section 19(b)(2) of the Act[7] and obtain Commission approval in order to list options on that index. Following are the conditions contained in proposed ISE Rule 2002(d).

- Under proposed ISE Rule 2002(d)(1), the index must be "broad-based," as defined in ISE Rule 2001(j). Rule 2001(j) defines the term "broad-based" as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.
- Under proposed ISE Rule 2002(d)(2),[8] options on the index must be designated as A.M.-settled.
- Under proposed ISE Rule 2002(d)(3),[9] the index must be capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted.
- Under proposed ISE Rule 2002(d)(4),[10] the index must consist of 50 or more component securities. The Exchange believes that a 50 component minimum is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that are sufficiently broad-based in scope and not readily subject to manipulation. The Exchange notes that there are currently a number of broad-based indexes that consist of fewer than 50 components, such as, the Dow Jones Industrial Average Index (30 components) and the Amex Major Market Index (20 components). The Exchange further notes that, while broad-based index options generally have more components than narrow-based index options, the generic listing standards for narrow-based index options are more liberal, requiring an index to consist of only 10 or more component securities.
- Under proposed ISE Rule 2002(d)(5),[11] component securities comprising at least 95 percent of the index, by weight, must have a minimum market capitalization of $75 million. In addition, component securities comprising at least 65 percent of the index, by weight, must have a minimum market capitalization of $100 million.
- Under proposed ISE Rule 2002(d)(6),[12] component securities that account for at least eighty percent (80%) of the weight of the index must satisfy the requirements of ISE Rule 502. That is, those securities must be "options eligible," meaning they must have, for example, at least a 7 million share float, 2000 holders, total annual trading volume of 2,400,000 shares, a minimum price of $3 per share, and the issuer must be in compliance with its obligations under the Act. The Exchange believes that an 80% weighting is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that contain components that are sufficiently liquid and not readily subject to manipulation. The Exchange notes that broad-based indexes may consist of thousands of components (for example, the Russell 3000 Index), and the components comprising the bottom 10% to 20% of the weight of the index generally are the smallest capitalized stocks and tend not to meet the requirements of ISE Rule 502. The Exchange further notes that the generic listing standards pursuant to Rule 19b–4(e) for narrow-based index options are less liberal, requiring a 90% weighting.
- Under proposed ISE Rule 2002(d)(7),[13] each component security that accounts for at least one percent (1%) of the weight of the index must have an average daily trading volume, or ADTV, of at least 90,000 shares over the prior six month period. The Exchange believes that 90,000 ADTV is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes in which the more-heavily weighted components are sufficiently liquid and not readily subject to manipulation.
- Under proposed ISE Rule 2002(d)(8),[14] no single component security may account for more than ten percent (10%) of the weight of an index, and the five highest weighted component securities in the index may not, in the aggregate, account for more than thirty-three percent (33%) of the weight of an index. The Exchange believes that the 10% and 33% weighting concentration caps are reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that are not unreasonably dominated by a few heavily-weighted components.[15] The Exchange notes that

change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[5] *See* ISE Rules 2002(b), 2002(c) and 2005; Chicago Board Options Exchange ("CBOE") Rules 24.2(b), 24.2(c) and 24.4A; American Stock Exchange Rules 901C *Commentary* .02 and 904C(c); Pacific Stock Exchange Rules 5.13 and 5.16; and Philadelphia Stock Exchange Rules 1009A(b), 1009A(c) and 1001A(b).

[6] *See* CBOE Rules 24.2(d), 24.2(e) and 24.4B.

[7] 15 U.S.C. 78s(b)(2).

[8] Proposed ISE Rule 2002(d)(2) is based on ISE Rule 2002(b)(1).

[9] Proposed ISE Rule 2002(d)(3) is based on ISE Rule 2002(b)(2).

[10] Proposed ISE Rule 2002(d)(4) is based on ISE Rule 2002(b)(2).

[11] Proposed ISE Rule 2002(d)(5) is based on ISE Rule 2002(b)(3).

[12] Proposed ISE Rule 2002(d)(6) is based on ISE Rule 2002(b)(7).

[13] Proposed ISE Rule 2002(d)(7) is based on ISE Rule 2002(b)(4).

[14] Proposed ISE Rule 2002(d)(8) is based on ISE Rule 2002(b)(6).

[15] There are a number of broad-based indexes with component weighting concentrations that approach the limits proposed by the Exchange. *See*, for example, as of February 22, 2005, Morgan Stanley Multinational Company Index—50 components, top 5 account for 33.24%; S&P 100 Index—100 components, top 5 account for 25.02%; Nasdaq 100 Index—100 components, top 5 account

Continued

the generic listing standards for narrow-based index options are more liberal, establishing 30% and 50% weighting concentration caps.

• Under proposed ISE Rule 2002(d)(9),[16] all component securities must be "reported securities," as defined in Rule 11Aa3–1 under the Act.[17]

• Under proposed ISE Rule 2002(d)(10),[18] no more than 20 percent of the securities in the index, by weight, may be comprised of foreign securities or American depository receipts ("ADRs") overlying foreign securities that are not subject to comprehensive surveillance sharing agreements.

• Under proposed ISE Rule 2002(d)(11),[19] the current index value must be widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange.

• *Under proposed ISE Rule 2002(d)(12),[20] the Exchange must reasonably believe that it has adequate system capacity to support the trading of options on the index. That belief must be based on the performance of a calculation by the Exchange that takes into account the Exchange's current Independent System Capacity Advisor ("ISCA") allocation and the number of new peak messages per second expected to be generated by options on such index. The Exchange notes that it currently performs this calculation for all new broad-based index options that it lists under its current rules and represents it would use the same calculation for all broad-based index options listed pursuant to proposed ISE Rule 2002(d).*

• Under proposed ISE Rule 2002(d)(13),[21] an equal dollar-weighted index must be rebalanced at least once every calendar quarter.

• Under proposed ISE Rule 2002(d)(14),[22] if the index is maintained by a broker-dealer, it must be calculated by a third-party who is not a broker-dealer. Further, the broker-dealer must establish appropriate procedures to ensure that the broker-dealer will not possess or be able to misuse any informational advantages with respect to changes in, and adjustments to, an index. Such procedures must include, for example, the establishment of appropriate informational barriers.

• Under proposed ISE Rule 2002(d)(15),[23] the Exchange must have written surveillance procedures in place with respect to surveillance of trading of options on the index.

Generic Maintenance Standards for Broad-Based Index Options Listed Pursuant to Proposed ISE Rule 2002(d)

Following the listing of a broad-based index option pursuant to proposed ISE Rule 2002(d), the underlying index must continue to satisfy the maintenance standards contained in proposed ISE Rule 2002(e) in the manner prescribed in proposed ISE Rule 2002(e). If the underlying index fails to satisfy the maintenance standards, the Exchange may not open for trading any additional series of options on that class of index options unless the continued listing of that class of index options has been approved by the Commission pursuant to section 19(b)(2) of the Act. Following are the maintenance standards contained in proposed ISE Rule 2002(e).

• Under proposed ISE Rule 2002(e)(1),[24] the requirements of proposed ISE Rule 2002(d)(1)–(3) and (9)–(15) must continue to be satisfied. In addition, the requirements of proposed ISE Rule 2002(d)(5)–(8) must be satisfied only as of the first day of January and July of each year. The Exchange believes that these maintenance standards are reasonable for broad-based indexes in as much as they strike an appropriate balance between the obligation to continually monitor and maintain critical attributes of the index, and the obligation to, at certain intervals, monitor and maintain non-critical attributes of the index, especially in light of the number of component securities that comprise broad-based indexes.

• Under proposed ISE Rule 2002(e)(2),[25] the number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing. The Exchange believes that this maintenance standard is reasonable for broad-based indexes, and, when applied in conjunction with the other maintenance requirements, will result in indexes that remain sufficiently broad-based and not readily subject to manipulation. The Exchange notes that the generic maintenance standards for narrow-based index options are more liberal, establishing a 33⅓% increase or decrease maximum.

Position Limits for Broad-Based Index Options Listed Pursuant to Proposed ISE Rule 2002(d)

Following the listing of a broad-based index option pursuant to proposed ISE Rule 2002(d), trading in the broad-based index option shall be subject to position limits. If the Exchange sought to apply a different position limit, the Exchange would be required to file a proposed rule change with the Commission on Form 19b–4 pursuant to section 19(b)(2) of the Act and obtain Commission approval in order to apply the different position limit. The position limit for broad-based index options listed pursuant to proposed ISE rule 2002(d) shall be 25,000 contracts. The Exchange believes that this position limit is reasonable for broad-based indexes and

for 24.32%; GSTI Composite Index—178 components, top 5 account for 33.68%; Dow Jones Industrial Average Index—30 components; top 5 account for 29.92%; and Amex Major Market Index—20 components, top 5 account for 37.14%.

[16] Proposed ISE Rule 2002(d)(9) is based on ISE Rule 2002(b)(8).

[17] 17 CFR 240.11Aa3–1. A "reported security" is defined in paragraph (a)(4) of this rule as any listed equity security or NASDAQ security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan. A "transaction reporting plan" is defined in paragraph (a)(2) of this rule as "any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to and meeting the requirements of, this section."

[18] Proposed ISE Rule 2002(d)(10) is based on ISE Rule 2002(b)(9).

[19] Proposed ISE Rule 2002(d)(11) is based on ISE Rule 2002(b)(10).

[20] Proposed ISE Rule 2002(d)(12) is not based on a current ISE rule, but codifies its current practice with respect to the listing of a broad-based index option under its current rules.

[21] Proposed ISE Rule 2002(d)(13) is based on ISE Rule 2002(b)(11).

[22] Proposed ISE Rule 2002(d)(14) is based on ISE Rule 2002(b)(12).

[23] Proposed ISE Rule 2002(d)(15) is not based on a current ISE rule, but codifies its current practice with respect to the listing of a broad-based index option under its current rules.

[24] Proposed ISE Rule 2002(e)(1) is based on ISE Rule 2002(c)(1).

[25] Proposed ISE Rule 2002(e)(2) is based on ISE Rule 2002(c)(2).

will result in indexes that are not readily subject to manipulation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under section 6(b)(5)[26] to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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 ISE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–27 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3998 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78f(b)(5).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52089; File No. SR–NASD–2005–071]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Modify Pricing for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut Facility

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2005, 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. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization. On June 9, 2005, Nasdaq filed an amendment to the proposed rule change.[5] On July 8, 2005, Nasdaq filed a second amendment to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut Facility. The proposal modifies the fee schedule applicable to orders in Nasdaq-listed stocks and exchange-traded funds listed on the American Stock Exchange that are entered into the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Partial Amendment dated June 9, 2005 ("Amendment No. 1). Amendment No. 1 made minor, technical corrections to the discussion section on page 4 of the original filing.

[6] *See* Partial Amendment dated July 8, 2005 ("Amendment No. 2"). Amendment No. 2 made minor changes to the rule text quoted on pages 6 and 15 of the original filing.

Nasdaq Market Center or Nasdaq's Brut Facility and routed to another market center for execution. The text of the proposed rule change is available on Nasdaq's Web site (*http://www.nasdaq.com*), at Nasdaq's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

The purpose of this proposed rule change is to modify the fee schedule applicable to orders in Nasdaq-listed stocks and exchange-traded funds listed on the American Stock Exchange that are entered into the Nasdaq Market Center or Nasdaq's Brut Facility and routed to another market center for execution. Routing charges are tiered, based upon the volume of shares on the Nasdaq Market Center and Brut books that are accessed during a month and the volumes of shares routed, and the volume of liquidity provided.

The routing charges are currently as follows: (i) If a market participant provides a daily average of 2,000,000 or fewer shares of liquidity during a month, its routing charge is $0.003 per share executed; (ii) if a market participant provides a daily average of more than 2,000,000 but fewer than 10,000,001 shares of liquidity during a month, its routing charge is $0.0028 per share executed; (iii) if a market participant provides a daily average of more than 10,000,000 but fewer than 20,000,001 shares of liquidity during a month, or provides a daily average of more than 20,000,000 shares of liquidity during a month but accesses and/or routes a daily average of 50,000,000 or fewer shares during the month, its routing charge is $0.0027 per share routed; and (iv) if a market participant provides a daily average of more than 20,000,000 shares of liquidity during a month and accesses and/or routes a daily average of more than 50,000,000 shares during the month, its routing charge will be $0.0025 per share executed. In anticipation of the expected lower trading volumes at all market centers during the summer months, and in order to ensure that Nasdaq's pricing structure remains competitive, Nasdaq is lowering the 50,000,000 share threshold for the $0.0027 and $0.0025 pricing tiers to 40,000,000 shares. Thus, the most favorable routing fee would be available to any market participant that provides a daily average of more than 20,000,000 shares of liquidity during a month and access and/or routes a daily average of more than 40,000,000 shares during a month.

2. Statutory Basis

Nasdaq believes that its proposed rule change is consistent with Section 15A of the Act,[7] in general, and furthers the objectives of Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. According to Nasdaq, the proposed rule change in routing fees is a response to anticipated lower trading volumes during the summer months and will ensure that the Nasdaq's fee schedule continues to provide for an equitable allocation of fees consistent with the fee schedule applicable in the past.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] in that it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] The effective date of the original proposed rule change is June 1, 2005. The effective date of Amendment No. 1 is June 9, 2005. The effective date of Amendment No. 2 is July 8, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 8, 2005, the date on which Nasdaq submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

available for inspection and copying at Nasdaq's Office of the Secretary. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–071 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3979 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52091; File No. SR–NASD–2005–072]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to the Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Modifying Pricing for Non-Members Using Nasdaq's Brut Facility

July 20, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2005, 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 and II below, which items have been prepared by Nasdaq. Nasdaq originally filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder.[4] On June 9, 2005, Nasdaq filed an amendment to the proposed rule change.[5] On July 1, 2005, Nasdaq filed Amendment No. 2, which replaced the text of the original filing in its entirety.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for non-NASD members using Nasdaq's Brut Facility. Nasdaq requested approval to implement the proposed rule change retroactively as of June 1, 2005. The text of the proposed rule change, as amended, is cited below. Proposed new language is italicized; proposed deletions are in brackets. The text of the proposed rule change is also available on Nasdaq's Web site (*http://www.nasdaq.com*), at Nasdaq's Office of the Secretary, and at the Commission's Public Reference Room.

7010. System Services

(a)–(h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1)–(5) No change.

(6) The fees applicable to non-members using Nasdaq's Brut Facility shall be the fees established for members under Rule 7010(i), as amended by SR–NASD–2005–019, SR–NASD–2005–035 [and] SR–NASD–2005–048 *and SR–NASD–2005–071*, and as applied to non-members by SR–NASD–2005–020, SR–NASD–2005–038, [and] SR–NASD–2005–049 *and SR–NASD–2005–072*.

(j)–(v) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, 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

In SR–NASD–2005–071,[7] which was filed on an immediately effective basis and applies to NASD members, Nasdaq has proposed to modify the fee schedule applicable to orders in Nasdaq-listed stocks and exchange-traded funds listed on the American Stock Exchange that are entered into the Nasdaq Market Center or Nasdaq's Brut Facility and routed to another market center for execution. In this filing, Nasdaq is proposing to apply the same modification to non-NASD members that use Nasdaq's Brut Facility.

Routing charges are tiered, based upon the volume of shares on the Nasdaq Market Center and Brut books that are accessed during a month and the volumes of shares routed, and the volume of liquidity provided. The routing charges are currently as follows: (i) If a market participant provides a daily average of 2,000,000 or fewer shares of liquidity during a month, its routing charge is $0.003 per share executed; (ii) if a market participant provides a daily average of more than 2,000,000 but fewer than 10,000,001 shares of liquidity during a month, its routing charge is $0.0028 per share executed; (iii) if a market participant provides a daily average of more than 10,000,000 but fewer than 20,000,001 shares of liquidity during a month, or provides a daily average of more than 20,000,000 shares of liquidity during a month but accesses and/or routes a daily average of 50,000,000 or fewer shares during the month, its routing charge is $0.0027 per share routed; and (iv) if a market participant provides a daily average of more than 20,000,000 shares of liquidity during a month and accesses and/or routes a daily average of more than 50,000,000 shares during the month, its routing charge is $0.0025 per share executed. In anticipation of the expected lower trading volumes at all market centers during the summer months, and in order to ensure that Nasdaq's pricing structure remains competitive, Nasdaq is lowering the 50,000,000 share threshold for the $0.0027 and $0.0025 pricing tiers to 40,000,000 shares. Thus, the most favorable routing fee would be available to any market participant that provides a daily average of more than 20,000,000 shares of liquidity during a month and access and/or routes a daily average of

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Partial Amendment dated June 9, 2005 ("Amendment No. 1). Amendment No. 1 made minor technical corrections to the discussion section and to the proposed rule text.

[6] *See* Amendment dated July 1, 2005 ("Amendment No. 2). Amendment No. 2. clarified that the proposed rule change was being submitted for consideration pursuant to Section 19(b)(2) instead of under Section 19(b)(3)(A) and Rule 19b–4(f)(6) thereunder.

[7] Securities Exchange Act Release No. 52089 (July 20, 2005).

more than 40,000,000 shares during a month.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[8] in general, and section 15A(b)(5)[9] of the Act, in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. According to Nasdaq, the proposed rule change applies to non-members that use Nasdaq's Brut Facility. The same fee change is also being implemented for NASD members that use the Nasdaq Market Center and/or Nasdaq's Brut Facility. Accordingly, the proposed change, as amended, promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities.

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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at Nasdaq's Office of the Secretary. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–072 and should be submitted on or before August 17, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[10] Specifically, the Commission believes that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act,[11] which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal, which would modify pricing for non-NASD members using the Nasdaq's Brut facility, would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective as of June 1, 2005, pursuant to SR–NASD–2005–071.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR–NASD–2005–071, which implemented those fees for NASD members and which became effective as of June 1, 2005. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,[12] to approve the proposed change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NASD–2005–072), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4002 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52081; File No. SR–NYSE–2005–44]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to an Amendment to Section 703.16 of the Listed Company Manual Regarding Dissemination of Index Value and Indicative Value

July 20, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the NYSE. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend section 703.16 (B)(3) of the Listed Company Manual ("Company Manual") to provide that if a series of Investment Company Units ("ICUs") is listed, or traded on the NYSE pursuant to unlisted trading privileges in reliance upon Rule 19b–4(e) under the Act,[3] the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the Consolidated Tape at least every 15 seconds during trading hours on the NYSE. The Exchange similarly seeks approval for the intraday "estimate" of a series of ICUs, sometimes known as the Intraday Indicative Value ("IIV") or Intraday Optimized Portfolio Value ("IOPV") to be widely disseminated by one or more major market data vendors or disseminated over the Consolidated Tape at least every 15 seconds during NYSE trading hours for ICUs, currently 9:30 a.m. to 4:15 p.m.[4] In addition, the Exchange proposes to make a technical amendment to section 703.16(E) of the Company Manual to reflect that ICUs trade in increments of $.01 rather than in fractions. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the principal office of the NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE has adopted NYSE Rule 1100 (Investment Company Units) and Section 703.16 of the Company Manual, which set forth listing standards applicable to ICUs, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis. In 1996, the Commission approved section 703.16 of the Company Manual, which sets forth the rules related to the listing of ICUs.[5] In 2000, the Commission also approved the Exchange's "generic" listing standards for listing and trading pursuant to Rule 19b–4(e) of the Act, or the trading pursuant to UTP, of ICUs under section 703.16 of the Company Manual and NYSE Rule 1100.[6]

Section 703.16 of the Company Manual enumerates the criteria that must be met in order to commence trading ICUs pursuant to Rule 19b–4(e) of the Act. ICUs include securities representing an interest in a registered investment company organized as a unit investment trust or an open-end management investment company (commonly referred to as "Exchange-Traded Funds" or "ETFs"). Among these criteria is the requirement that the current value of the index underlying a series of ICUs be disseminated over the Consolidated Tape every 15 seconds during trading hours. Additionally, an estimated value for the ICU shares (sometimes called the IIV or IOPV) must be updated every 15 seconds on the Consolidated Tape during NYSE trading hours. The IIV (or IOPV) reflects an estimate of the value of the Fund's shares and may be based on the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.[7]

Widespread dissemination of the index value and IIV relating to a particular series of ICUs is important information for the investing public to have. However, the Exchange believes it is unnecessary that such dissemination be over the Consolidated Tape (Tape A or Tape B) in order to permit listing or trading under the expedited procedures permitted by Rule 19b–4(e) of the Act. Index values and other index information, such as the IIV (as calculated by an independent third party, known as a "Value Calculator"), are widely available to the public and market participants through major vendors of financial information and market data, such as Reuters, ILX, and Bloomberg.

The NYSE, therefore, proposes to amend the generic listing standards in Section 703.16 to permit listing or trading a series of ICUs under Rule 19b–4(e) of the Act[8] if the current index value and IIV for that series is widely disseminated by one or more major market vendors or is disseminated over the Consolidated Tape at least every 15 seconds during trading hours on the Exchange. Major market vendors would encompass those vendors that are well-known, accepted and reputable among securities market participants. The Exchange believes that the proposed rule change will continue to assure ready, widespread access to index information by the financial community and the investing public.

In addition, the NYSE proposes to make a technical amendment to Section 703.16(E) of the Company Manual to reflect that ICUs currently trade in increments of $.01 rather than in fractions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose

[3] 17 CFR 240.19b–4(e).

[4] Telephone conversation between Mike Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on July 12, 2005.

[5] *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR–NYSE–95–23).

[6] *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (March 13, 2000) (SR–NYSE–00–46).

[7] The IIV reflects the current value of the Deposit Securities and the Cash Balancing Amount. For Funds that utilize a representative sampling strategy, the IIV may not reflect the value of all securities included in the Underlying Indexes. In addition, the IIV does not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular point in time. Therefore, the IIV on a per Fund share basis disseminated during the Exchange's trading hours should not be viewed as a real time update of the net asset value ("NAV") of the Funds, which is calculated only once a day. Telephone conversation between Mike Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on July 12, 2005.

[8] 17 CFR 240.19b–4(e).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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 neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2005–44 and should be submitted on or before August 17, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[11] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[12] which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed change would continue to provide for widespread availability of index information in connection with listing or trading ICUs under the generic standards in Section 703.16 of the Company Manual and will facilitate the utilization of the generic standards, while maintaining comparable or increased public availability of index information.[13]

The NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register.** The Commission notes that it has recently approved similar proposals regarding the dissemination of the underlying index value for ICU's traded on Nasdaq and the American Stock Exchange LLC ("Amex").[14] The Commission believes that granting accelerated approval of the proposal will allow the NYSE to immediately implement these listing standards for dissemination of the underlying index value that already are in place on Nasdaq and the Amex, along with dissemination of the IIV through one or more major market vendors. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.**

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–2005–44) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4000 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Securities Exchange Act Release Nos. 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (SR–NASD–2005–024); and 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (SR–Amex–2005–44).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52070; File No. SR–PCX–2005–61]

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Establishing a De Minimus Exception to the 80/20 Test

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2005, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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 PCX. On June 29, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the "80/20 Test" in determining limitations on Principal Order access under the rules imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") [4] and related rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No.1 added clarifying language to the proposed rule text.

[4] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options

The text of the proposed rule change, as amended, is available on the PCX's Web site at *http://www.pacificex.com*, the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, will modify the so called "80/20 Test" set forth in Section 8(b)(iii) of the Linkage Plan and PCX Rule 6.96. PCX Rule 6.96 states that Market Makers should send Principal Orders through Linkage on a limited basis and not as a primary aspect of their business.[5] The 80/20 Test implements this general principle by prohibiting a Market Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market Maker's Principal Order contract volume is disproportionate to the Market Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically, if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the Test. This would bar the Market Maker from using the Linkage to send Principal Orders in that option class for the following calendar quarter. It was not the intent of the Exchange to bar Market Makers with limited volume from sending Principal Order through the Linkage in these circumstances since such trading was not "a primary aspect of their business." Thus, the proposed rule would create a *de minimus* exemption from the 80/20 Test for Market Makers that have total contract volume of less than 1000 contracts in an option class for a calendar quarter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml* or send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2005–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–PCX–2005–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–61 and should be submitted on or before August 17, 2005.

market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the International Securities Exchange, Inc. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the PCX, and the Boston Stock Exchange, Inc. joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[5] The Exchange defines a Principal Order as an order for a principal account of an eligible Market Maker that does not relate to a customer order the Market Maker is holding. *See* PCX Rule 6.92(a)(12)(ii).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3981 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52090; File No. SR–PCX–2005–68]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Modify Its Rate Schedule Retroactively to January 1, 2002 To Cap the Fees on Multiple Options Issues Transfers

July 20, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On July 1, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its rate schedule retroactive to January 1, 2002 to allow the Exchange to cap the fee it charges a Lead Market Maker ("LMM") when multiple options issues are transferred. The text of the proposed rule change, as amended, is available on the Exchange's Web site (*http://www.pacificex.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes to add a defined rate schedule applicable to the cap on issue transfer fees. The PCX charges a Lead Market Maker (LMM) that has been allocated an options issue a $1000 fee in the event that the LMM transfers the issue to another LMM, in accordance with PCX Transfer of Issues Guidelines.[4] The purpose of this fee, which was filed as part of PCX–2001–51,[5] is to help offset the administrative and technological costs related to transferring an options issue. While it is still accurate to charge $1000 for the transfer of one issue, when multiple issues are transferred as part of a single transaction the overall costs associated with the transfer may be reduced. To assess an LMM the full $1000 on every transferred issue, with no limit to the total charges, is not in keeping with the original intent of the transfer fee. By establishing a cap on the fees the Exchange charges an LMM, the Exchange is attempting to more accurately assess the LMM the true cost associated with a transfer, which was the purpose of the fee when first implemented. The PCX proposes to continue charging $1000 per issue transferred, but cap the fee at $15,000 for the first one hundred issues transferred, and $5000 for every one hundred (or any part of) additional issues transferred. Using this rate schedule the PCX would cap the transfer fee at $15,000 for the first 100 issues, $20,000 for up to 200 issues transferred and $25,000 for up to 300 issues transferred, and so forth using the same formula. To qualify for the rate cap all transfers must be deemed to be part of a single transaction and meet the guidelines of the PCX Transfer of Issues Guidelines. The new fee cap will allow the PCX to more accurately assess an LMM the technological and administrative costs associated with the transfer of allocated issues. The Exchange proposes to make this fee effective retroactive to January 1, 2002, the date that PCX–2001–51 was effective. By making this filing retroactive to coincide with the date the transfer fee was originally implemented, the Exchange will have the ability to make any adjustments it deems necessary to allow previous charges to properly reflect the true intent of PCX–2001–51. The PCX will review all past transfers to determine if any adjustments are warranted pursuant to the proposed rate schedule contained in this filing.

2. Statutory Basis

The proposal is consistent with section 6(b) of the Act,[6] in general, and section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original proposal.

[4] PCX Transfer of Issues Guidelines is explained in PCX Regulatory Information Bulletin RBO–03–09 (Aug. 11, 2003).

[5] *See* Securities Exchange Act Release No. 45351, (January 29, 2002), 67 FR 5631 (February 6, 2002).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–68 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4001 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52082; File No. SR–Phlx–2005–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Automatic Execution of Option Transactions During Crossed Markets

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 12, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to provide for automatic executions when the Exchange's disseminated market is crossed by one minimum trading increment (*i.e.*, $1.05 bid, $1.00 offer or $3.10 bid, $3.00 offer), and the Exchange's disseminated price is the National Best Bid/Offer ("NBBO"). Additionally, as a housekeeping matter, the proposed rule change would delete Phlx Rule 1080(c)(iv)(G), a reference to an obsolete pilot program relating to the disengagement of AUTO–X.

The text of the proposed rule change is set forth below. Brackets indicate deletions; underlining indicates new text.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c)(i)–(iii) No change.

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for automatic execution will instead be manually handled by the specialist:

(A) The Exchange's disseminated market is crossed *by more than one minimum trading increment (as defined in Exchange Rule 1034) (i.e.*, 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange *by more than one minimum trading increment;*

(B)–(D) No change.

(E) if the Exchange's bid or offer is not the NBBO; *and*

(F) When the price of a limit order is not in the appropriate minimum trading increment pursuant to Rule 1034. [; and

(G) Respecting non-Streaming Quote Options, when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program through April 30, 2005) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.]

The Exchange's systems are designed and programmed to identify the conditions that cause inbound orders to be ineligible for automatic execution. Once it is established that inbound orders are ineligible for automatic execution, Exchange staff has the ability to determine which of the above conditions occurred.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the automated handling and execution of option orders on the Exchange by establishing that orders are eligible for automatic execution during crossed markets when

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

such markets are crossed by one minimum trading increment.[3]

Currently, Exchange Rule 1080(c)(iv)(A) states that an order otherwise eligible for automatic execution will instead be manually handled by the specialist when the Exchange's disseminated market is crossed or crosses the disseminated market of another options exchange.[4] The proposed rule change would limit the specialist's manual handling of orders during crossed markets to situations where the market is crossed by more than one minimum trading increment (*i.e.*, 2.10 bid, 2 offer). The proposed rule would provide that an order otherwise eligible for automatic execution would instead be handled manually by the specialist when the Exchange's disseminated market is crossed by more than one minimum trading increment, or crosses the disseminated market of another options exchange by more than one minimum trading increment.

Thus, the effect of the proposal is that orders would be eligible for automatic execution when the Exchange's disseminated market is crossed or crosses another exchange's market by just one minimum trading increment (and where the Exchange's disseminated market is the NBBO).[5]

The Exchange believes that establishing a limitation of one minimum trading increment as the amount by which a market may be crossed in order to provide automatic executions during crossed markets should provide Exchange specialists and Registered Options Traders ("ROTs") with sufficient ability to manage their market risk during times of crossed markets. The Exchange believes that a market that is crossed by an amount greater than one minimum trading increment is an indication that one or more options market(s) or market makers may be experiencing quotation system issues that do not reflect current market conditions, and thus orders on the Exchange would be handled manually by the specialist in such circumstances.

On the other hand, the Exchange believes that markets that are crossed by only one single minimum trading increment in today's increasingly electronic marketplace reflect the number and speed of electronic quotations and the number of market makers submitting such quotations, and therefore do not necessarily indicate system errors that may result in unusual risk to market makers.

Finally, as a housekeeping matter, the Exchange proposes to delete Phlx Rule 1080(c)(iv)(G), a reference to an expired pilot program relating to the disengagement of AUTO–X for "non-Streaming Quote Options."[6] There are no longer any non-Streaming Quote Options traded on the Exchange; therefore Phlx Rule 1080(c)(iv)(G) is no longer applicable.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by establishing conditions under which the Exchange will provide automatic executions during times of crossed markets, thus increasing the number of orders that are handled electronically on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All

[3] Exchange Rule 1034, Minimum Increments, currently provides that all options on stocks, index options, and Exchange Traded Options quoting in decimals at $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options quoting in decimals under $3.00 shall have a minimum increment of $.05.

[4] Eligible orders are currently executed automatically on the Exchange during locked markets (*i.e.*, 2 bid, 2 offer). *See* Securities Exchange Act Release No. 47359 (February 12, 2003), 68 FR 8322 (February 20, 2003) (SR–Phlx–2003–03).

[5] Orders otherwise eligible for automatic execution will instead be handled manually by the specialist when the Exchange's disseminated market is not the NBBO. *See* Exchange Rule 1080(c)(iv)(E). Therefore, for an order to be eligible for automatic execution during a crossed market, the Exchange's disseminated market must be the NBBO.

[6] A "non-Streaming Quote Option" was previously defined as an option that is not traded on the Exchange's electronic trading platform for options, "Phlx XL." *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59). All options traded on the Exchange are now traded on Phlx XL.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–45 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3977 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52072; File No. SR–Phlx–2005–33]

Self-Regulatory Organizations; The Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Sending Principal Orders Via the Intermarket Options Linkage

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 11, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On July 8, 2005, the Exchange filed Amendment No. 2.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1087, Limitation on Principal Order Access, relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").[5] Specifically, the proposed rule change, as amended, would establish an exemption to the so called "80/20 Test," which provides that specialists and Registered Options Traders ("ROTs") effecting transactions that represent 20 percent or more of their contract volume in a particular calendar quarter by sending Principal Orders[6] to other exchanges via the Linkage may not send Principal Orders in that option during the following calendar quarter. The proposed exemption would apply to specialists and ROTs that have total contract volume of less than 1,000 contracts in an option for such calendar quarter. The text of the proposed rule, as amended, is available at the Exchange's Web site at *http://www.phlx.com/exchange/phlx_rule_fil.html* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, will modify the 80/20 Test set forth in Section 8(b)(iii) of the Linkage Plan and Phlx Rule 1087.

In particular, the purpose of this proposed rule change, as amended, is to modify Phlx Rule 1087 to establish an exemption from the provision in the rule that states that a specialist or ROT that effected 20 percent or more of its volume in a particular option by sending Principal Orders through the Linkage in a calendar quarter is prohibited from sending Principal Orders via the Linkage in such option during the following calendar quarter.

According to the Exchange, applying this prohibition has resulted in anomalies for specialists and ROTs with limited quarterly volume in an option. Specifically, if a specialist or ROT has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the specialist or ROT trading more than 20 percent of his or her contract volume in a given option based on relatively insignificant contract volume in such option. This would bar the specialist or ROT from sending Principal Orders in such option via Linkage for the following calendar quarter. The Exchange does not believe that it was the intent of participants in the Plan (*i.e.*, the six U.S. options exchanges) to bar participants with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly was not a primary aspect of their business.

The proposed rule change would create an exemption from the prohibition for specialists and ROTs that have total contract volume of less than 1,000 contracts in an option for a calendar quarter. The Exchange believes that this exemption will reduce the number of instances in which specialists and ROTs with limited contract volume in a particular option are prohibited from sending Principal Orders via the Linkage for a calendar quarter.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 dated May 11, 2005 ("Amendment No. 1"). Amendment No. 1 corrected a pagination error in the original filing.

[4] *See* Amendment No. 2 dated July 8, 2005 ("Amendment No. 2"). Amendment No. 2 made a minor technical change to the proposed rule text.

[5] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the International Securities Exchange, Inc. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, the Pacific Exchange, Inc. and the Boston Stock Exchange, Inc. joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[6] The Exchange defines a "Linkage Order" as an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders: (i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Phlx Rule 1083(k).

consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, because it is designed to perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade by creating an exemption from the prohibition against effecting transactions that represent 20 percent or more of their contract volume in a particular calendar quarter in certain options, in conformity with the Linkage Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

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 the Phlx 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. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml;* or send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–33 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-Phlx-2005–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Phlx-2005–33 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3978 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10143 and #10144]

Georgia Disaster #GA–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 07/19/2005.

Incident: Tropical Storm Dennis.

Incident Period: 07/10/2005.

DATES: *Effective Date:* 07/19/2005.

Physical Loan Application Deadline Date: 09/19/2005.

EIDL Loan Application Deadline Date: 04/19/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cherokee, Cobb, Colquitt, Douglas, Worth.

Contiguous Counties: Georgia—Bartow, Brooks, Carroll, Cook, Crisp, Dawson, Dougherty, Forsyth, Fulton, Gordon, Lee, Mitchell, Paulding, Pickens, Thomas, Tift, Turner.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	6.387
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10143 8 and for economic injury is 10144 0.

The States which received an EIDL Declaration # are Georgia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 19, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–14752 Filed 7–26–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Change to SBA Secondary Market Program

SUMMARY: The purpose of this notice is to inform the public of a program change in SBA's Secondary Market Loan Pooling Program. This change is being made to permit the SBA Loan Pooling Program to continue to operate at a zero subsidy. The change described in this notice will be incorporated, as needed, into the Secondary Market Program Guide, and all other appropriate secondary market documents.

DATES: The change in the notice will apply to loan pools with an issue date on or after October 1, 2005.

ADDRESSES: Address comments concerning this notice to James W. Hammersley, Director, Loan Programs Division, U.S. Small Business Administration, 8th floor, 409 3rd St., SW., Washington, DC 20416 or *james.hammersley@sba.gov*.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Loan Programs Division, U.S. Small Business Administration, 8th floor, 409 3rd St., SW., Washington, DC 20416, telephone 202–205–7505 or e-mail at *james.hammersley@sba.gov*.

SUPPLEMENTARY INFORMATION: When Congress enacted the Small Business Secondary Market Improvements Act of 1984, it authorized SBA to guaranty the timely payment of principal and interest on pool certificates representing an ownership interest in a pool of guaranteed portions of loans made under SBA's section 7(a) guaranteed loan program ("SBA 7(a) loans"). Congress anticipated that the timely payment guaranty could be structured so that SBA would have no additional budgetary exposure and no need for any direct taxpayer subsidy of this cost.

SBA established the Master Reserve Fund ("MRF"), which has served as a self-funding mechanism to cover the cost of the timely payment guaranty. Borrower payments on the guaranteed portions of pooled SBA 7(a) loans, as well as any SBA guaranty payments on defaulted SBA 7(a) loans, are deposited into the MRF, and all payments to investors ("Registered Holders") are made from the MRF. Interest earned while the borrower and guaranty payments are in the MRF is used, as needed, to make the timely payments to the Registered Holders.

Under the Federal Credit Reform Act of 1990 ("FCRA"), 2 U.S.C. 661 *et seq.*, SBA was required to develop a model of Secondary Market activity to estimate whether there will be sufficient funds in the MRF to meet the timely payment obligations to the Registered Holders of pool certificates. This is the same process that SBA follows every year to estimate the subsidy cost of the section 7(a) and section 504 loan programs. The subsidy model was developed based on assumptions related to several factors, including interest rates and prepayments over the lives of the pools.

Last year, SBA's forecast for pools expected to be originated in FY 2005 (the "FY 2005 pools") indicated that the interest that would be earned in the MRF in connection with those pools would not be sufficient to make all timely payments of principal and interest due to the Registered Holders. Consequently, effective October 1, 2004, SBA published in the **Federal Register** three minor changes to the Secondary Market Loan Pooling Program. *See* 69 FR 56472, September 21, 2004.

SBA's current forecast for pools to be originated in FY 2006 (the "FY 2006 pools") indicates that the interest that will be earned in the MRF in connection with the FY 2006 pools will not be sufficient to make all timely payments of principal and interest due to the Registered Holders under the current program terms implemented on October 1, 2004. Under FCRA, SBA must address this shortfall. Without statutory authority to charge a fee for this purpose, SBA must address the shortfall by making an administrative change to the requirements for a loan pool that will allow the program to operate at no cost to the taxpayers. The change being adopted will reduce the maximum variation in the remaining term to maturity between loans in the same pool.

To understand this program change, it would be helpful to first summarize certain features of the loan pooling program. To facilitate the formation of loan pools, SBA permits loans with different remaining terms to maturity to be put into the same pool. The pool certificates have the maturity of the loan with the longest remaining term to maturity in the pool. Currently, the remaining term on the loan with the shortest remaining maturity of any loan in a pool must be at least 70 percent as long as the maturity of the loan with the longest remaining term. For example, if the longest remaining term of a loan in a pool is 120 months (10 years), the loan with the shortest remaining term must have at least 84 months until the maturity of the loan. The extent of the average maturity difference between a pool certificate and its underlying loans is an important driver of the loan pooling program costs. Larger differences increase the disparity in the amortization rates between the pool certificate and the underlying loans. This increases principal that accumulates in the MRF. Costs result as the MRF must make interest payments to Registered Holders at pool certificate interest rates while earning interest on accumulated loan principal at Treasury rates.

To keep the program at a zero subsidy, SBA is reducing the maximum spread permitted between the longest and shortest remaining term on loans in each pool. For pools with an issue date on or after October 1, 2005, the shortest remaining term of any loan in a pool must be at least 80 percent of the remaining term on the loan with the longest remaining term to maturity. Reducing the maximum allowed loan-to-pool certificate maturity spread to 80 percent will reduce the program costs associated with the loan and pool amortization disparities. This reduction occurs because the program costs attributable to the MRF's payment of interest at pool certificate interest rates from funds invested at Treasury rates is reduced. The 80 percent minimum was calculated in compliance with the requirements of FCRA, based on loan and pool characteristics and SBA's forecast of future program performance.

Although this change is expected to affect approximately 93 percent of future pools, SBA believes that pool assemblers will be able to continue forming pools. Some pools may be smaller due to the new requirement; however, in Calendar Year 2004, the average pool size was $8,300,000, well in excess of the $1,000,000 minimum size required by SBA.

This program change will be incorporated as necessary into the appropriate secondary market documents. The change will be effective on October 1, 2005, and will modify the guidance on loan pool characteristics included in the SBA Secondary Market Program Guide. SBA is making this change pursuant to its authority under Section 5(g)(2) of the Small Business Act, 15 U.S.C. 634 (g)(2).

It is important to note that there is no change to SBA's obligation to honor its guaranty of the timely payment of amounts owed to Registered Holders on all SBA loan pools and that such guaranty continues to be backed by the full faith and credit of the United States.

Authority: 15 U.S.C. 634(g)(2).

Dated: July 20, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–14753 Filed 7–26–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5141]

30-Day Notice of Proposed Information Collection: Form DS–157, Supplemental Nonimmigrant Visa Application, OMB Control Number 1405–0134

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Supplemental Nonimmigrant Visa Application.
- *OMB Control Number:* 1405–0134.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–157.
- *Respondents:* All nonimmigrant visa applicants.
- *Estimated Number of Respondents:* 7,000,000 per year.
- *Estimated Number of Responses:* 7,000,000 per year.
- *Average Hours Per Response:* 1 hour.
- *Total Estimated Burden:* 7,000,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 27, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collections listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Charles Robertson of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., L–603, Washington, DC 20522, who may be reached at 202–663–3969 or *robertsonce3@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Department of State consular officers use Form DS–157 (Supplemental Nonimmigrant Visa Application) in conjunction with Form DS–156 (Nonimmigrant Visa Application, OMB # 1405–0018) to fulfill the legal requirements for aliens to apply for a nonimmigrant visa. The supplemental information requested on the form is limited to that which is necessary for consular officers to determine efficiently the eligibility and classification of aliens seeking nonimmigrant visas to the United States.

Methodology

Form DS–157 will be submitted via mail or fax to U.S. embassies and consulates overseas. A fillable version of the form is available online.

Dated: July 6, 2005.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 05–14867 Filed 7–26–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5142]

Advisory Committee on Private International Law Meeting Notice: Meeting of the Study Group on International Child Support To Discuss the Draft Hague Convention on the International Recovery of Child Support

There will be a meeting of the Study Group on International Child Support of the Secretary of State's Advisory Committee on Private International Law (ACPIL) from 3:30 to 5:30 p.m., Wednesday, August 3, 2005 in Cincinnati, Ohio. This meeting is taking place during the annual meeting of the National Child Support Enforcement Association (NCSEA). The meeting will be held in Room 211 North, Cinergy Center (Cincinnati Convention Center), 55 W. 5th Street, Cincinnati, Ohio 45202.

The purpose of the meeting is to seek input from the public to assist the Department of State and the Office of Child Support Enforcement of the Department of Health and Human Services in preparing for the next negotiating session of a new worldwide convention for the reciprocal enforcement of child support obligations. The most current working draft of the convention can be found on the OCSE Web site: *http://www.acf.hhs.gov/programs/cse/international/index.html.*

Some of the topics on the agenda will be:

—How should the new convention handle modification of child support orders?

—How should the new convention deal with the issue of costs of services, both administrative and legal?

—What should the minimum required services and the minimum level of services be under the new convention? How can these obligations be effectively enforced?

Dated: July 14, 2005.

Mary Helen Carson,

Attorney-Adviser, Office of the Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 05–14868 Filed 7–26–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Delegation of Authority No. 282]

Delegation by the Secretary of State to the Legal Adviser and the Deputy Legal Advisers of Authority To Refer Claims

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651a), I hereby delegate to the Legal Adviser and the Deputy Legal Advisers the function vested in the Secretary of State by 22 U.S.C. 1623(a)(1)(C), which relates to the referral to the Foreign Claims Settlement Commission of categories of claims against foreign governments.

The authority covered by this delegation may also be exercised by the Secretary of State or the Deputy Secretary of State.

This delegation of authority shall be published in the **Federal Register**.

Dated: July 15, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–14870 Filed 7–26–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 8, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–21782.
Date Filed: July 5, 2005.
Parties: Members of the International Air Transport Association.
Subject: Passenger Agency Conference held in Singapore on 07–09 June 2005. Adopted Resolutions For Expedited Implementation. Intended effective date: August 1, 2005.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–14894 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 8, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6210.
Date Filed: July 8, 2005.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 29, 2005.
Description: Application of Delta Air Lines, Inc., requesting renewal of its certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail between Atlanta, GA and Buenos Aires, Argentina.

Docket Number: OST–2005–21805.
Date Filed: July 6, 2005.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 2005.
Description: Application of Tyrolean Jet Service Nfg. GmbH & Co. KG requesting a foreign air carrier permit authorizing it to conduct charter foreign air transportation of persons, property and mail between any point or points in Austria and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes air service to Austria for the purpose of carrying local traffic between Austria and the United States, and other charters between third countries and the United States.

Docket Number: OST–2005–21822.
Date Filed: July 8, 2005.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 29, 2005.
Description: Application of Small Community Airlines, Inc. requesting authority as a commuter air carrier to conduct scheduled passenger operations from Dallas Love Field, TX (DAL) to Lake Charles Regional Airport, LA (LCH); and motion to withhold from public disclosure Exhibits C, I, J, K, P, Q and R.

Docket Number: OST–2005–21828.
Date Filed: July 8, 2005.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 29, 2005.
Description: Joint application of America West Airlines, Inc., U.S. Airways, Inc. and PSA Airlines, Inc. (collectively "the Joint Applicants") requesting approval of the de facto certificate transfer that will result from the common ownership of America West, U.S. Airways, and PSA by a restructured U.S. Airways Group, Inc. In addition, the Joint Applicants request that the Department approve the final transfer of international authority that will occur upon the ultimate merger of the mainline carriers. The Joint Applicants also seek route integration authority to enable them to integrate their services on the transferred routes with existing services on other international routes.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–14895 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Granting Exemption

AGENCY: Department of Transportation.

ACTION: Notice of Order (2005–7–20) Docket 16776 granting IATA partial exemption (Fourth Tranche) of Passenger Service Conference Resolutions and Recommended Practices.

SUMMARY: The Department of Transportation has granted an application by the International Air Transport Association (IATA) to permit IATA to implement certain resolutions and recommended practices of its worldwide Passenger Services Conference (PSC), without filing the resolutions and recommended practices for prior Approval by the Department and without obtaining immunity from the U.S. antitrust Laws.

FOR FUTHER INFORMATION CONTACT: Mr. John Kiser or Ms. Bernice Gray, Pricing & Multilateral Affairs Division (X–43, Room 6424), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2435.

Dated: July 20, 2005.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 05–14882 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the

lease of the airport property. The proposal consists of 1 parcel of land, totaling approximately 19.49 acres. Current use and present condition is undeveloped land compatible with local commercial/industrial zoning classification. The land was acquired under the FAA Project Numbers 3–26–0031–1798 and 3–26–0031–1899. There are no impacts to the airport by allowing the airport to lease of the property. Subject land may provide good commercial/industrial development opportunities for the community and are well outside airport perimeter fence limits. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Marlon D. Peña, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET–ADO 610, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2909/ FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Delta County Airport, Escanaba, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Escanaba, Delta County, Michigan, and described as follows:

Parcel 1 Part of Government Lot 1 of Section 1 T.38N., R.23W., (Part A)

From the E¼ corner of Section 1 T.38N., R.23W., measure S.89°48′48″ W. along the North line of Government Lot 1 of said Section a distance of 56.09 feet to a point on the Westerly Right-of-Way line of State Highway M–35 and the point of beginning of the land herein described, thence Southwesterly along said right-of-way line on a 1,372.39 foot radius curve to the right a chord bearing of S.35°20′44″ W. a chord distance of 1,137.28 feet to a point that is 725.00 feet West of the East line of said Section 1, thence N.00°40′46″ W. parallel with said East line a distance of 235.54 feet, thence S.89°48′48″ W. parallel with said North line a distance of 75.00 feet, thence S.00°40′46″ E. parallel with said East line a distance of 275.61 feet to a point on said Westerly right-of-way line, thence Southwesterly along said right-of-way line on 1,372.39 foot radius curve to the right a chord bearing of S.63°49′26″ W. a chord distance of 22.16 feet to a point that is 820.00 feet West of said East line, thence N.00°40′46″ W. parallel with said East line a distance of 955.32 feet to a point that is 20.00 feet South of the North line of said Government Lot, thence N.89°48′48″ E. parallel with said North line a distance of 445.00 feet, thence N.00°40′46″ W. parallel with said East line a distance of 20.00 feet to a point on said North line, thence N.39°48′48″ E. along said North line a distance of 318.91 feet to the point of beginning. Containing 10.70 acres.

Parcel 1 Part of Government Lot 1 of Section 1 T.38N., R.23W., (Part B)

From the E¼ corner of Section 1 T.38N., R.23W., measure S.89°48′48″ W. along the North line of Government Lot 1 of said Section a distance of 820.00 feet to the point of beginning of the land herein described, thence S.0°40′46″ E. parallel with the East line of said Section a distance of 500.00 feet, thence S.89°48′48″ W. parallel with said North line a distance of 250.00 feet, thence S.0°40′46″ E. parallel with said East line a distance of 568.08 feet to a point on the North Right-of-Way line of State Highway M–35, thence S.72°02′59″ W. along said right-of-way line a distance of 206.99 feet, thence N.7°30′53″ W. a distance of 472.26 feet to a point on the West line of said Government Lot, thence N.0°03′32″ W. along said West line a distance of 622.86 feet to the NW corner of said Government Lot, thence N.89°48′48″ E. along the North line of said Government Lot a distance of 496.67 feet to the point of beginning. Containing 8.79 acres.

Issued in Romulus, Michigan on July 13, 2005.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–14759 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Rickenbacker International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 8.655 acres of airport property for the proposed right-of-way for the Alum Creek Drive Extension between Ashville Pike and Lockbourne-Eastern Road. The land is vacant and is currently being farmed. The land was acquired by the Rickenbacker Port Authority through a Quitclaim Deed dated March 30, 1984 from the Administrator of General Services for the United States of America. There are no impacts to the airport by allowing the airport to dispose of the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The CRAA will not receive payment for the dedication of the right-of-way to the City of Columbus or Franklin County for public transportation purposes.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Mary W. Jagiello, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–608, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2956)/FAX Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or Rickenbacker International Airport, Columbus, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Columbus, Pickaway County, Ohio, and described as follows:

Beginning at an angle point in the centerline of Ashville Pike (County

Road 28), at an angle point in the boundary of said Tract 1, at the northeasterly corner of that five acre tract as described in a Survivorship Deed to Darrell T. Wilson and Dorothy M. Wilson, of record in Official Record Volume 245, Page 267, filed October 15, 2001, on file in the Recorder's Office, Pickaway County, Ohio;

Thence North 03°43′38″ East, along the centerline of Ashville Pike extended, into said Tract 1, a distance of 46.61 feet to a point;

Thence South 86°35′55″ East, through said Tract 1, a distance of 2693.18 feet to a point in the easterly line of Section 13;

Thence South 03°47′28″ West, continuing through said Tract 1, along the easterly line of said Section 13, along the centerline of Lockbourne Eastern Road (Township Road 31) passing the centerline intersection of Airbase Road and said Lockbourne Eastern Road (Township Road 31) at a distance of 55.94 feet, a total distance of 140.00 feet to a point;

Thence North 86°35′55″ West, continuing through said Tract 1, a distance of 2693.02 feet to a point in the centerline of Ashville Pike (County Road 28), in a westerly line of said Tract 1, in the easterly line of said five acre tract as described in said Survivorship Deed to Darrell T. Wilson and Dorothy M. Wilson;

Thence North 03°43′38″ East, along the centerline of Ashville Pike, along a westerly line of said Tract 1, a distance of 93.39 feet to the point of Beginning and containing 8.655 acres, more or less. The basis of bearings are based on the grid bearing of South 86°13′48″ East, between Franklin County Survey Control Monument Numbers 9958 and 9962.

Issued in Romulus, Michigan, on July 13, 2005.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–14758 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Rickenbacker International Airport; Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the lease of the airport property. The triangular parcel consists of 85.85 acres. The land is currently vacant and being farmed. The land was acquired by the Rickenbacker Port Authority through a Quitclaim Deed dated November 15, 1999 and a Quitclaim Deed dated September 22, 2003 from the United States of America through the Secretary of the Air Force. There are no impacts to the airport by allowing the airport to lease the property. The release of the property is being requested to allow for development into an intermodal transportation facility, along with roadway access. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Mary W. Jagiello, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–608, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2956)/Fax Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or at Rickenbacker International Airport, Columbus, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Columbus, Franklin and Pickaway Counties, Ohio, and described as follows: Begin for Reference at Franklin County Monument FCGS 9962 in the line between Franklin and Pickaway Counties; Thence North 86°13′48″ West, a distance of 2319.83 feet, along the County line to a point in said line, and being the Point of True Beginning, for the herein described tract; Thence the following ten (10) courses and distances on, over and across the said (Tract 13) the said (Tract 1):

1. South 44°24′00″ East, a distance of 763.73 feet, parallel to and 30.00 feet south of the centerline of pavement, to a point;

2. South 54°01′23″ West, a distance of 138.50 feet, parallel to and 100.00 feet northwest of the west Runway Protection Zone, to a point;

3. South 44°30′28″ East, a distance of 1015.11 feet, parallel to and 100.00 feet south of the southwest line of the west Runway Protection Zone, to a point;

4. South 54°14′36″ West, a distance of 171.33 feet, parallel to and 100.00 feet northwest of the east Runway Protection Zone, to a point;

5. South 44°17′15″ East, a distance of 502.98 feet, parallel to and 100.00 feet south of southwest line of the east Runway Protection Zone, to a point being 30.00 feet west of the centerline of pavement;

6. South 09°51′29″ West, a distance of 397.45 feet, parallel to and 30.00 feet west of said centerline of pavement, to a point;

7. Continuing parallel and 30.00 feet west of said centerline of pavement with an arc of a curve to the left having a central angle of 86°42′06″, a radius of 320.00 feet, an arc length of 484.23 feet, a chord bearing of South 33°29′34″ East, with a chord distance of 439.34 feet, to a point;

8. South 76°50′37″ East, a distance of 576.15 feet, continuing parallel to and 30.00 feet west of said centerline of pavement to a point;

9. Continuing parallel and 30.00 feet west of said centerline of pavement with an arc of a curve to the right having a central angle of 80°04′07″, a radius of 35.00 feet, an arc length of 48.91 feet, a chord bearing of South 36°48′33″ East, with a chord distance of 45.03 feet, to a point;

10. South 03°13′30″ West, a distance of 62.92 feet, continuing parallel to and 30.00 feet west of said centerline of pavement to a point in the northerly right-of-way line of Ashville Pike, Pickaway County Road 28, (40 feet in width);

Thence North 86°36′31″ West, a distance of 1846.94 feet, along the northerly right-of-way line of said Ashville Pike to a point in a line common to said (Tract 1) and tract owned by Pickaway County Board of County Commissioners;

Thence North 04°07′45″ East, a distance of 20.00 feet, along the line common to said (Tract 1) and Pickaway County Board of County Commissioners to a point in northerly right-of-way line of said Ashville Pike;

Thence North 84°12′31″ West, a distance of 15.05 feet, along the northerly right-of-way line of said Ashville Pike to a point, being the southeast corner of a 0.90 acre tract conveyed to The Ohio Midland Light and Power Company of Canal Winchester and their (assigns) by deed of record in Deed Book 139, Page 402, being a common corner to said (Tract 1);

Thence the following three courses and distances along the lines common to said (Tract 1) and said 0.90 acre tract:

1. North 03°23′29″ East, a distance of 200.00 feet, to a point;

2. North 86°36′31″ West, a distance of 200.00 feet, to a point;

3. South 03°23′29″ West, a distance of 191.62 feet, to a point in the northerly right-of-way line of said Ashville Pike;

Thence North 84°12′31″ West, a distance of 530.00 feet, along the northerly right-of-way line of said Ashville Pike a line common to said (Tract 1) to a point in the easterly right-of-way line of Norfolk Western Railway Company; Thence North 03°35′44″ East, a distance of 1947.81 along the easterly right-of-way line of said Norfolk Western Railway Company a line common to said (Tract 1) then said (Tract 13) to a point of curvature, passing the northwest corner of (Tract 1) at 1823.98 feet.

Thence continuing along the easterly right-of-way line of said Norfolk Western Railway Company a line common to said (Tract 13) with a curve to the left having a central angle of 20°18′13″, a radius of 1938.85 feet, an arc length of 687.06 feet, a chord bearing of North 06°33′23″ West, with a chord distance of 683.47 feet, to a point a the northwest corner of said (Tract 13) a common corner with 255.289 acre (Tract 11) conveyed to Columbus Regional Airport Authority by deed of record in Instrument Number 200401210015232, said point being in the line between Franklin and Pickaway Counties;

Thence continuing along the easterly right-of-way line of said Norfolk Western Railway Company a line common to said (Tract 11) with a curve to the left having a central angle of 11°41′47″, a radius of 1938.85 feet, an arc length of 395.80 feet, with a chord bearing of North 22°33′23″ West, with a chord distance of 395.11 feet, to a point; Thence the following two (2) courses and distances on, over and across said (Tract 11):

1. North 45°36′00″ East, a distance of 143.75 feet, to a point;

2. South 44°24′00″ East, a distance of 691.07 feet, to the Point of True Beginning, containing 85.850 acres, more or less.

The bearings in the above description are based on the grid bearing of South 86°13′48″ East, between Franklin County Geodetic Survey Monument Number 9958 and Franklin County Geodetic Survey Monument Number 9962.

Issued in Romulus, Michigan on July 13, 2005.

Irene R. Porter,

Manager, Detroit Airports District Office FAA, Great Lakes Region.

[FR Doc. 05–14764 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Nine Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on nine currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 26, 2005.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0007, Flight Engineers and Flight Navigators. 49 U.S.C. 44902(a), 44702(a)(2), and 44707(1) authorize issuance of airman certificates and provide for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. Information collected is used to determine certification eligibility. The current estimated annual reporting burden is 1,416 hours.

2. 2120–0008, Operating Requirements: Domestic, Flag and Supplemental Operation—Part 121. 14 CFR Part 121 prescribes the requirements governing air carrier operations. The information collected is used to determine air operators' compliance with the minimum safety standards set out in the regulation and the applicant's eligibility for air operations certification. The current estimated annual reporting burden is 1,273,247 hours.

3. 2120–0014, Procedures for Non-Federal Navigation Facilities. The non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public. These aids may be located at unattended remote sites or airport terminals. The information kept are used by the FAA as proof that the facility is maintained within certain specified tolerances. The current estimated annual reporting burden is 33,116 hours.

4. 2120–0535, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities. 14 CFR Part 121, Appendices I and J, require specified aviation employers to implement FAA-approved antidrug and alcohol misuse prevention programs and conduct testing of safety-sensitive employees. To monitor compliance, institute program improvements, and anticipate program problem areas, the FAA receives reports from the aviation industry. The current estimated annual reporting burden is 26,373 hours.

5. 2120–0600, Training and Qualification Requirements for Check Airmen and Flight Instructors. The rule allows some experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate, to perform flight instructor or check airmen functions in a simulator. The current estimated annual reporting burden is 13 hours.

6. 2120–0604, Aviation Medical Examiner Program. This collection of information is necessary in order to determine applicants' professional and personal qualifications for certification

as an Aviation Medical Examiner (AME). The information is used to develop the AME directories used by airmen who must undergo periodic examinations by AMEs. The current estimated annual reporting burden in 225 hours.

7. 2120–0682, Certification of Repair Stations, Part 145 of Title 14, CFR. Information is collected from applicants who wish to obtain repair station certification. Applicants must submit FAA form 8310–3 to the appropriate FAA flight standards district office for review. If the application is satisfactory, an onsite inspection is conducted. When all the requirements have been met, an air agency certificate and repair station operations specifications with appropriate ratings and limitations are issued. The current estimated annual reporting burden is 270,239 hours.

8. 2120–0702, Use of Certain Personal Oxygen Concentrator (POC) Devices on Board Aircraft. The rule requires passengers who intend to use an approved POC to present a physician statement before boarding. The flight crew must then inform the pilot-in-command that a POC is on board. The current estimated annual reporting burden is 172,694 hours.

9. 2120–0703, Responsibility for Operational Control During Part 135 Operations. As part of our safety oversight responsibilities, the FAA has developed questions concerning elements of the operational control system employed by certain Part 135 operators. The current estimated annual reporting burden is 262 hours.

Issued in Washington, DC, on July 20, 2005.

Judith D. Street,

FAA Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–14761 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review for Atlantic City International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by South Jersey Transportation Authority for Atlantic City International Airport under provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Atlantic City International Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before January 11, 2006.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 15, 2005. The public comment period ends September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Maria Stanco, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, New York 11530. Comments on the proposed noise compatibility programs should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Atlantic City International Airport are in compliance with applicable requirements of Part 150, effective July 15, 2005. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 11, 2006. This notice also announces the availability of this program for public review and comment.

Under section 103 of the Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

As an airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR)Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The South Jersey Transportation Authority submitted to the FAA in a letter dated, December 31, 2004, noise exposure maps, descriptions and other documentation. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 10(b) of the Act.

The FAA has completed its review of the noise exposure maps and related description submitted by the South Jersey Transportation Authority. The specific maps under consideration are the 2004 Noise Exposure (Figure 1.1) and the 2009 Noise Exposure Map (Figures 1.2), Flight Tracks (Figures 5.1, 5.2), Incompatible Land Uses (Figure 7.3), and Noise Sensitive Sites (Figure 8.3). Additional description is contained in Chapter 8 (numbers of residents within noise contours) and in Chapter 6, (Fleet Mix—Tables 6.3 and 6.4) and Chapter 3 (Runway Use). The FAA has determined that these maps, tables and accompanying narrative for Atlantic City International Airport are in compliance with the applicable requirements. This determination is effective on July 15, 2005. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or the fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed

overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted these maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, which under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Atlantic City International Airport, effective on July 15, 2005. Preliminary review of the submitted material indicated that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 11, 2006.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, created an undue burden on interstate of foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land used and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors, all comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extend practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, NY 11530.

South Jersey Transportation Authority, Farley Service Plaza, Route 54, Hammonton, NJ 08037.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Garden City, New York, July 15, 2005.

Philip Brito,

Manager, New York Airports District.

[FR Doc. 05–14760 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–42]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 19, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2005–20458.

Petitioner: Jet Aviation Engineering Services L.P.

Sections of 14 CFR Affected: 14 CFR 25.785(d), and 25.785(h)(1).

Description of Relief Sought/ Disposition:

Petitioner sought relief from the requirement that firm handholds be provided along each aisle and additional passenger areas. Petitioner also sought relief from the requirement that flight attendant seats be located to provide a direct view of the passenger cabin in the executive interior of a Boeing Model 747–400 airplane, having serial number 26903, in "private, not-for-hire" use.

Grant of Exemption, 06/13/2005, Exemption No. 8585.

[FR Doc. 05–14765 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–44]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition. .

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 16, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2005–21408 or FAA–2005–21412 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lender (202) 267–8029 or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 21, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–21913.

Petitioner: Professional Aviation Maintenance Association.

Section of 14 CFR Affected: 14 CFR 65.93(a) Inspection Authorization: Renewal.

Description of Relief Sought: The Professional Aviation Maintenance Association (PAMA) requests this exemption to permit a 15-day extension from March 31 to April 15 for attendees of the PAMA convention to submit evidence of compliance with § 65.91(c)(1) through (4). PAMA requests this exemption for 10 years, through 2015.

Because of scheduling events beyond PAMA's control, the PAMA 2006 Aviation Maintenance Symposium, and PAMA's extensive technical education programming, much of which is approved training for Inspection Authorization (IA) renewal, will be held March 28–30, 2006. Many potential attendees have already expressed concern that they will not be able to attend for purposes of IA renewal because of the insufficient time to provide the evidence of their training to their respective Flight Standards District Office before the end of March. Inspection Authorization renewal training is an important reason why many maintenance professionals attend PAMA's annual Symposium.

[FR Doc. 05–14858 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–43]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 8, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2005–20737] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 20, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–20737.

Petitioner: Mr. Alexander M. Blaine.

Section of 14 CFR Affected: 14 CFR 61.213(a)(4)(ii).

Description of Relief Sought: To permit Mr. Blaine to be eligible for a ground instructor certificate or rating without taking the knowledge test on aeronautical knowledge areas in advanced ground instructor rating.

[FR Doc. 05–14859 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Light-Sport Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of certain new consensus standards and revisions to previously accepted consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule issued July 16, 2004, and effective September 1, 2004. ASTM International Committee F37 on Light Sport Aircraft developed these new and revised standards with FAA participation. By this Notice, the FAA finds these new and revised standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule.

DATES: Comments must be received on or before September 26, 2005.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Programs and Procedures Branch, ACE–114, Attention: Larry Werth, Room 301, 901 Locust, Kansas City, Missouri 64106. Comments may also be e-mailed to: *Comments-on-LSA-Standard@faa.gov.* All comments must be marked: Consensus Standards Comments, and must specify the standard being addressed by ASTM designation and title.

FOR FURTHER INFORMATION CONTACT: Larry Werth, Light-Sport Aircraft Program Manager, Programs and Procedures Branch (ACE–114), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4147; e-mail: *larry.werth@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of certain new consensus standards and revisions to previously accepted consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule. ASTM International Committee F37 on Light Sport Aircraft

developed these new and revised standards.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F37 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the Sport Pilot and Light-Sport Aircraft rule, and revised Office of Management and Budget (OMB) Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities", dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for light-sport aircraft. These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for light-sport aircraft. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F37 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

Comments on Previous Notices of Availability

In the Notice of Availability (NOA) issued on February 16, 2005, and published in the **Federal Register** on March 3, 2005, the FAA asked for public comments on the 15 consensus standards accepted by that NOA. The comment period closed on May 2, 2005.

The preamble to the Sport Pilot and Light-Sport Aircraft Rule states,

"If comments from the public are received as a result of the Notice of Availability, the FAA will address them during its recurring review of the consensus standards and participation in the consensus standards revision process."

And—

"The FAA will respond to comments on the consensus standards in this revision process."

ASTM International Committee F37 examined the public comments received on these 15 standards during the May 2005 committee meeting held in Reno, Nevada. The committee determined the comments did not warrant or justify any changes or revisions to the standards.

In the NOA issued on April 7, 2005, and published in the **Federal Register** on April 18, 2005, the FAA asked for public comments on the one consensus standard accepted by that NOA. The comment period closed on June 17, 2005. No comments were received on that consensus standard.

Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any light-sport aircraft issued a special light-sport airworthiness certificate, which has been designed, manufactured, operated and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. Manufacturers who choose to produce these aircraft and certificate these aircraft under 14 CFR part 21, 21.190 or 21.191 are subject to the applicable consensus standard requirements. The FAA maintains a listing of all accepted standards at *afs600.faa.gov*.

The Revised Consensus Standards and Effective Period of Use

The following previously accepted consensus standards have been revised, and this Notice of Availability is accepting the later revisions. Either the previous revisions or the later revisions may be used for the initial certification of Special Light-Sport Aircraft until November 1, 2005. This overlapping period of time will allow aircraft that have started the initial certification process using the previous revision levels to complete that process. After November 1, 2005, manufacturers must use the later revisions and must identify these later revisions in the Statement of Compliance for initial certification of Special Light-Sport Aircraft unless the FAA publishes a specific notification otherwise.

a. ASTM Designation F 2240–03, titled: Standard Specification for Manufacturer Quality Assurance Program for Powered Parachute Aircraft.

b. ASTM Designation F 2241–03, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft.

c. ASTM Designation F 2242–03, titled: Standard Specification for Production Acceptance Testing System for Powered Parachute Aircraft.

d. ASTM Designation F 2243–03, titled: Standard Specification for Required Product Information to be Provided with Powered Parachute Aircraft.

e. ASTM Designation F 2244–03, titled: Standard Specification for Design and Performance Requirements for Powered Parachute Aircraft.

f. ASTM Designation F 2352–04, titled: Standard Specification for Design and Performance of Light Sport Gyroplane Aircraft.

g. ASTM Designation F 2354–04, titled: Standard Specification for Continued Airworthiness System for Lighter-Than-Air Light Sport Aircraft.

h. ASTM Designation F 2356–04, titled: Standard Specification for Production Acceptance Testing System for Lighter-Than-Air Light Sport Aircraft.

i. ASTM Designation F 2415–04, titled: Standard Practice for Continued Airworthiness System for Light Sport Gyroplane Aircraft.

The Consensus Standards

The FAA finds the following 8 new and 9 revised consensus standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule. The consensus standards listed below may be used unless the FAA publishes a specific notification otherwise.

a. ASTM Designation F 2240–05, titled: Standard Specification for Manufacturer Quality Assurance Program for Powered Parachute Aircraft.

b. ASTM Designation F 2241–05, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft.

c. ASTM Designation F 2242–05, titled: Standard Specification for Production Acceptance Testing System for Powered Parachute Aircraft.

d. ASTM Designation F 2243–05, titled: Standard Specification for Required Product Information to be Provided with Powered Parachute Aircraft.

e. ASTM Designation F 2244–05, titled: Standard Specification for Design and Performance Requirements for Powered Parachute Aircraft.

f. ASTM Designation F 2352–05, titled: Standard Specification for Design and Performance of Light Sport Gyroplane Aircraft.

g. ASTM Designation F 2354–05, titled: Standard Specification for Continued Airworthiness System for Lighter-Than-Air Light Sport Aircraft.

h. ASTM Designation F 2355–05, titled: Standard Specification for Design

and Performance Requirements for Lighter-Than-Air Light Sport Aircraft.

i. ASTM Designation F 2356–05, titled: Standard Specification for Production Acceptance Testing System for Lighter-Than-Air Light Sport Aircraft.

j. ASTM Designation F 2415–05, titled: Standard Practice for Continued Airworthiness System for Light Sport Gyroplane Aircraft.

k. ASTM Designation F 2425–05, titled: Standard Specification for Continued Airworthiness System for Weight-Shift-Control Aircraft.

l. ASTM Designation F 2426–05, titled: Standard Guide on Wing Interface Documentation for Powered Parachute Aircraft.

m. ASTM Designation F 2427–05, titled: Standard Specification for Required Product Information to be Provided with Lighter-Than-Air Light Sport Aircraft.

n. ASTM Designation F 2447–05, titled: Standard Practice for Production Acceptance Test Procedures for Weight-Shift-Control Aircraft.

o. ASTM Designation F 2448–04, titled: Standard Practice for Manufacturer Quality Assurance System for Weight-Shift-Control Aircraft.

p. ASTM Designation F 2449–05, titled: Standard Specification for Manufacturer Quality Assurance Program for Light Sport Gyroplane Aircraft.

q. ASTM Designation 2457–05, titled: Standard Specification for Required Product Information to be Provided with Weight-Shift-Control Aircraft.

Availability

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Issued in Kansas City, Missouri on July 19, 2005.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14762 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21925; Notice 1]

Continental Tire North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America, Inc. (Continental Tire) has determined that certain tires that it produced do not comply with S6.5 of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Continental Tire has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental Tire has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Continental Tire's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 430 tires produced on May 24, 2005. One requirement of S6.5 of FMVSS No. 119, tire markings, is that the tire identification shall comply with 49 CFR Part 574, "Tire Identification and Recordkeeping," which includes the marking requirements of 574.5(b) DOT size code, and 574.5(c) DOT tire type. The subject tires are incorrectly marked for both size code and tire type. The markings read "A3 3T 1WP XXXX" when they should read "A3 55 1N1 XXXX."

Continental Tire explains:

[T]he curing mold used in the production of the tires was being serviced. During the service, the interchangeable plugs that contain the DOT size and type information came out of the mold. The individual replacing the plugs inserted plugs engraved with the incorrect information. The noncompliance was discovered after 430 tires had been cured in this mold.

Continental Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Continental Tire states that "[a]ll other sidewall identification markings and safety information are correct, referring to recognizable size markings and load carrying capacities. A consumer or dealer examining the DOT Code could still determine the correct manufacturing plant and correct manufacturing date."

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 26, 2005.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: July 21, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14856 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21192; Notice 2]

ArvinMeritor, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

ArvinMeritor Inc. (ArvinMeritor) has determined that certain automatic slack

adjusters assembled by the petitioner in 2004 do not comply with S5.1.8(a) and S5.2.2(a) of 49 CFR 571.121, Federal Motor Vehicle Safety Standard (FMVSS) No. 121, "Air brake systems." Pursuant to 49 U.S.C. 30118(d) and 30120(h), ArvinMeritor has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30 day comment period, on May 17, 2005 in the **Federal Register** (70 FR 28352). NHTSA received two comments.

Affected are a total of approximately 187 automatic slack adjusters assembled between October 13, 2004 and December 20, 2004. S5.1.8(a) is applicable to trucks and buses, and S5.2.2(a) is applicable to trailers. Both sections are titled "Brake adjuster," and both require that:

> Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

ArvinMeritor states that the noncompliant automatic slack adjusters were assembled with housings supplied by TaeJoo Ind. Co., Ltd., and these housings were below the dimensional specifications. The petitioner states that as a result, there is interference between the automatic slack adjuster pawl and the housing cavity in which the pawl is positioned, preventing the pawl from properly engaging the actuator, which can result in a reduction or elimination of the automatic adjustment function as required by S5.1.8(a) and S5.2.2(a).

ArvinMeritor believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. ArvinMeritor states that it has conducted dynamic testing of vehicles simulating the affected automatic slack adjusters and based on the results of this testing, ArvinMeritor is satisfied that the braking systems will still halt a vehicle within the stopping distances required by FMVSS No. 121.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety for the following reasons.

First, we believe that out-of-adjustment brakes present a significant safety concern. As indicated in NHTSA's October 20, 1992 final rule establishing automatic brake adjuster requirements, "When brakes are under-adjusted, stopping ability is reduced and the probability of a crash is increased. When brakes are over-adjusted,* * *the possibility of a crash [is] increased as a result of excessive lining wear, wheel lock, or brake drum cracking. Such improper brake adjustment contributes to a significant number of crashes, including those in which vehicles are unable to stop in time and those in which there are 'runaways' on steep mountain grades" (57 FR 47793 at 47794).

Second, ArvinMeritor's testing showed no major degradation in stopping distance of trucks with temporarily disabled slack adjusters. However, their data did not address long-term effects of non-functioning slack adjusters on braking performance. Because automatic slack adjusters are designed to address degradation of braking performance over time, we believe that the petitioner's test results are not persuasive.

The agency received two public comments. The first commenter, Freightliner LLC (Freightliner), supports the petitioner's belief that the noncompliance is inconsequential to safety based on three points.

First, Freightliner says that the potential failure rate for these automatic slack adjusters is below Freightliner's warranty rate for this type of component.

NHTSA cannot determine that a noncompliance is inconsequential to motor vehicle safety because a potentially serious safety failure occurs relatively infrequently.

Second, Freightliner states that it instructs drivers of the vehicles to conduct a visual inspection of the slack adjuster, brake free stroke, and brake adjustment on all axles daily; thus any failure of the slack adjuster would be identified through this daily inspection.

NHTSA cannot determine that a noncompliance is inconsequential to safety because of recommended maintenance procedures or instructions established in response to a potential safety hazard. Among other things, we have no assurances that drivers would in fact follow Freightliner's visual inspection instructions.

Third, Freightliner states that it agrees with ArvinMeritor's contention that the affected vehicles will continue to meet the stopping distance requirements of FMVSS No. 121 even in the out-of-adjustment condition.

As explained above, we cannot accept Freightliner's argument because the tests conducted by the petitioner did not show that the noncompliance would not negatively affect braking performance over time.

The second comment suggested that the agency deny the petition but did not elaborate.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, ArvinMeritor's petition is hereby denied.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: July 21, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14863 Filed 7–26–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Bureau of Engraving and Printing is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, Bureau of Engraving and Printing (BEP) has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records.

The changes throughout the document are editorial in nature and consist principally of changes to system locations and system manager addresses and revisions to organizational titles. In addition, the title to BEP .027 is being changed from "Programmable Access Security System (PASS)" to "Access Control and Alarm Monitoring Systems (ACAMS)."

One new system of records was established by BEP entitled "BEP .047—Employee Emergency Notification System" on August 18, 2003, and published at 68 FR 49544.

The systems notices are reprinted in their entirety following the Table of Contents.

Systems Covered by This Notice

This notice covers all systems of records adopted by BEP up to June 1, 2005.

Dated: July 21, 2005.

Nicholas Williams,

Deputy Assistant Secretary for Headquarters Operations.

Table of Contents

Bureau of Engraving and Printing (BEP)

TREASURY/BEP .002

SYSTEM NAME:

Personal Property Claim File—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian officers and employees of the Bureau of Engraving and Printing, former employees and their survivors having claim for damage to or loss of personal property incident to their service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal property damage claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Military Personnel and Civilian Employees' Claims Act of 1964, as amended, Pub. L. 88–558.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to Office of Chief Counsel staff.

RETENTION AND DISPOSAL:

Retained three years after case is closed, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals having claim for damage to or loss of personal property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .004

SYSTEM NAME:

Counseling Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees whose actions or conduct warrants counseling.

CATEGORIES OF RECORDS IN THE SYSTEM

Contains correspondence relative to counseling information and follow-up reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains, contingent upon that individual signing a release of information form;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide general educational information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked in file cabinets; access is limited to EEO and Employee Counseling Services staff.

RETENTION AND DISPOSAL:

Retained for one year after close of file, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

EEO and Employee Counseling Services Staff Manager, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW.. Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .005

SYSTEM NAME:

Compensation Claims—Treasury/BEP.

SYSTEM LOCATION:

Compensation Staff, Personnel Services Division, Office of Human Resources, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Human Resources Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees incurring work-connected injuries or illnesses, who make claims under Federal Employee Compensation Act for medical expenses, continuation of pay or disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

All pertinent documentation, including investigative reports, medical reports, forms, letters to BEP Office of Financial Management authorizing continuation of pay, Labor Department reports, etc. relative to work-connected injuries or illnesses of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act, as amended, Pub. L. 93–416.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder, magnetic media and computer disks.

RETRIEVABILITY:

Name and date of injury.

SAFEGUARDS:

Locked file cabinets, locked computers, passwords. Back-up discs locked in file cabinets. Access is limited to Compensation Claims staff and Safety managers.

RETENTION AND DISPOSAL:

Records are retained for three years after last entry, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Manager, Personnel Services Division, Office of Human Resources, Bureau of Engraving and Printing, 14th

and C Street SW., Washington, DC 20228. (2) Manager, Human Resources Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Occupational Health Unit Daily Report, medical providers, employee's supervisor's report, and information provided by the employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .006

SYSTEM NAME:

Debt Files (Employees)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees on whom debt complaints are received.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's name, complaint information, court judgments, counseling efforts, receipts, and final disposition of complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Personnel Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained in locked cabinets; access is limited to Management Relations Division, Human Resources Division and the Office of the Chief Counsel.

RETENTION AND DISPOSAL:

Retained for two years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief, Office of Human Resources and the Office of the Chief Counsel, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228. (2) Manager, Human Resources Division, and the Office of Chief Counsel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Employees, Complainants, and Court Judgments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .014

SYSTEM NAME:

Employee's Production Record—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current Washington, DC and Fort Worth, TX Bureau of Engraving and Printing employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's name, dates, work hours, record of production, history of work assignments, training, work performance, and progress reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 4103 and 4302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or

implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in data entry diskettes, file folders and production books.

RETRIEVABILITY:

Indexed by name, work code number and cross-referenced by project number.

SAFEGUARDS:

Maintained in locked cabinets or desks; access is limited to personnel having a "need-to-know."

RETENTION AND DISPOSAL:

Retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel; Chief, BEP Resolution Center; Chief, Office of Human Resources; Chief, Office of Currency Production; Chief, Office of Stamp Production; Chief, Office of Engraving; Chief, Office of Procurement; Chief, Office of Production Management; Chief, Office of External Relations; Chief, Office of Currency Standards; Chief, Office of Facilities Support; Chief, Office of Production Support; Chief, Office of Management Control; Chief, Office of Environment and Safety, Chief, Office of Administrative Services; Chief, Office of Critical Infrastructure & IT Security; Chief, Office of IT Operations; Chief, Office of Quality; Chief, Securities Technology and Chief, Office of Security. Address: Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228. Plant Manager, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information furnished by employee, developed by supervisor or by referral document.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .016

SYSTEM NAME:

Employee Suggestions—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees submitting suggestions under the incentive award program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's suggestion, reviewer evaluation and final disposition information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., 4502 (c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, as well as on computer disks.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in locked file cabinets; access is limited to the Chief, Office of Human Resources, the Deputy Chief Financial Officer, and the employee's supervisor.

RETENTION AND DISPOSAL:

Retained for three years following date of submission, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228, and the Deputy Chief Financial Officer, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employee, employee's supervisor and review committee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .020

SYSTEM NAME:

Industrial Truck Licensing Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees designated to operate self-propelled material and/or machinery handling equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of employee physical examination, testing, license number and issue date for purpose of operating one or more types of material handling equipment used within the Bureau of Engraving and Printing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder and Card file.

RETRIEVABILITY:

By Name.

SAFEGUARDS:

Locked file cabinet, access is limited to Office of Environment Safety and Health, and the General Stores, Receiving and Mail Section personnel.

RETENTION AND DISPOSAL:

Destroyed three years after license revocation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Environment Safety and Health, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228 and the Chief, Office of Production Management and Manager, General Stores, Receiving and Mail Section Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Supervisor's request, results of physical examination, and data obtained during training or practical tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .021

SYSTEM NAME:

Investigative Files—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Separated Bureau Employees, Employee Applicants, Visitors to the Bureau, News-Media Correspondents, Contractor and Service Company Employees (Current and Separated).

CATEGORIES OF RECORDS IN THE SYSTEM:

Category: Security Files, Personnel Clearance Requests, Case Files, Bank Shortage Letters, Contractor Files, Currency Discrepancy Reports, Intelligence Files, Stamp Discrepancy Reports, Case Records, Correspondence from the Public concerning Security Matters, Security Files Reference Record, Employee Indebtedness Record. Type of Information: Character references, Police force reports, Previous employment verifications, Newspaper articles, Social Security numbers, Laboratory reports to include handwriting results and latent fingerprint examinations, Law enforcement criminal and subversive record checks, Court records, Security registers, Residency information, Reports of shortages or thefts of Bureau products including subsequent investigations, Personnel records of various types, Fingerprint card, Photograph, Names of individuals including those at contractor plants who worked on a shortage involving Bureau products, Credit checks, Background investigation reports conducted by Office of Personnel Management, Bureau of Engraving and Printing, the Internal Revenue Service and other Federal Investigative Agencies, Disciplinary action recommended and/or received, Military record forms and extracted information, List of Bureau employees granted security clearances, Processes served, *i.e.* summons, subpoenas, warrants, etc., Personnel security case numbers, dates—case opened and closed, and recommendations, Certificate of Security Clearance, Reports of violations of Bureau regulations and procedures, Bureau visitor control documents,

Correspondence relating to individuals, Claims of indebtedness from firms and collection agencies and other sources, and assorted documents, Tape-recorded testimony, Type of Information: Bureau investigation reports, Information supplied by Law Enforcement agencies, Applicant interview record, Anonymous tips concerning Bureau employees, Official investigative statements, Names of those requesting security assistance and report of the assistance rendered, other pertinent Governmental records, education records and information, Date of Birth and physical description of individual in the files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and implementing Treasury and Bureau Regulations and 31 U.S.C. 427.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders, 3 × 5 Index Cards, 5 × 8 Index Cards, Loose-leaf Binders, Ledgers, Recording Tape, Computer Database Programs, and Microfiche.

RETRIEVABILITY:

Numerically by case number and year, alphabetically by name and social security number, and alphabetically by Company name.

SAFEGUARDS:

Access is limited to Office of Security and Western Currency Facility Security Division personnel. Records are maintained in locked file cabinets and secured computers.

RETENTION AND DISPOSAL:

Destroyed within 90 days following notification of an employee's death, or, within five years after separation or transfer of incumbent employee; or, five years after expiration of contractual relationship. Product Discrepancy Investigative Reports and Bank Letter Investigative Reports are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Security Division personnel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The sources of the information are the individual concerned and information supplied by Federal, State and local investigative agencies, credit bureaus, financial institutions, court records, educational institutions, and individuals contacted concerning the person being investigated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

TREASURY/BEP .027

SYSTEM NAME:

Access Control and Alarm Monitoring Systems (ACAMS)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing Employees (Washington, DC and Fort Worth, Texas); employees of other U.S. Government agencies, contractors and service company employees who have been cleared for access to the Bureau of Engraving and Printing and issued BEP Access Badges, and escorted visitors; *i.e.*, contractors and service company employees who have not undergone the formal clearance to enter the Bureau of Engraving and Printing.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) The following information is maintained concerning all individuals who are issued BEP access badges with photographs: Photograph; Full name; Social Security number; date of birth; badge number; supervisory status, work telephone; work area number; BEP access clearance level; date BEP access level granted; date last security background investigation was completed; BEP access level; BEP access time zone; date access badge issued; date access badge voided; and time, date and location of each passage through a security control point, (B) In the case of BEP employees and contractors issued "Temporary Access" badges and contractors and others issued "No Escort" badges, in lieu of his/her BEP access badge with photograph, the same information as in paragraph A (above) is kept, and (C) Official visitors, contractors, and others issued "Escort Visitor" badges: full name, date of issue,

and date, time and location of each passage through a security control point is maintained in the BEP ACAMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321, 5 U.S.C. 301 and 5 U.S.C. 6106.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media and computer printouts.

RETRIEVABILITY:

Numerical by PASS/badge number, alphabetically by last name, and appropriate index by subject.

SAFEGUARDS:

Records are maintained in locked cabinets in a locked room; access is limited to Technical Security Division, Office of Security, senior management staff, Office of Security, the staff of the Internal Review Division, Office of Management Control and the Security Division personnel at the Fort Worth, Texas facility. On-line terminals are installed in a locked 24-hour manned Central Police Operations Center and the Security Systems Operations Center (SSOC) at the Washington, DC facility. These terminals are on lines that can be manually activated and deactivated in the Security Systems Operations Center (SSOC).

RETENTION AND DISPOSAL:

The retention period is for two (2) years.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Technical Security Division, Office of Security, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Manager, Security and Police Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The individual concerned, his/her supervisor, or an official of the individual's firm or agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .035

SYSTEM NAME:

Tort Claims (Against the United States)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or organizations making claim for money damage against the United States for injury to or loss of property or personal injury or death caused by neglect, wrongful act, or omission of a Bureau of Engraving and Printing employee while acting within the scope of his office or employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal injury and/or property damage claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, Title 28 U.S.C. 2672, Public Law 89–506.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an

inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to Office of Chief Counsel staff.

RETENTION AND DISPOSAL:

Retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual or organization's claim and/or investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .038

SYSTEM NAME:

Unscheduled Absence Record—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees who have had unscheduled absences.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains chronological documentation of unscheduled absences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Kept in locked file cabinets; access to these records is restricted to Supervisor and authorized timekeeping personnel.

RETENTION AND DISPOSAL:

Retained for one year following separation or transfer, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Human Resources Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employee's time and attendance records, and his/her supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .041

SYSTEM NAME:

Record of Discrimination Complaints—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have initiated discrimination complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data developed as a result of inquiry by the person making the allegation of discrimination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be used to:

(1) Disclose to EEOC to adjudicate discrimination complaints;

(2) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders. Locked in combination safe.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Access is limited to Complainants and Bureau Resolution Center; maintained in locked combination safe.

RETENTION AND DISPOSAL:

Retained four years after resolution, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau Resolution Center, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employees who have discrimination complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .045

SYSTEM NAME:

Mail Order Sales Customer Files-Treasury/BEP

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers ordering engraved prints and numismatic products from the Bureau of Engraving and Printing through the mail, and those individuals who have requested that their names be placed on the BEP mailing list.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mail order customer's names, addresses, company names, credit card numbers and expiration dates; history of customer sales; and inventory data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purposes of the Mail Order Sales Customer Files are to: (1) Maintain information regarding customers to inform them of BEP products; (2) provide the capability to research in response to customer inquiries; and (3) transmit credit card information to financial institutions for approval or disapproval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used to electronically transmit credit card information to obtain approval or disapproval from the issuing financial institution. Categories of users include personnel involved in credit card approval.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a Government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and Section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and in electronic media.

RETRIEVABILITY:

By customer name, order number or customer number.

SAFEGUARDS:

Access is limited to those authorized individuals who process orders, research customer orders or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Files on customers who have not purchased any products are kept for two years, after which they are taken out of the active system and placed in a separate storage file. This file generates two additional annual mailings after which time they are purged from the system. (Should a customer reorder after being placed on this file, they will be assigned a new customer number and placed back in the main system).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of External Relations, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 107–M, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORDS ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORDS PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Customers, BEP employees, financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .046

SYSTEM NAME:

Automated Mutilated Currency Tracking System-Treasury/BEP

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and financial institutions sending in mutilated paper currency claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mutilated currency claimants' names, addresses, company names, amount of claims, amount paid, types of currency and condition of currency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose of the Automated Mutilated Currency Tracking System is to maintain historical information and to respond to claimants' inquiries, *e.g.*, non-receipt of reimbursement, status of case, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and records in electronic media.

RETRIEVABILITY:

By claimant name, case number, address or registered mail number.

SAFEGUARDS:

Access is limited to those specific employees who process the mutilated currency cases, prepare payment, research inquiries or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Active claimant files are maintained for two years. Inactive files are maintained for seven years. After seven years, the files are purged from the system and then destroyed. (Inactive files are those for which final payments have been made.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Currency Standards, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 344A, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, banking institutions and BEP employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .047

SYSTEM NAME:

Employee Emergency Notification System—Treasury/BEP.

SYSTEM LOCATION:

Records are maintained at the following Bureau of Engraving and Printing locations: (1) 14th and C Streets, SW., Washington, DC 20228; and (2) 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover those Bureau employees who have voluntarily provided personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of personal information collected by this system are necessary to ensure the timely emergency notification to individuals that employees have identified. The types of personal information presently include or potentially could include the following:

(a) Personal identifiers (name; home, work and electronic addresses; telephone, fax, and pager numbers);

(b) emergency notification (name of person to be notified; address; telephone number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3101, *et seq.*, and 5 U.S.C. 301.

PURPOSE:

The purpose of this system of records is to provide emergency notification to those person(s) as voluntarily provided by employees, emergency service providers and law enforcement officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There are no routine uses.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System: Storage:

Records are maintained on manual locator cards and electronic media.

RETRIEVABILITY:

Records may be retrieved by name, or other unique identifier.

SAFEGUARDS:

BEP has sophisticated Internet firewall security via hardware and software configurations as well as specific monitoring tools. Records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords, sign-on protocols, and user authentication that are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Records will be updated by the employees on a voluntary basis and kept for the duration of the individual's employment. Records can be destroyed at any time at the direction of the employee. Paper records that are ready for disposal are destroyed by shredding or burning. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Administrative Services, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–14772 Filed 7–26–05; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 26, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030. FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–2900–0004."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0004" in any correspondence.

Titles

a. Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

b. Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child—In-service Death Only, VA Form 21–543a.

OMB Control Number: 2900–0004.

Type of Review: Revision of a currently approved collection.

Abstract

a. VA Form 21–534 is used to gather the necessary information to determine surviving spouse and/or children of veterans entitlement to dependency and indemnity compensation (DIC), death benefits, (including death compensation is applicable), and any accrued benefits not paid to the veteran prior to death.

b. Military Casualty Assistance Officers complete VA Form 21–534 to assist surviving spouse and/or children of veterans who died on active duty in processing claims for dependency and indemnity compensation benefits. Accrued benefits and death compensation are not payable in claims for DIC.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2005, at pages 7795–7796.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–534—76,136 hours.

b. VA Form 21–534a—600 hours.

Estimated Average Burden Per Respondent:

a. VA Form 21–534—75 minutes.

b. VA Form 21–534a—15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 21–534—76,136.

b. VA Form 21–534a—600.

Dated: July 15, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–4003 Filed 7–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–

463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on September 19–21, 2005 in room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting will convene at 8 a.m. and adjourn at 5 p.m. each day. The meeting will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on scientific research on Gulf War illnesses published since the last Committee meeting. Additionally, there will be preliminary information on treatment research for Gulf War illnesses, research related to possible health effects of exposures during the 1991 Gulf War, and discussion of Committee business and activities.

Members of the public may submit written statements for the Committee's review to Dr. William J. Goldberg, Designated Federal Officer, Department of Veterans Affairs (121E), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Dr. William J. Goldberg at (202) 254–0294.

Dated: July 19, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–14815 Filed 7–26–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463, Federal Advisory Committee Act, that a meeting of the Health Services Research and Development Service Merit Review Board will be held August 30 through September 1, 2005 at the Capital Hilton Hotel, 1001 16th Street, NW., Washington, DC 20036.

On Tuesday, August 30, 2005, five subcommittees will convene from 8 a.m. to 5 p.m.—Rehabilitation Outcomes, Implementation and Management Science and Patient Safety Systems, Equity/Women's Health, Nursing Research Initiative (NRI), and Chronic Disease Management. On Wednesday, August 31, 2005, four subcommittees will convene from 8 a.m. to 5 p.m.—Special Populations, Implementation and Management Science and Patient Safety Systems (continuation), Research Methodology, and Chronic Disease Management (continuation). On Thursday, September 1, 2005, four review groups will convene from 8 a.m. to 5 p.m.—Special Populations (continuation), Implementation and Management Science and Patient Safety Systems and Management (continuation), General Health Services Research, and Quality Measurement and Effectiveness. The rooms will be open an hour before the meeting convenes to allow participates to organize their materials and network.

The purpose of the Board is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

After the review groups meet there will be a debriefing provided to members of the Merit Review Board and HSR&D staff by the chairman of each review group. This debriefing, by teleconference, will be to discuss the outcomes of the review session and to ensure the integrity and consistency of the review process.

Each subcommittee meeting will be open to the public the first day convened for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meeting will be closed. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents.

During the closed portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Law 94–409; closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Assistant Director, Scientific Merit Review (124), Health Services Research and Development Service, Department of Veterans Affairs, 1722 Eye Street, NW., Washington, DC, at least five days before the meeting. For further information, call (202) 254–0212.

By Direction of the Secretary.

Dated: July 19, 2005.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–14814 Filed 7–26–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
July 27, 2005

Part II

Department of Education

National Institute on Disability and Rehabilitation Research—Notice of Proposed Long-Range Plan for Fiscal Years 2005–2009; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Notice of Proposed Long-Range Plan for Fiscal Years 2005–2009

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed long-range plan for fiscal years 2005–2009.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) proposes the National Institute on Disability and Rehabilitation Research's (NIDRR) Long-Range Plan (Plan) for fiscal years 2005 through 2009. As required by the Rehabilitation Act of 1973, as amended, the Assistant Secretary takes this action to outline priorities for rehabilitation research, demonstration projects, training, and related activities, and to explain the basis for these priorities.

DATES: We must receive your comments on or before August 26, 2005.

ADDRESSES: Address all comments about this proposed Plan to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

You must include the term "Long-Range Plan" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed Plan. To ensure that your comments have maximum effect in developing the final Plan, we urge you to identify clearly the specific area of the Plan that each comment addresses and to arrange your comments in the same order as the proposed Plan.

During and after the comment period, you may inspect all public comments about this proposed Plan in room 6032, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed Plan. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background: This proposed Plan presents a research agenda anchored in legislative mandate, consumer goals, and scientific initiatives. The proposed Plan has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources.

(2) To establish objectives for research and related activities from which annual research priorities can be formulated.

(3) To describe a system for operationalizing the Plan in terms of annual priorities, evaluation of the implementation of the Plan, and updates of the Plan as necessary.

(4) To direct new emphasis to the management and administration of the research endeavor.

This proposed Plan was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers, including the Commissioner of the Rehabilitation Services Administration, members of the National Council on Disability, and representatives from The Department of Health and Human Services.

The authority for the Secretary to establish the Plan is contained in section 202(h) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(h)).

The proposed Plan is published as an attachment to this notice.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 21, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

National Institute on Disability and Rehabilitation Research: Long-Range Plan for 2005–2009

Preface

The introductory section of the National Institute on Disability and Rehabilitation Research (NIDRR) Long-Range Plan 2005–2009 (Plan) provides basic background about NIDRR. This includes its mission, its administrative location, the legislative and administrative environments in which NIDRR operates, intended beneficiaries of NIDRR research, conceptual overview of the Plan, management and evaluation principles, general highlights of 25 years of NIDRR research, and the structure of the Plan. The first section of the Plan also includes a chapter that defines and describes NIDRR's target population, providing some data on population characteristics. The second section of the Plan presents NIDRR's Logic Model and research domains, and operational strategies to implement the Plan and enhance the accountability and responsiveness of NIDRR. The third section of the Plan delineates each domain of NIDRR research activities and the research strategies that will be employed to address NIDRR's mission.

Part A. Introduction and Background

Introduction

The mission of the National Institute on Disability and Rehabilitation Research (NIDRR or the Institute) is to generate new knowledge and promote its effective use to improve the abilities of people with disabilities to perform activities of their choice in the community, and also to expand society's capacity to provide full opportunities and accommodations for its citizens with disabilities.

The timely convergence of technological breakthroughs and empowerment of people with disabilities has resulted in increased demand for the products of disability and rehabilitation research. These

include not only technological devices but also new knowledge about interventions and policies that will further the mission of NIDRR to advance all aspects of life for people with disabilities.

Organizational Context

NIDRR is located within the Office of Special Education and Rehabilitative Services (OSERS) at the U.S. Department of Education (Department). OSERS has two other components: The Rehabilitation Services Administration (RSA), which administers the State-Federal Vocational Rehabilitation Program, and the Office of Special Education Programs (OSEP), which oversees the implementation of the Individuals with Disabilities Education Act, as amended (IDEA). NIDRR, therefore, is ideally situated to facilitate the transfer of knowledge to consumers, practitioners, and administrators in vocational rehabilitation and special education. NIDRR also has developed extensive linkages to the broader disability and rehabilitation research community through its leadership work chairing the Interagency Committee on Disability Research (ICDR) and through development of significant partnerships with many Federal agencies, research institutions, and consumer organizations. NIDRR values and encourages the collaborative and synergistic nature of its many partnerships, as significant advancements in disability knowledge are achieved through the efforts of many researchers and others over time.

Statutory Mandates

The 1978 amendments to the Rehabilitation Act of 1973, as amended, (the Act) created NIDRR [1] in recognition of both the opportunities for scientific and technological advancements to improve the lives of people with disabilities and the need for a comprehensive and coordinated approach to research, development, demonstration, and information dissemination and training. These amendments charged NIDRR with providing a comprehensive and coordinated program of research and related activities designed to maximize the inclusion and social integration, health and function, employment and independent living of individuals of all ages with disabilities.

In addition to research and development (R&D), the Act authorizes widespread dissemination of research-generated knowledge to rehabilitation service providers, people with disabilities and their families, researchers and others; promotion of technology transfer; leadership of an Interagency Committee to coordinate Federal disability and rehabilitation research; advanced training in disability and rehabilitation research; and increased opportunities for minority institutions and researchers with disabilities or from minority groups.

To guide rehabilitation research, the Act requires publication of the proposed Plan in the **Federal Register**, public comment on the Plan, and subsequent production of a final Plan. The Act specifies that in developing and implementing the Plan, NIDRR should: Outline priorities for NIDRR's activities and provide the basis for such priorities; specify appropriate goals and timetables for covered activities to be conducted under sections 202 and 204 of title II of the Act; develop the Plan in consultation with the Commissioner of RSA, the Commissioner of the Administration on Developmental Disabilities, the National Council on Disability (NCD), and the ICDR; and provide full consideration to the input of people with disabilities and their family members, organizations representing people with disabilities, researchers, service providers and other appropriate entities. The Plan also must provide for widespread dissemination of the results of funded activities, in accessible formats, to rehabilitation practitioners and individuals with disabilities and their families, including those who are members of minority groups or underserved populations.

This proposed Plan was developed with extensive input from a steering committee of researchers, service providers, and people with disabilities. In addition, NIDRR actively solicited comments through a Web site and through six national videoconferences. NIDRR also consulted with the ICDR, the NCD, and other Federal partners. Appendix 1 of this Plan contains a list of steering committee members.

National Policy Context for NIDRR Research

In recent years, several major policy directives have influenced activities and initiatives in disability and rehabilitation research, including implementation of the 1999–2003 NIDRR Long-Range Plan and development of the proposed Plan. These include the U.S. Supreme Court's 1999 decision in *Olmstead* v. *L.C.* (527 U.S. 581), the President's New Freedom Initiative (NFI), and the report of the President's New Freedom Commission On Mental Health. The Americans with Disabilities Act of 1990 (ADA), now in existence for more than a decade, has continued to provide a strong framework for all disability-related activities.

Because maximum community participation for persons with disabilities is the ultimate objective of NIDRR research, the important directives in the *Olmstead* decision resonate with and inform NIDRR's agenda. The *Olmstead* decision stated that title II of the ADA requires public agencies that provide services to people with disabilities to do so in the most integrated settings appropriate to their needs.

Moreover, State agencies that provide housing and services must make plans to move individuals from institutions to community environments and to divert others from institutionalization when appropriate. The *Olmstead* decision allows State agencies to take into consideration limited available funds, but does require that they show progress through planning for the implementation of change. Full implementation of this decision eventually will have far-reaching consequences for people with disabilities and the service systems they use.

The *Olmstead* decision affects disability and rehabilitation research as it highlights the need for new, validated strategies, supports, programs, interventions, guidelines and policies to make living in the community successful for deinstitutionalized individuals or those diverted from potential institutionalization. Individual States are serving as de facto laboratories for research into social policy implementation, and generate a need and an opportunity for the evaluation of best practices. NIDRR will continue its focus on research that addresses effective use of information for people with disabilities and access to appropriate accommodations in society; both are essential components of the Institute's research agenda.

The NFI was announced by President George W. Bush on February 1, 2001, to further the full participation of people with disabilities in all areas of society by increasing access to assistive and universally designed technologies, by expanding educational and employment opportunities, and by promoting full access to community life. Several provisions of the NFI have had a direct

[1] Established as the National Institute on Handicapped Research (NIHR) in the 1978 amendments, the Institute's name was changed to the National Institute on Disability and Rehabilitation Research (NIDRR) by the 1986 amendments to the Rehabilitation Act of 1973, as amended.

impact on NIDRR activities. The NFI included a proposal to increase funding for NIDRR's Rehabilitation Engineering Research Centers (RERCs). Substantial funding was earmarked for the ICDR, which is chaired and staffed by NIDRR, in order to increase coordination of Federal research efforts related to technology and disability. Other aspects of the NFI, such as increased preparedness and more opportunities for employment, telework, universal design, access to assistive technology, increased homeownership, and access to mental health services, also influenced NIDRR's activities and research during much of the preceding four years.

The President's New Freedom Commission on Mental Health (Commission), established through Executive Order 13263 on April 29, 2002, examined the mental health care system in the Nation and issued recommendations for change. In July 2003, the Commission issued its final report, "Achieving the Promise: Transforming Mental Health Care in America". The report identified barriers to care within the mental health system and provided examples of community-based care models that have worked successfully to coordinate and provide treatment services. The Commission concluded that the mental health service delivery system in the United States is fragmented and should be substantively transformed. Goals for the transformed system include ensuring that: (1) Americans understand that mental health is essential to overall health; (2) mental health care is consumer and family-driven; (3) disparities in mental health services are eliminated; (4) early mental health screening, assessment, and referral to services are common practice; (5) excellent mental health services are delivered and research is accelerated; and (6) technology is used to access mental health care and information.

The realization of these goals will require the development and transfer of new knowledge about barriers to recovery and community integration, effective treatment interventions and supports, best practices in services delivery and increasing access to care, technology to support living independently in the community, and accommodations to promote employment. The Commission's final report contains substantial implications for NIDRR's research agenda, as well as those of its Federal partner agencies.

Overview of Long-Range Plan Concepts

The proposed Plan builds on the work of the 1999–2003 Long-Range Plan, while responding to new developments in the disability and rehabilitation research field and in government. Both plans stress the importance of NIDRR's significant role as a research institute in the public interest, carrying out scientific research to meet the diverse needs of people with disabilities.

The contextual paradigm of disability and rehabilitation research will continue to frame the NIDRR research agenda. This paradigm overcomes the limitations imposed by a medical model of disability. The new paradigm of disability maintains that "disability is a product of the interaction between characteristics of the individual (*e.g.*, conditions or impairments, functional status, or personal and social qualities) and the characteristics of the natural, built, cultural, and social environments." (NIDRR Long-Range Plan 1999–2003.)

The contextual paradigm of disability was explicated in the 1999–2003 NIDRR Long-Range Plan and significantly influenced the design of NIDRR research during the past five years. The contextual paradigm of disability helps to focus NIDRR research on new research issues; new approaches for defining, measuring, counting and categorizing disability; and new methods for conducting and managing research. Definitions and enumeration of disability are addressed in the subsequent chapter on the characteristics of the target population and in the demographics research chapter. New approaches to measurement issues and research methods will be addressed in each of the chapters on research domains (*e.g.*, participation and community living, health and function, technology for access and function, employment, and demographics), as will new research methods. New research issues will be discussed in the individual chapters on research domains.

The Plan continues the important research areas of universal design and the emerging universe of disability. The new Plan further recognizes the importance of interdependence, not only in its continued emphasis on personal assistance services, but also on supports for family and other informal caregivers, direct care workers and paraprofessionals in facilitating community living and participation in the community.

The Plan expands NIDRR's emphasis on the major research "domains" of employment, participation and community life, health and function, and technology for access and function. In these areas, the Plan continues to emphasize areas of employment incentives and accommodations, access to health care, and the preference for supports rather than services as the model for facilitating the community integration of people with disabilities. The previously termed *domain of independent living and community integration* in the 1999–2003 Long-Range Plan has been renamed *participation and community living* to better capture the broad goal of increased participation, which is intrinsic to the NIDRR mission. Additionally, the area of *disability demographics* has been elevated to a major domain and renamed *demographics*. This change recognizes and reinforces the importance of improved disability data for policy, design of services and future research initiatives.

The Plan also embraces the concept of disability as a holistic phenomenon by extending this concept into the research field. This is achieved by emphasizing interactions between two or more domains, thus indicating and stressing the important interrelationships among the research domains throughout the Plan.

Accountability, Management and Evaluation of Research

The Plan introduces major changes in accountability, management, and evaluation of the research portfolio, some of which reflect new standards of accountability for NIDRR as an entity, while others relate to the performance of grantees.

In 1993, Congress passed the Government Performance and Results Act (GPRA), intended to improve accountability of Federal programs through strategic planning and performance assessment. GPRA requires Federal agencies to develop strategic plans for all programs, identifying performance goals and the indicators that would be used to measure progress. In 2002, the President's Management Agenda was announced, emphasizing the use of objective criteria to assess program results for budgeting purposes. The Office of Management and Budget (OMB) developed the Program Assessment Rating Tool (PART) to assess each program's performance. Government-wide policy shifts have resulted in changes in NIDRR management procedures to emphasize standards for assessing its work and that of its grantees. NIDRR has developed its response to the PART document by using a logic model, as presented in the next part of the Plan.

While NIDRR will continue to emphasize the same or similar research areas as those delineated in the 1999–

2003 Long-Range Plan (*i.e.*, employment, health and function, technology for access and function, participation and community living, and disability demographics, which are termed *domains* in this Plan), there will be new emphases on stages of knowledge development. These stages relate to the types of objectives and end products that grantees are expected to pursue. These stages include: (1) Discoveries; (2) theories, measures and methods; and (3) interventions, products or devices, and environmental adaptations.

In program reviews and other evaluations, NIDRR has found that disability and rehabilitation research often lacks validated theories and measures. The degree of deficit varies from one domain to another, and within domains, in relation to certain disability types or other target populations. Equally important is the tendency to sometimes reinvent data collection instruments for each individual study, rather than create a more robust knowledge base by using instruments that already are validated. Validated measurement tools are critical to evaluating research outcomes, and for determining which research findings are appropriate for dissemination to various constituents. Research projects at the second stage of knowledge development will develop and test the validity of theories, measures, and methods as applied to disability research.

The focus on research stages of knowledge development will enable NIDRR to set more measurable goals and to assess the extent to which grantees have produced relevant outputs and outcomes. For example, whether a particular research topic is appropriate for the interventions, products, and environmental adaptations stage will be an important judgment, and one that NIDRR generally will announce with a published priority. In this third stage of knowledge development, researchers will test the effectiveness of specific interventions or program configurations.

Accomplishments of NIDRR Researchers

NIDRR researchers and representatives of the disability community generally attribute two categories of accomplishments to NIDRR. The first category includes NIDRR leadership in important areas, pioneering inquiries, and general principles. The second category consists of the work of NIDRR-supported grantees in enhancing the knowledge base and disseminating new findings. The two categories are often complementary and interdependent. The Institute has reached its 25th Anniversary, and a backward glance will highlight some important NIDRR achievements.

The need to examine the many dimensions of the new paradigm of disability, also referred to as the contextual paradigm of disability, provided the catalyst for an innovative collaboration between NIDRR and the American Psychological Association (APA). The *Bridging Gaps* research conference examined the impact of the paradigm shift on psychology and rehabilitation research. One presenter at the *Bridging Gaps* conference described the significant effects of the paradigm shift:

> NIDRR's new paradigm for conceptualizing disability is a powerful tool for focusing both research and service delivery systems on interactions that can significantly affect outcomes for persons with disability. If we are trying to understand outcomes through research or attempting to influence outcomes by direct intervention, or both, it is critical to understand and apply this paradigm by paying increased attention to the person-environment interactions. As with any good theory, this one illuminates aspects that were in the dark under the older paradigm and suggests ways of thinking that were not intuitively obvious.[2]

Related to the new paradigm are several new directions in research that also have served to lead the field. Among the research issues are universal design; the concept of an emerging universe of disability; and emphasis on accommodations. NIDRR has been a leading international proponent of universal design, which is defined as design for a built environment that can be used by nearly all people—living, working and playing together. Rather than using design parameters based on idealized measures of human factors that restrict usability to a narrow segment of the population, universal design works to accommodate a wider range of functional abilities through approaches including modular designs that easily can be modified.

The *emerging universe of disability* refers to a disabled population that is shaped by demographic changes in age, immigrant status and other socioeconomic factors, by new types of potentially disabling conditions, by consequences of treatments of existing conditions, and by differential distribution of conditions and their consequences. The concept of an emerging universe of disability has helped to increase attention in the last five years to the unique needs of this population, and to multiply the research endeavors focusing on cultural and economic factors affecting disability.

NIDRR has pursued a model for addressing obstacles facing people with disabilities that have shifted from service provision to supports that enable self-direction. Supports may include personal assistance services (PAS), assistive technology, civil rights, and peer support, and involving people with disabilities in the conduct and administration of disability and rehabilitation research. Promoting accommodations and assistive technology have been two areas of NIDRR leadership that are reflected in new public policy, including in the ADA and the NFI. Accommodations may be physical, technological or programmatic, and entitlement to accommodations is a cornerstone of the ADA. Accommodations are particularly important in supporting work and education. NIDRR researchers have developed assistive technology devices addressing information technology (IT), communications and speech, and neurological, mobility, and manipulation issues, among other functional areas. Accommodations also encompass changes in program operations to enable people with disabilities to participate fully; these changes may include times and locations, structure of activities and accessibility.

NIDRR has sponsored research on supports that help individuals with disabilities make their own choices and direct their own lives. Supports include peer-to-peer and family-to-family programs, PAS, self-advocacy skill development, consumer direction, assistive technology, and environmental modifications, all which have been subjects of considerable NIDRR research.

In 1982, NIDRR convened the first meeting of the member agencies, now known as the Interagency Subcommittee on Disability Statistics (ISDS), to coordinate and promote the generation of improved statistical knowledge about disability populations. This committee has met monthly for 20 years. The ISDS achievements include: Collaborating to publish a book on statistics of disability populations (Thompson-Hoffman, S. Fitzgerald Storck, I. (Eds.), *Disability in the United States: A Portrait from National Data* (1991); and serving as a consultation and review resource for other public and private agencies

[2] Nirenberg B, "A system for bridging the financial and cultural gaps in the well-being of persons with disabilities", in *Bridging gaps: Refining the disability research agenda for rehabilitation and the social sciences—Conference proceedings.* Menomonie: University of Wisconsin-Stout, Stout Vocational Rehabilitation Institute, Research and Training Centers, edited by F.E. Menz and D.F. Thomas, 2003, p. 239 *(http://www.rtc.uwstout.edu/pubs/pubs.htm).*

designing surveys of individuals with disabilities. The ISDS also has facilitated a substantial amount of sharing and exchange of information among member agencies, and joint funding of projects among these agencies.

Structure of the Plan

The Plan is divided into three parts. Part A includes this introduction and a chapter on NIDRR's target population. NIDRR has, by law, a number of target populations, including people with disabilities and their families; individuals who provide vocational rehabilitation, or medical, technological and direct support services; educators; policymakers; businesses; and the general public. However, people with disabilities clearly are intended to be the ultimate beneficiaries of all NIDRR activities, and the next chapter focuses on defining and describing that population.

Part B addresses accountability, management, and evaluation through the use of a logic model and a strategy of "managing for results." The NIDRR Logic Model provides a theoretical base for the evaluation of program outcomes, and will serve to ensure consistency throughout a planning and feedback cycle. In "managing for results," NIDRR presents its strategy for making its operations more systematic and responsive to the concerns of all its constituents. The management chapter focuses on setting regular, fixed dates for the steps of annual grants competitions—announcement of priorities and closing dates, peer reviews, and grant award announcements—and establishing standing panels for consistency and expertise in peer review. Additionally, NIDRR will focus on setting priorities that encourage greater leeway for applicants in designing research. NIDRR will be enhancing its monitoring and evaluation processes to provide continuous feedback to improve its research portfolio.

Part C discusses three arenas of outcomes achievement: Research and development (R&D), knowledge translation (KT) and capacity building (C–B). The R&D arena is divided according to the domains of NIDRR research—employment, health and function, technology for access and function, participation and community living, and disability demographics.

The R&D arena is subdivided into stages of knowledge development which include: Discoveries; theories, measures and methods; and interventions, products and devices, and environmental modifications. Under each of these arenas, NIDRR will develop a set of implementation strategies that will identify potential research that could address the anticipated outcomes in the given domain. NIDRR will publish these implementation strategies as proposed priorities and, following public comment, final priorities annually, on a combined basis.

The *Knowledge Translation* (KT) chapter discusses the arena of KT and introduces reforms in NIDRR's current knowledge dissemination program. The new approach to KT features a process for assessing the scientific validity of findings to be transferred, using consortia and other external organizations for evaluation.

In the arena of capacity building (C–B), NIDRR has focused its efforts on the personal and professional development of scientists, advocates, and people with disabilities, and is expanding this approach to include development of the capacity of institutions and organizations, especially those that address the needs of underserved populations.

Appendix 1 to this Plan lists the NIDRR 2005–2009 Long-Range Plan steering committee members.

The Target Population: Definitions and Characteristics

Definitions of Disability

The ICDR, based on a survey of publicly available documents, identified more than 60 definitions of disability in the Federal Government alone, generally related to eligibility requirements for benefits or services, but also reflected in major national surveys that determine the Nation's estimates of disability. NIDRR is governed by the definitions in Title II of the Act. The definition that applies to Title II describes a person with a disability as: "any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment" (29 U.S.C. 705).

NIDRR is required to focus especially on experiences of individuals with the most significant disabilities. The Act defines an *individual with a significant disability* in functional terms, the resulting need for multiple vocational rehabilitation services over an extended period of time, and indicates that the definition includes, but is not limited to, a list of specific conditions (29 U.S.C.705). Multiple services over an extended period of time include accommodations needed during the rehabilitation process and/or during subsequent employment. Under this definition of as *individual with a significant disability*, NIDRR is concerned with finding research solutions for people with all types of disabilities—mobility and manipulation, sensory, cognitive and emotional. The target population includes individuals of all ages. Section 21 of the Act requires specific attention to underserved populations, those individuals with disabilities who are additionally marginalized by membership in minority racial or ethnic populations.

Prevailing definitions of disability used by Federal agencies do not reflect the new paradigm of disability concepts because the Federal definitions typically stress limitations and do not mention the potential role of accommodations or environmental conditions. The field of disability and rehabilitation research also continues to lack a widely accepted conceptual framework to identify and measure disability. The newer conceptual frameworks all focus on some continuum that progresses from etiology through disease, impairments and functional limitations, which, when combined with external or environmental conditions, may cause deficits in the performance of daily activities or desired social roles. The latest proposal for classifying disability is the International Classification of Functioning, Disability and Health (ICF) developed by the World Health Organization (WHO), and last revised in 2001.[3] A diagram of the ICF classification schema can be found at *http://www.cessi.net/longrangeplan/icf.htm*.

The ICF allows one to view disability as a dynamic interaction between the person and the environment. ICF's diagram of its classification schema depicts the multiple interactions of the person with the environment, and the various aspects of the person. The ICF provides a method for organizing measures of function, activity, participation and environmental context. NIDRR and many of its partner agencies are considering the appropriateness of applying the ICF to U.S. populations, and are engaged in assessments of the necessary measurement tools and data systems. A later chapter of this Plan, *Disability*

[3] The ICF represents a revision of the International Classification of Impairments, Disabilities, and Handicaps (ICIDH), which was first published by the WHO for trial purposes in 1980. Developed after systematic field trials and international consultation, it was endorsed by the Fifty-fourth World Health Assembly for international use on 22 May 2001 (resolution WHA54.21). *http://www3.who.int/icf/intros/ICF-Eng-Intro.pdf*.

Demographics, presents a more thorough discussion of the ICF.

Prevalence of Disability

Current figures on the number of people with disabilities in the United States indicate an estimated 54 million individuals have disabilities, based on definitions employed in national surveys, and self-reported responses to them. General definitions and descriptions of the target population, in terms of the domains of NIDRR research—employment, health and function, participation and community living, and technology for access and function—are provided in this section. A later chapter of the Plan includes an analysis of the data in current measurement systems, and identifies gaps to be addressed by future research.

General descriptors of NIDRR's target population, drawn from data about the disabled population, show that disability is closely related to aging and poverty. Persons with disabilities are more likely to be elderly, poor, of low educational status, and unemployed than those with no disabilities. People with disabilities are less likely to participate in community and social activities and are more likely to lack adequate transportation. However, persons with disabilities are about as likely as those without disabilities to have health insurance (relying heavily on Medicare and Medicaid) and somewhat more likely to have an identified source of health care. The disabled population is not monolithic, and there are many variations based on type of disability and age of onset, for example, as well as on the demographic characteristics mentioned here.

Tables 1 and 2 describe the overall disabled population—its size, age and race distributions, and the frequency of conditions underlying the disabilities. Table 3 includes type of disability in the characterization. These tables are from the U.S. Census Bureau, Census 2000, Summary File 3.

TABLE 1.—PREVALENCE OF DISABILITY BY AGE AND RACE

[Percent with a disability]

Race and Hispanic or Latino origin	Total population aged 5 and older	5 and older	5 to 15	16 to 64	65 and older
Total	257,167,527	19.3	5.8	18.6	41.9
White alone	195,100,538	18.5	5.6	16.8	40.6
Black or African American alone	30,297,703	24.3	7	26.4	52.8
American Indian and Alaska Native alone	2,187,507	24.3	7.7	27	57.6
Asian alone	9,455,058	16.6	2.9	16.9	40.8
Native Hawaiian and Other Pacific Islander alone	337,996	19	5.1	21	48.5
Some other race alone	13,581,921	19.9	5.2	23.5	50.4
Two or more races	6,206,804	21.7	7.1	25.1	51.8
Hispanic or Latino (of any race)	31,041,269	20.9	5.4	24	48.5
White alone, not Hispanic or Latino	180,151,084	18.3	5.7	16.2	40.4

TABLE 2.—PREVALENCE OF DISABILITY BY AGE AND GENDER

Total			Males		Females	
	Number	%	Number	%	Number	%
Population 5 years and over	257,167,527	100	124,636,825	100	132,530,702	100
With any disability	49,746,248	19.3	24,439,531	19.6	25,306,717	19.1
Population 5 to 15 years	45,133,667	100.0	23,125,324	100.0	22,008,343	100.0
With any disability	2,614,919	5.8	1,666,230	7.2	948,689	4.3
Population 16 to 64 years	178,687,234	100.0	87,570,583	100.0	91,116,651	100.0
With any disability	33,153,211	18.6	17,139,019	19.6	16,014,192	17.6
Population 65 years and over	33,346,626	100.0	13,940,918	100.0	19,405,708	100.0
With any disability	13,978,118	41.9	5,634,282	40.4	8,343,836	43.0

The following table, Table 3, presents information about three categories of disability—sensory, physical, and mental—by age and gender. The table also includes additional information about major life activities. Thus, these are not unduplicated counts, and the totals exceed the estimated number of individuals who have disabilities.

TABLE 3.—CHARACTERISTICS OF THE CIVILIAN NON-INSTITUTIONALIZED POPULATION BY AGE, DISABILITY STATUS, AND TYPE OF DISABILITY: 2000

Total			Males		Females	
	Number	%	Number	%	Number	%
Population 5 years and over	257,167,527	100	124,636,825	100	132,530,702	100
With any disability	49,746,248	19.3	24,439,531	19.6	25,306,717	19.1
Population 5 to 15 years	45,133,667	100.0	23,125,324	100.0	22,008,343	100.0
With any disability	2,614,919	5.8	1,666,230	7.2	948,689	4.3
Sensory	442,894	1.0	242,706	1.0	200,188	0.9
Physical	455,461	1.0	251,852	1.1	203,609	0.9
Mental	2,078,502	4.6	1,387,393	6.0	691,109	3.1
Self-care	419,018	0.9	244,824	1.1	174,194	0.8

TABLE 3.—CHARACTERISTICS OF THE CIVILIAN NON-INSTITUTIONALIZED POPULATION BY AGE, DISABILITY STATUS, AND TYPE OF DISABILITY: 2000—Continued

	Total		Males		Females	
	Number	%	Number	%	Number	%
Population 16 to 64 years	178,687,234	100.0	87,570,583	100.0	91,116,651	100.0
With any disability	33,153,211	18.6	17,139,019	19.6	16,014,192	17.6
Sensory	4,123,902	2.3	2,388,121	2.7	1,735,781	1.9
Physical	11,150,365	6.2	5,279,731	6.0	5,870,634	6.4
Mental	6,764,439	3.8	3,434,631	3.9	3,329,808	3.7
Self-care	3,149,875	1.8	1,463,184	1.7	1,686,691	1.9
Going outside the home	11,414,508	6.4	5,569,362	6.4	5,845,146	6.4
Employment disability	21,287,570	11.9	11,373,786	13.0	9,913,784	10.9
Population 65 years and over	33,346,626	100.0	13,940,918	100.0	19,405,708	100.0
With any disability	13,978,118	41.9	5,634,282	40.4	8,343,836	43.0
Sensory	4,738,479	14.2	2,177,216	15.6	2,561,263	13.2
Physical	9,545,680	28.6	3,590,139	25.8	5,955,541	30.7
Mental	3,592,912	10.8	1,380,060	9.9	2,212,852	11.4
Self-care	3,183,840	9.5	1,044,910	7.5	2,138,930	11.0
Going outside the home	6,795,517	20.4	2,339,128	16.8	4,456,389	23.0

Part B: Managing for Success

Preface

This section of the Plan contains two chapters. The first chapter describes NIDRR's logic model for outcomes achievement, which has served as the basis of development of the Plan.

The second chapter details the systematic approaches NIDRR intends to pursue to advance the management of the Institute's operations. A central feature is a move toward a fixed competition schedule. The second chapter also describes efforts to enhance NIDRR's scientific review process, and the emphasis on outcomes evaluation.

I. NIDRR Logic Model

Introduction

NIDRR has based the development of the Plan on its mission statement. The mission statement emphasizes participation in the community by persons with disabilities as the overall objective of NIDRR's investment activities. NIDRR's mission statement was derived from the enabling legislation for NIDRR. In developing its research agenda, NIDRR drew upon accountability guidelines from the Department and OMB, which focus on outcomes of research activities.

To provide a theoretical framework for the Plan and guide its implementation, NIDRR developed its program Logic Model (see Appendix 2), which represents graphically the different types of short-term and intermediate outcomes that NIDRR's investments in R&D are designed to produce or contribute to and the interrelationships among these intended outcomes. The Logic Model also serves as the framework for depicting NIDRR's planned performance assessment and outcomes evaluation processes, which are key to demonstrating the Institute's accountability for research results. The width and density of the upward-directed arrows, at the bottom of the Logic Model diagram, indicate that the degree of accountability and hence intensity of NIDRR efforts in assessment and evaluation is greatest for the short-term outcome arenas.

How the NIDRR Logic Model Contributes to the Long-Range Plan

The value of any logic model is that it provides:

- A tool for outcomes planning and performance management that depicts the "chain of events" linking outcome goals to outputs, activities and inputs.
- A vehicle for communicating program goals and guiding program improvement and evaluation.
- A graphic representation or "blueprint" of the key elements of a program or intervention, and how these elements will work under certain conditions to "solve" identified problems.

Definitions of Components of the NIDRR Logic Model

Situation

The uppermost block in the Logic Model, labeled "situation," highlights the gaps in knowledge, skills, policy and practice that hinder attainment of parity in employment, health and function, and participation for people with disabilities compared to the non-disabled population (see Appendix 2). The Logic Model depicts the short-term and intermediate outcomes that NIDRR seeks to achieve directly and indirectly through its investments in research and related activities to eliminate these gaps and inform needed changes in policy, practice, behavior, and system capacity. These advancements and changes, in turn, contribute to the long-term outcome of improving the lives of people with disabilities.

Major Domains of NIDRR Mission

The substantive focus of NIDRR's investment activity is R&D applied to maximizing the participation of people with disabilities. This activity is centered on the three major life domains of interest to NIDRR: (a) Employment, (b) participation and community living, and (c) health and function. In the Logic Model, interlocking circles represent these inter-related domains (see Appendix 2). The achievement of goals related to the three major life domains is facilitated by technology, which addresses both access and function, and knowledge of the demographics of disability, including characteristics and trends in the population of people with disabilities. Policymakers, service providers, researchers, and disability advocates are the principal users of demographic data. NIDRR is uniquely positioned to address these inter-connected domains.

The *employment* circle of the Logic Model represents research on employment-related activities and strategies to improve employment outcomes and labor force participation. Lack of parity in employment remains one of the greatest barriers to independence for people with disabilities. Research is needed on strategies to enable Americans with disabilities to access careers, integrate into the workforce, and participate as full citizens in the economic marketplace. Employment, although an integral part of community participation, is treated as a separate

domain because of NIDRR's statutory relationship with the Federal-State vocational rehabilitation program, and because of its overwhelming significance to people with disabilities and society.

The *participation and community living* circle of the Logic Model represents the interaction with the social and built environment in a way that maximizes full inclusion and integration of people with disabilities. This domain focuses on direct supports that increase the availability of acceptable options and opportunities to make choices and enhance participation in everyday activities. For the promise of full participation and community living to become a reality, people with disabilities need safe and affordable housing, access to transportation, access to the political process, and access to the services, programs and activities offered to all members of the community at public and private facilities.

The *health and function* circle of the Logic Model represents individual factors such as the structure and function of the human body, as well as strategies to prevent, identify, assess or resolve causes and consequences of disability. In this domain, as in the others, NIDRR stresses the importance of individual choice—choosing providers, services and objectives. The health and function domain encompasses research to achieve outcomes at the individual level—improved functioning, fitness, and health, including mental health. This domain also addresses goals at the system level, such as more effective service delivery systems, better access (financial and logistical) to health care services, and the assessment of rehabilitation effectiveness.

The outer ring of the Logic Model includes two additional domains: *technology for access and function* and *demographics of disability*. Technology for access and function is essential to community integration, employment, and health and function, and plays a major role in enabling a good fit between individuals with disabilities and the environment. The domain of demographics of disability emphasizes describing and characterizing people with disabilities to provide a better understanding of the phenomenon of disability. Improved statistics on disability and participation are critical to developing policies and strategies that will be effective in addressing barriers to participation faced by individuals with disabilities, and in assessing the Nation's progress in improving life outcomes for individuals with disabilities.

Long-term Outcomes

Generally, outcomes refer to anticipated or actual changes in a target system that occurs from carrying out program activities and outputs. Long-term outcomes are the desired end-results of a program at the societal level; long-term outcomes are indicated by changes in overall conditions of the target population. Given their scope, long-term outcomes go beyond the direct or indirect influence and control of any one agency. Because of this, NIDRR is not accountable for producing, by itself, societal level improvements in the overall conditions of people with disabilities. Rather, the Institute's long-term outcomes, which focus on eliminating disparities in employment, participation and community living, and health and function, serve as critical anchor points guiding all strategic planning and research management efforts. Consistent with the Act, NIDRR's span of accountability centers on generating, promoting and disseminating short-term outcomes that consist of new knowledge resulting from the combined accomplishments of its grantees. These short-term outcomes, when combined with KT activities, can be used to inform policy, change practice and behavior, and expand system capacity, which in turn will contribute to improving the lives of individuals of all ages with disabilities.

Short-Term Outcome Arenas

Short-term outcomes refer to advancements in understanding, knowledge, skills and learning systems that result from the successful implementation of program activities and the use of R&D related outputs. Within the Logic Model and in the context of disability and rehabilitation research, there are three short-term outcome arenas, corresponding to NIDRR's investments in three functional programs. These functional arenas are: (1) C–B (2) R&D; and (3) KT, corresponding to NIDRR's three strategic goals (See Part C). Given its centrality to the NIDRR mission, the R&D arena is further divided to reflect three stages of knowledge development. The three stages recognize that advancements in knowledge may occur through (a) discoveries, (b) new or improved theories, measures and methods, or (c) interventions, products, devices, and environmental adaptations. The generation of new knowledge in this short-term outcomes block is the primary area of direct responsibility for which NIDRR holds itself accountable.

Although the three strategic goals are discussed separately in Part C of the Plan, they are inextricably intertwined, in that research is supported by C–B and feeds KT, but the process is not linear. Inevitably, the generation of new knowledge raises new questions, calls for new skills and leads to further discoveries, theories and interventions, multiplying the efficacy of NIDRR's investment.

Research and Development

R&D is divided into three generally sequential, but closely related, outcome arenas, corresponding to stages in knowledge development. Characteristically, research begins with significant discoveries (stage one) and moves through theory, measure and method development (stage two) ultimately to enable the development of effective new and improved interventions, products and devices, and environmental adaptations (stage three). In this context, a product may be a new device or technique. An adaptation may include methods to improve physical, behavioral or virtual environments.

The first two stages—discoveries and new or improved theories, measures and methods—provide the critical foundation for new ideas, information, analyses, and scientific tools (*i.e.*, theories, measures, methods) upon which to base the conduct of valid and reliable research and development activity. NIDRR will shape future priorities based on considerations of the state of knowledge development in a particular subject area to determine, for example, if an adequate theoretical basis exists upon which an intervention can be developed.

Capacity Building

NIDRR will focus its specific C–B activities primarily on the need to train new investigators to enable them to pursue topics of importance to NIDRR's research agenda, and to otherwise increase the capacity of the system to carry out complex studies. The Institute's training agenda includes cross-training of individuals already skilled in other disciplines in topics relevant to disability issues, and training of promising young investigators, with particular emphasis on underrepresented groups and persons with disabilities to facilitate their participation in the research process. In addition, NIDRR specifically supports institutional C–B through targeted initiatives. Finally, NIDRR plays an active leadership role throughout the Department and the Federal government in raising

awareness of the needs of people with disabilities and issues of equity.

Knowledge Translation

Equally critical to NIDRR's mission is the ability to effectively translate and transfer the knowledge and products generated through R&D activities. NIDRR must successfully disseminate this information for use by intended target audiences, including individuals with disabilities and their families and caregivers. Indeed, NIDRR will include an assessment of the potential for translation of knowledge gained through the project to the target audiences in considering new projects for support. KT includes the important work of technology transfer that directly promotes the widespread commercialization and utilization of research results. Previously referred to as the "Knowledge Dissemination and Utilization (KDU)" component of NIDRR's agenda, this arena has been renamed KT to reflect the evolution of translation science as a field and increased emphasis in the Federal government on the importance of systematic review and synthesis of R&D results.

Intermediate Beneficiaries

This component refers to the immediate intended beneficiaries of NIDRR products and services as well as the recipients of the outputs and outcomes generated by NIDRR-funded grantees. This array of recipients includes individuals with disabilities and family members, researchers, clinicians and engineers, educators, service providers, product developers, policy experts and decision-makers, Federal and non-federal partners, industry representatives, employers, media, and consumer advocates.

Intermediate Outcome Arenas

Intermediate outcomes refer to changes in policy, practice, behavior, and system capacity that occur in part as a result of the external use or adoption of NIDRR-funded outputs and advances in knowledge. Unlike short-term outcomes, intermediate outcomes are under the indirect influence of program activities and outputs and consist of changes in decision-making and societal action. Because of the multiple influences on these intermediate outcomes, NIDRR can only partially influence these outcomes, and thus cannot be held accountable to the same degree as for short-term outcomes.

Intended Beneficiaries

The intended beneficiaries of NIDRR's overall investments are people with disabilities and their families. These individuals may benefit either directly, or more likely, indirectly through changes in policy, practice, behavior and system capacity brought about through NIDRR's investments. The of purpose of NIDRR's activities, as described above in discussing the *Long-term Outcomes,* is the elimination of disparities in employment, participation and community living, and health and function. Intended beneficiaries include people with impairments or limitations in mobility, communications, cognition, and behavior.

Performance Assessment & Outcomes Evaluation

The last component of the NIDRR Logic Model depicts NIDRR's multi-level evaluation system. The intensity of the assessment and evaluation efforts is proportional to the thickness of the arrows of the Logic Model, and is greatest for short-term outcomes (see Appendix 2). Performance assessment takes place annually and is focused on evaluating grantee progress and the quality and relevance of the aggregate of R&D findings and accomplishments. Moreover, the performance assessment identifies the strengths and weaknesses of portfolio areas, which are defined as clusters of projects in NIDRR's domains and the Institute's program funding mechanisms. Data from these annual performance assessment and portfolio reviews are used to satisfy GPRA and PART requirements and inform program improvement efforts. Outcomes evaluation, in contrast, occurs periodically and is focused primarily on a retrospective assessment of the long-term achievements in a portfolio area relative to both short-term and intermediate outcomes, as well as any contributions at the societal level toward improving the overall condition of people with disabilities. Both types of evaluations are performed by independent review panels comprised of scientists, engineers, clinicians, service providers, policy analysts, industry representatives, consumer advocates, individuals with disabilities, and family members.

Contextual Factors

Some of the factors that may change the activities implemented by NIDRR, either directly or indirectly, are called "contextual factors" and are shown at the base of the Logic Model (see Appendix 2). Changes may be mandated directly in changing policies or indirectly in a changing environment that might require new strategies. The contextual factors include variable funding, scientific and technological advancements, societal attitudes, economic conditions, changing public policies, and coordination and cooperation with other government entities.

II. Managing for Results

A. Overview

In this chapter, NIDRR presents the management agenda for implementing its disability and rehabilitation research portfolio. Management of NIDRR research programs and projects encompasses many distinct aspects: Provision of a results-oriented planning environment, selection and scheduling of priorities, operation of program mechanisms to carry out research and related activities, organization and monitoring of projects, and support for interagency and international research efforts.

To further advance the management of research and related activities, NIDRR is developing plans to improve its grant-making procedures and to expand the scope and enhance the effectiveness of its standing peer review panels. The Plan delineates and clarifies the processes of decision-making, and includes a new emphasis on research portfolios and research clusters, which use the different program mechanisms to integrate disparate research projects in a given topical area. Over the lifetime of the Plan, NIDRR will systematically evaluate all aspects of its management activities.

B. Results-Oriented Planning Environment

To facilitate advancements in rehabilitation and disability and rehabilitation research, NIDRR will delineate and plan strategic goals, identify specific program options for achieving the goals over time, and manage a wide range of projects derived from priorities based on these goals and program decisions. GPRA requires that all Federal managers link resources to results through use of outcome performance measures.

NIDRR research comprises a diverse portfolio of projects. As is true of overseeing and directing any sizeable portfolio of investments, management must set criteria for choices, time investments, execute decisions, monitor returns, evaluate outcomes, rebalance as necessary, and report results. NIDRR anchors its portfolio management and performance evaluation systems in the legislative mandate set forth in the Act. As described in the previous chapter, NIDRR translates the legislative mandate into its mission and strategic goals through continually assessing

performance, measuring project progress and short-term outcomes, tracing intermediate outcomes as the target systems use the projects' results, and identifying long-term outcomes as depicted in the NIDRR Logic Model.

Within the accountability goals established by GPRA and PART, NIDRR is responsible for measuring and reporting the progress of its many research projects. NIDRR managers and program stakeholders face the continuing challenge of delineating longer-term achievements, as these will improve the use of scarce resources, advance outcome measures and provide feedback on strategic goals.

Priority Planning

NIDRR, like all Federal agencies, must plan and schedule its decisionmaking for portfolio management over a multi-year time frame. At any given time, NIDRR is engaged in implementing and managing ongoing projects, conducting grant competitions and making new awards, planning for the next immediate budget cycle, and assessing the consequences of multi-year funding decisions for subsequent funding cycles. Table 4 presents time frames and descriptions of activities for the management of NIDRR research.

TABLE 4.—TIME FRAMES FOR PLANNING AND IMPLEMENTING MANAGEMENT IMPROVEMENTS

Time horizon	Process	Description of activities	Product
36–24 months prior to start of fiscal year (FY).	Pre-planning	Review Plan, strategic and performance goals, portfolios of existing projects to address emergency opportunities and ongoing needs.	Potential priority areas in broad terms.
24–18 months now to start of FY.	Planning	Initial environmental scan. identification of potential projects.	Refined list of priorities.
9 months prior to start of FY through start of FY.	Program Priority Choices	Based on budget and identified goals and criteria, establish specific priorities and issued announcement.	Priorities.
During FY	Pre-Award Decision and Award.	Make award decisions based on peer review and program considerations.	Projects chosen for award based on peer review and extent to which purposed activities match Plan.
1 to 5 years post-award	Post-Award Management.	Throughout project periods, monitor progress, assess trends, feed back data for planning and portfolio decisions.	Data on project and center operations.
3–10 years post award	Performance evaluation.	Review goal measurements, programs, and combinations of projects for outputs, outcomes, and impacts.	Documented outcomes.

Timeline

This Plan describes a number of important changes that will improve the way NIDRR manages its multiple responsibilities to constituencies, grantees and potential grantees, and the public. These changes will take five years or longer to be fully realized. The timeline for completion of these efforts is identified in Table 5.

TABLE 5.—TIMELINE FOR MANAGEMENT ACHIEVEMENTS

Item	Description/implication	Timeframe
Regulation changes	Update selection criteria and legislative references; implement small grant authority; describe procedures for resubmission; establish proposal content.	1 year.
Fixed competition schedule.	Annual announcement of priorities; notices inviting applications, peer reviews, and grant awards at regular dates.	3 years.
Standing panels for competition review.	Enhance content-expertise standing panels	3 years.
Evaluate clusters	Using expert panels, review topical project clusters	5 years.
GPRA panels	Establish standing panels for annual review of quality of outputs, research rigor, short-term outcomes	3 years.
Environmental scan	Establish procedures for conducting comprehensive studies of relevant technological, scientific and policy changes with implications for disability.	4 years.
Independent expert review.	Conduct comprehensive review by independent panel of status of research on disability	3 years.

To accomplish a number of goals, NIDRR plans to initiate efforts to change regulations governing the management of its research portfolio. NIDRR will make changes to selection criteria that will improve the quality of its peer review and provide for more consistent evaluation. Moreover, the initiation of a streamlined, systematic process for resubmission of applications would be useful for grantees and peer reviewers. The establishment of elements needed for a standardized proposal narrative would facilitate a more consistent review. The following steps are intended to advance NIDRR research management:

- NIDRR will implement a regular, fixed competition schedule. This will facilitate the recruitment and retention of standing panels of reviewers.
- NIDRR will undertake a rotating review of all major components of its research portfolio.
- In order to meet the obligations of GPRA, NIDRR will establish expert panels to conduct an annual review of its clusters of projects. Data for this evaluation will be drawn from existing (or planned) data sources to the maximum possible extent, e.g., using the Annual Program Performance Report (APPR) as one source document.
- NIDRR intends to institute systematic "environmental scans" to help ascertain elements of technology,

science or policy that may impact research to be conducted in the future. These scans shall be carried out by NIDRR staff, making use of all available data sources, and may involve experts and other stakeholders as needed.

• As part of the ongoing evaluation of the appropriateness of the NIDRR research portfolio, NIDRR will, together with other Federal partners, initiate an external study of disability research and related topics.

Funding Mechanisms and Strategies

NIDRR operates a number of program mechanisms to support research and related activities. These mechanisms vary in purpose, duration and resource allocation. Rehabilitation Research and Training Centers (RRTCs) and the Rehabilitation Engineering Research Centers (RERCs) are primary recipients of NIDRR resources and carry out many of NIDRR's major research efforts.

NIDRR support of RRTCs is specified in the Act. RRTCs are funded to conduct coordinated and advanced programs of research, training and information dissemination in priority areas that are specified by NIDRR. RRTCs are expected to be multidisciplinary; involve people with disabilities and their families; provide advanced research training, as well as training for rehabilitation practitioners, consumers and families; and provide undergraduate education. RRTCs are designed to be national centers of scientific research and resources for the disability and rehabilitation field, providing information and technical assistance to a broad constituency. Each RRTC typically is funded for five years.

RERCs also are specified in the Act, and conduct engineering and technological research to design, develop and test equipment, technologies, assistive devices and methods that will remove environmental barriers and provide innovative models for rehabilitation technology service delivery.

The Act also provides for discrete research projects and other related work. These undertakings are carried out through R&D projects and are directed toward solving specific problems identified by NIDRR.

A program of field-initiated (FI) research was created by NIDRR in 1984, under its R&D authority. The FI program supplements NIDRR's directed research portfolio by addressing diverse research issues in promising and innovative ways. FI research projects cover all aspects of NIDRR's domains, including employment, independent living, medical rehabilitation and development of new technologies, and address all disability populations with a wide range of research approaches.

The Act also provides for two C–B programs—Fellowships and Advanced Rehabilitation Research Training Grants (ARRTs). Fellowships are awarded to individuals in various stages of their careers to support one year of independent research in a selected area. ARRTs are awarded to institutions of higher education to support advanced training in research in any discipline investigating issues of disability and rehabilitation. ARRTs, which typically are funded for five years, provide stipends to trainees and funding for mentoring, instruction, hands-on research experience, and opportunities for presentation and publication.

NIDRR also supports service demonstration and research programs to develop and evaluate improved methods and systems of rehabilitation care for individuals with spinal cord injury, traumatic brain injury, and burns.

Fixed Competition Schedules

NIDRR will move toward a fixed schedule for competitions that will permit potential grantees to better plan application efforts, facilitate NIDRR's work with reviewers, and increase efficient grant-making operations at NIDRR. Fixed schedules will maintain consistent dates for key activities in the competition process, including announcements of final priorities, application due dates and award dates. These goals are consistent with the Department's overall directions. To accomplish these goals, NIDRR intends to publish all of its proposed priorities and, following public comment, final priorities annually, on a combined basis. This will allow NIDRR's constituents to view the overall scope of NIDRR's planned priorities and to evaluate and submit comments on these priorities at one time rather than at different times throughout the year.

Managing for Results at NIDRR

NIDRR research management will be guided by many elements and will employ several research planning and decision-making principles in its work. These principles include:

• NIDRR will implement its research portfolio through use of "clusters" of projects that address common subject matters and employ various funding mechanisms. This management approach will be used for specified types of R&D activities and will be grouped around the domains of the NIDRR Logic Model. Portfolio management will utilize strategies that organize and review clusters or groups of related projects. The organization of program analysis by common elements, including subject and the target population that will benefit, improved collaborations, sequencing of activities and related methods will encourage collaboration among researchers. Management will facilitate communication among related projects through meetings, technical assistance, research compilations and related activities.

• To establish the context for its research, NIDRR will assess portfolio investments and opportunities by applying criteria that ascertain the importance of proposed activities in relationship to NIDRR's mission and authority; past, current and emerging projects; scientific advances; and work of research partners in the U.S. and abroad. Distinguishing the context for a NIDRR initiative may include identifying the legal basis for action, partner agency needs, opportunity to respond to new discoveries, continuation of effective research, or supporting a national initiative.

• NIDRR will communicate decisions clearly and understandably to a wide range of audiences. The complex interrelationships inherent in disability and rehabilitation research require that NIDRR's decision making process be clear and understandable to a wide range of audiences. Success will be attained through increasing public input to planning; holding regularly scheduled competitions; and continually assessing the quality of communications with stakeholders.

• NIDRR will make choices regarding resource allocation using the best available evidence. NIDRR will ensure that explanations of directed activities are clear to external observers in reviews of funding opportunities and actual awards. Portfolio decisions will reflect advisory input such as scientific conferences, literature reviews and public comments. NIDRR will provide explanations of the use of "directed" versus "non-directed" (*i.e.*, NIDRR priorities vs. FI) research.

• NIDRR will allocate resources across program clusters to achieve the best relationship of costs and benefits. Factors for consideration may include the anticipated size of the investment; available funds; congruence with NIDRR's Logic Model; and risks of failure to act, including lost value and expertise.

• NIDRR will build on current capacity and promote the development of new capacity to anticipate future needs. C–B has two important dimensions in NIDRR's management framework. First, NIDRR strives to

assess readiness of potential applicants to address the specific research topics. Second, some NIDRR program activities have as their primary purpose the enhancement of future disability and rehabilitation research efforts through improved resources.

For both dimensions, NIDRR management must assess the ways in which investments support not only new research areas, but also the development of methods and measures that improve outcome assessment and evidence-based practices, and the investment in people to improve research capacity. NIDRR also has responsibilities to address areas of special need, such as improving services and opportunities for racial and ethnic minority populations (see section 21 of the Act); research capacity to address specific geographic issues; and training for individuals with disabilities and their families.

• Quality program management at NIDRR will require the further development of internal and external controls to provide knowledge of ongoing and completed research and its utility to stakeholders.

Internal and external controls will assist in assessing program progress in implementing the Plan. High-quality scientific peer review with preeminent peers will ensure high quality research. Participation of people with disabilities at all stages of NIDRR-funded work also will contribute to quality outcomes. Monitoring of project and research activity will ensure that funds are spent wisely, efforts are on target, effective feedback is provided, and best practices are identified. Formative and summative "in-process" peer reviews will continue to establish quality mechanisms for evaluating and disseminating research findings.

Peer Review Processes

Application review is central to efforts that ensure the integrity and validity of the research agenda. This review provides both face and content validity to the research portfolio. Thus, it is imperative that this process be as effective as possible.

As mandated by the Act, NIDRR continues its commitment to a review of its research portfolio by a fully representative audience that includes both researchers and consumers. NIDRR envisions a standardized peer review process across NIDRR's research portfolio, with standing panels servicing many program funding mechanisms.

NIDRR will establish standing panels as part of an overall revision of program operations. By providing standing panels, NIDRR anticipates achieving a more consistent review of applications, thereby encouraging continued growth and improvement in those applications. A fixed competition schedule, as described above, will allow panelists to reserve time for the reviews, allowing a higher percentage of individuals to complete their term of service. Such consistency should increase reviewer familiarity and skill with NIDRR research programs, allow effective role modeling by panelists, and ensure more effective training efforts. NIDRR will provide training to all panelists to optimize their effectiveness in reviewing proposals.

Monitoring

As is depicted in the NIDRR Logic Model (Appendix 2), NIDRR will evaluate the outcomes of its grantee research efforts; measures of success will vary by goal and topic. NIDRR will use the results of outcomes research to judge projects for productivity gains, economic value, practitioner satisfaction and end user satisfaction. Product indicators will measure how a new or improved tool contributes to better rehabilitation technologies. Citations and bibliometrics on a grantee's research efforts will be applied to identify widespread use of a new or improved theory, measure, or method.

Historical tracing—examining research to outcome, or backward from outcome to contributing research—will be employed to identify key times when a theory, measure or method advanced the state of a particular field.

NIDRR is developing a systematic tracking of instruments developed by grantees (Tools List), which, along with patent counts, will serve to verify outcomes of research methods and products. Systematic reviews or meta analyses will be used to evaluate aggregated research outcomes. NIDRR will employ survey techniques to indicate widespread or specialized use of a tool or measure. Qualitative studies of social and behavioral dimensions of research activities indicate the benefit gained from improved tools. NIDRR also works with professional groups to identify increased use of new measures in research and practice guides. The Federal government requires that interventions research adhere to standards for Human Subjects Protection, privacy, and data safety monitoring; such standards are monitored in conjunction with appropriate Department officials.

Research Cooperation

As a leading Federal agency involved in disability and rehabilitation research, NIDRR works closely with numerous other Federal agencies. These working relations are fostered through memoranda of understanding and other interagency agreements that facilitate joint projects. These agreements have resulted in research jointly sponsored with the Substance Abuse and Mental Health Services Administration, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, the National Institutes of Health, and other components of the Department of Health and Human Services (DHHS). NIDRR also conducts employment research jointly with the U.S. Department of Labor and conducts NFI-related activities with the Office on Disability of DHHS, through memoranda of understanding.

Another avenue for interagency cooperation is participation in groups such as the Washington Research Evaluation Network (WREN), which is a partnership of a number of Federal agencies that have joined together to serve as a forum for the R&D evaluation community in exploring new approaches that will improve the management of science and technology organizations. These efforts will assist NIDRR as it examines and furthers the implementation of performance measures to assess the quality, effectiveness and utility of its R&D investment.

Interagency collaborations can facilitate addressing mutual and individual concerns in research areas. A major mechanism for fostering such collaboration is the ICDR.

Interagency Committee on Disability Research

The ICDR, authorized by the Act, will continue to promote coordination and cooperation among Federal departments and agencies that are conducting disability and rehabilitation research programs. NIDRR is the administrative home of the ICDR, and the Director of NIDRR chairs this committee. Representatives of more than 35 Federal entities regularly participate in the ICDR. In addition to the full committee, five subcommittees address specific issues: Disability Statistics, Medical Rehabilitation, Technology (including Technology Transfer), Employment and the NFI).

The goals of the ICDR and its subcommittees are to increase public input to ensure that research efforts lead to solutions for identified needs, to improve the visibility of Federal disability research in general, and to increase collaboration among agencies. The ICDR meets quarterly, and subcommittees meet either quarterly or more frequently. As required by the Act,

the ICDR submits an annual report of its work to the President and Congress. Under the NFI, funds are allocated to support the ICDR in coordinating Federal disability research programs relative to technology. The Plan proposes to support the continued work and accomplishments of the ICDR; information on the ICDR can be accessed on the Internet at: *http://www.icdr.us.*

International Research Program

The magnitude of the overall Federal R&D effort directed to disability and rehabilitation research is relatively small, compared to R&D efforts in other areas. Thus, international cooperation and exchange has been viewed as an important mechanism by which the critical mass of disability and rehabilitation research can be increased. Section 204(b)(6) of the Act states that the Director of NIDRR is authorized to: "* * * conduct a program for international rehabilitation research, demonstration, and training * * *" and many nations look to the U.S. as a model for disability and rehabilitation research in technology.

NIDRR has funded the international exchange of information and experts. NIDRR projects have demonstrated the value of international collaboration in developing technology for individuals with disabilities in prosthetics development—for example, a sand casting system that greatly facilitates prosthetic socket fabrication. Additionally, addressing the issues concerning Web accessibility continues to be mutually beneficial to NIDRR's constituents and its international partners.

NIDRR also has funded research in the multicultural aspects of disability and rehabilitation research and in understanding how cultural perspectives affect the development and implementation of intervention strategies and the interpretation and analysis of disabilities.

Thus, there is a compelling reason for NIDRR to continue its work on projects with an international scope, including issues of concern for individuals with disabilities in the Middle East, Asia/Pacific, Africa, Europe/North America, Latin America, and Caribbean regions. There is a possibility for creating further collaborations through the Department and the United States-Mexico Binational Commission. NIDRR supports the United Nations Educational Scientific and Cultural Organization (UNESCO) Flagship activities to ensure the inclusion of children with disabilities in UNESCO's Education for All (EFA) plans. NIDRR is interested in developing closer relationships with funding agencies in other nations. A potential avenue for this would be the United States-European Union (US-EU) Science and Technology Agreement signed in 1997. NIDRR could operate under this agreement to expand cooperation with a comparable governmental agency in the European Commission (EC). The possibility of coordinated calls for research on both sides of the Atlantic could greatly increase the critical mass of research and development of technology, further improving the lives of people with disabilities in the United States and other nations.

Part C: Addressing Outcomes Through Research and Development, Capacity Building, and Knowledge Translation

Preface

NIDRR has built its program of funded activities around the three arenas of R&D, C–B, and KT. For each of these arenas, there are strategic goals and objectives. This part of the Plan presents NIDRR's Strategic Goals and Objectives, and then presents more detailed chapters on R&D, C–B, and KT.

Strategic Goals and Objectives

Strategic goals are broad statements of a program's aims, whereas strategic objectives specify the means by which the goals will be carried out. These strategic goals and objectives are intended to communicate NIDRR's main themes and directions, and not to serve as measurable operational objectives. NIDRR has developed the following set of comprehensive strategic goals and objectives that reflect the program's mission and align with both the targeted outcome arenas depicted on the Logic Model (see Appendix 2) and the Institute's GPRA performance measures.

Goal 1: Advance Knowledge Through Research and Related Activities

Generate scientific knowledge, technologies, and applications to inform policy, change practice and improve outcomes.

- Objective 1a: Contribute evidenced-based theories, information, and analyses to increase understanding and enhance knowledge of disability and rehabilitation related concepts, issues, and emerging trends and developments.
- Objective 1b: Provide new and improved tools and methods to strengthen the scientific basis of disability and rehabilitation related research, policy and practice and increase the generalizability of findings and utility of products.
- Objective 1c: Develop new and improved interventions, programs, products, devices, and environmental adaptations to guide decision-making, change practice, and enhance access, function and opportunities for full participation.

Goal 2: Advance Knowledge Through Capacity-Building

Increase capacity to conduct and use high quality and relevant disability and rehabilitation research and related activities designed to guide decisionmaking, change practice, and improve the lives of individuals with disabilities.

- Objective 2a: Promote productive partnerships with other Federal agencies and non-federal organizations and facilitate improvements in R&D infrastructure to strengthen the research portfolio, support clinical trials, and increase the effectiveness of KT efforts.
- Objective 2b: Encourage multidisciplinary applications representing a broad array of relevant fields and from diverse individuals and underrepresented institutions to balance the research portfolio and strengthen the capacity to solve problems in a creative, state-of-the-art manner.
- Objective 2c: Enhance opportunities for cross-disciplinary and advanced research training in disability and rehabilitation-related fields and improve the quality of training provided to qualified individuals, including students with disabilities and from minority backgrounds.

Goal 3: Advance Knowledge Translation

Promote the effective use of scientific-based knowledge, technologies, and applications to inform disability and rehabilitation policy, improve practice, and enhance the lives of individuals with disabilities.

- Objective 3a: Promote external review of the quality of NIDRR funded research and related activities through participation in independent scientific collaborations (*e.g.*, Campbell and Cochran Collaborations) and registries.
- Objective 3b: Develop tools and methods to facilitate effective accumulation, translation, dissemination and transfer of disability and rehabilitation related knowledge, technologies and applications to relevant stakeholders.

These strategic goals and objectives are addressed in the following three chapters: I. Research and Development, II. Capacity Building, and III. Knowledge Translation.

I. Research and Development

At the heart of NIDRR's mission is the conduct of research to improve the lives of people with disabilities. The

associated strategic goal for this is to generate scientific-based knowledge, technologies, and applications to inform policy, change practice, and thereby improve overall conditions for people with disabilities. This section focuses attention on the major domains as seen in the Logic Model, beginning with employment of people with disabilities, which is a major concern of the Department and of NIDRR. Similarly, NIDRR is interested in maximizing choices for persons with disabilities as they select their dwellings, transportation and life activities. Health and function are essential components of such life choices. A focus on technology that supports these choices is of central importance to NIDRR.

As NIDRR establishes goals and priorities for effective resource allocation, the Institute is interested in improving knowledge about people with disabilities, including the nature and duration of disability, where they live and what kinds of jobs they have.

The future research agenda for NIDRR rests on the strategic goals and objectives defined above and on the long-term outcomes depicted in the Logic Model, which call for eliminating disparities in employment, participation and community living, and health care between people with disabilities and the general population. However, because achieving this desired end-result requires changes in the overall condition of people with disabilities that go beyond the reach of the Institute's mission, it is necessary to articulate an additional set of more operational performance goals. Unlike long-term outcomes, performance goals, which may be output or outcome-oriented, lie within a program's span of accountability and consist of tangible, measurable objectives, against which actual accomplishments and achievements can be compared.

Within the NIDRR research agenda, performance goals are formulated separately for each of the major domains of the Institute's mission. However, it is important to note that because of differences in the needs of consumers and levels of knowledge and methodological development across domains, the number of articulated performance goals may differ among the domains. NIDRR will publish specific implementation strategies in the form of proposed priorities and, following public comment, final priorities annually, on a combined basis.

A. Employment

Overview

For many people with disabilities, employment that is challenging, fulfilling, and fairly and adequately compensated is the ultimate rehabilitation outcome. For those individuals interested in workforce participation, employment shapes the lives of individuals with disabilities at all stages of life. Successful workforce participation requires supports and partnerships of employers, service providers, workers, and often a network of family, friends and community entities. At the individual and systems level success is often measured in terms of acquisition, improvement and enhancement of skills, productivity, earnings, job retention and advancement, and benefits. NIDRR advances employment-related innovations that contribute to success at work and subsequent improvements in quality of life in education, home and community.

Research can be used to strengthen the scientific basis of disability-related employment policy and practice. Studies provide validated information that improve understanding of employment policy and practice as it affects the workforce and society. Moreover, research findings related to career planning, job entry, advancement and retention can assist individuals with disabilities, particularly those with significant disabilities, in moving from dependency on public benefits to self-sufficiency, or from underemployment into work that is consistent with the individual's strengths, abilities, and interests. Examples include workplace assistance, methods and techniques developed from productivity studies, and accommodations improve on-the-job outcomes.

Employment research supported by NIDRR for people with disabilities strives to identify proven job enhancements and career building blocks to sustain them in the workforce. NIDRR supports studies to improve knowledge of societal, environmental, individual, and behavioral factors that serve as barriers or facilitators for employment.

Context of Employment

The employment policy environment has changed dramatically in recent years. Laws such as the Ticket to Work and Work Incentives Improvement Act (TWWIIA) and other initiatives were designed to erase some of the disincentives to work that current public policy and programs present for beneficiaries. Sound research at the systems and individual levels is necessary to evaluate the impact of long-standing policies and programs, and to assess new developments as they are considered for national implementation, modification, or elimination.

Both individuals and employers are intended beneficiaries of NIDRR employment research. For individuals, employment research can develop and improve interventions for and measures of individual function and task performance at all stages of life. NIDRR's employment research may be general across disabilities or specific to certain target populations. Many employment issues, particularly those related to economic and social policies, have similar impacts on people with different disabilities. However, some aspects of employment research, such as accommodations at the work site or applications of technology, may be specific to persons with physical, communication, cognitive, or psychiatric disabilities and NIDRR will address their specific needs as appropriate.

Employers are important targets for NIDRR research. Research addresses methods to integrate unique needs of employers and disability populations to improve employment outcomes across the life span. NIDRR research can lead to more accessible work environments. R&D activities seek to address employer concerns about costs of accommodations and generate innovative approaches to alleviate obstacles to accommodations. Research defining employer perspectives on hiring and retaining people with disabilities is in early stages. Continued research will help in understanding how economics, legal issues, health care, functional status, and attitudes drive employer practices with regard to people with disabilities. Employer-oriented, or demand-side, research will help policymakers, employers, and service providers develop better strategies for meeting the employment needs of people with disabilities and hiring entities.

Employment researchers must overcome significant challenges in their work, including: diverse employment settings and service systems; limited access to work settings to test interventions; inadequate research methods and measures; unsatisfactory models for designing new employment initiatives; difficulty in arranging cooperation of service partners and employers; and work disincentives. Consequently, it is critical for NIDRR to sponsor studies that pose significant research questions, use sound methods, and produce results that are

generalizable to large numbers of people with disabilities.

Disability and rehabilitation researchers explore methods, costs and results of services by rehabilitation programs or supported employment, including studies of natural supports at work as they relate to employment outcomes. Researchers address PAS challenges and solutions for work. PAS aids an individual with a disability in performing activities of daily living on or off the job. Rehabilitation technology and universal design require systematic application of products, environmental adaptations and engineering. Technological innovations support enhanced personal function and address the barriers confronted by people with disabilities in many areas, including employment.

For a person with a disability, personal and environmental factors such as health, age, work incentives and disincentives, accommodations, functional capacity, education, PAS, housing and transportation influence labor force participation. Policy and societal changes, including technological advancements, continually change the questions that must be asked about labor force participation, earnings and work.

NIDRR employment research addresses a culturally diverse population across age, gender, ethnic, disability and socioeconomic groups. In addition to addressing the general population of people with disabilities, NIDRR develops strategies for targeted services for subpopulations. For example, research identifies needs of persons who are blind or visually impaired, or who are deaf or hard of hearing. To assist another subpopulation of people with disabilities, NIDRR works with the Center for Mental Heath Services in DHHS on the employment needs of persons with mental illness. NIDRR works with the Social Security Administration on disability criteria for benefits, return-to-work, and the TWWIIA.

Research attempts relate transitions across the life span to employment outcomes for people with disabilities. Transition services promote movement from educational settings and post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living and community-based services to participation in the labor force. Activities address individual student needs, taking into account individual preferences and interests. NIDRR's employment research addresses the lifelong challenges and opportunities of transitions in employment of people with disabilities.

Accomplishments in Employment Research

Research on theories, measures and methods for employment has:

- Developed, at the University of North Carolina, a method to analyze administrative complaints and lawsuits filed under the employment discrimination mandates of the ADA. Findings describe people with disabilities and show that the Equal Employment Opportunity Commission's mediation program has increased settlements.
- Simplified and reorganized demographic data resources on employment, income, and poverty status of persons with disabilities. The online statistical resource, provided by Cornell University, is readily available to all in need of accurate disability statistics.
- Developed, at the University of Montana RRTC on rural disability, an improved measures and methods for assessing transportation, housing, employment, independent living services, health and wellness facilities, and community planning activities for people with disabilities in rural communities.
- Developed, at the University of Missouri, a model designed to ensure students with disabilities access to accommodations, mentoring, and information technology upon graduation.

Research on new and improved interventions, products, devices, and environmental adaptations for employment has:

- Demonstrated an input-intervention-outcome model for vocational rehabilitation services to deaf or hard of hearing consumers under the Workforce Investment Act (WIA) and the Rehabilitation Act.
- Investigated State employment services to people with disabilities to improve outcomes within welfare-to-work initiatives.
- Developed employment-related assistance services for individuals who are blind or severely visually impaired receiving services under the WIA.
- Investigated incentives, disability management, return-to-work and telecommuting to improve employment outcomes and benefit employers.
- Developed approaches to help ensure that students with disabilities access technology resources, mentoring, and advanced IT in school and gain related jobs upon graduation.
- Developed a prototype computer software program that provides the opportunity for job seekers who are deaf or hard-of-hearing to practice interviewing skills for employment.

Research Agenda

Within the domain of employment research, NIDRR will focus on increasing useful theories, measures, and methods to improve the scientific validity of employment research and on research to increase the availability of validated interventions, products, devices, and environmental adaptations.

Theories, Measures and Methods

Tested theories, measures and methods to increase the scientific validity of employment research will enable end users to sustain quality employment for individuals with disabilities by improving:

- Understanding of employment trends for individuals with disabilities in relation to macroeconomic, legislative and societal changes, and demographic trends.
- Services and policies that impact work-related needs of individuals with disabilities and employers.
- Tools that measure multiple dimensions of employment for individuals with disabilities and the employment industry.

Valid theories for investigating employment phenomena and measures of the specific needs of subpopulations should enable researchers to map pathways from knowledge advances to target systems, and to identify the determinants of labor force participation, lost earnings and recovery of employment.

Interventions, Products, Devices, and Environmental Adaptations

Research on interventions, products, devices and environmental adaptations will serve to develop strategies that will:

- Successfully support transitions into employment and within the employment setting across the lifespan.
- Effectively increase access to and quality of vocational rehabilitation and individualized employment services, workplace supports and job accommodations; successfully reduce barriers to hiring while enhancing work skills, job acquisition, job retention, and career advancement.
- Effectively contribute to program eligibility determinations, design of program components, and assessment of program outcomes.
- Effectively address the employment needs of individuals with intellectual or

cognitive disabilities, mental illness or psychiatric disabilities, and episodic disabilities of all etiologies. These interventions must be sensitive to changing demographics.

- Respond to employment needs in high growth and rapidly changing industries.
- Improve work opportunities for individuals with disabilities from diverse interest, knowledge, language, and cultural backgrounds.
- Assist employers and policymakers to provide employment opportunities for people with disabilities.
- Create tools that match the needs of employers and individuals with disabilities for workplace accommodations.
- Improve employment outcomes for specific disability populations, including individuals with behavioral, physical, psychiatric, cognitive, and sensory disabilities.

Thus, NIDRR's research agenda in the area of employment is designed to:

- Strengthen the scientific basis of disability and rehabilitation-related research and practice by increasing the availability of validated theories, measures and methods to improve measurement, data sources and estimates, and enhance identification, evaluation and prediction of the factors that facilitate successful labor force participation and work-related transitions across the life span.
- Strengthen the scientific basis of disability-related employment policy, practice, and research by providing evidenced-based information and analyses that improve understanding of employment trends; specific job industries and changes within industries; individual labor force participation and school-to-work transitions; and that enhance knowledge of the rapidly changing societal developments that affect employment opportunities and outcomes across the life span.

B. Participation and Community Living

Overview

Like employment, participation and community living are at the heart of NIDRR's mission to develop knowledge that will "improve substantially the options for disabled individuals to perform activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens." In this Plan chapter, NIDRR will use the term "participation" to represent all three concepts of participation, community integration and independent living (IL). The central question of the *Olmstead* decision is whether people with disabilities are physically living in the community. This enriched term "participation" will help NIDRR and the applied rehabilitation research community to focus on the extent to which people with disabilities are participating in the community in a manner that is meaningful to them.

NIDRR's focus on participation follows the stated purpose of IL programs under the Act. That purpose is "to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society." People with physical disabilities historically have employed the term "independent living" to indicate a philosophy, movement and service system that work toward a goal of meaningful participation in society. Similarly, the term "community integration" has been used to represent a concept, movement and service delivery system that encompass the ultimate goal of full societal participation of people with cognitive and psychiatric disabilities. Thus, incorporation of the IL and community integration terms within the term of participation will allow NIDRR to focus on the ultimate outcome sought by all people with disabilities. This chapter mainly addresses general research needs related to achieving societal participation for people with all types of disabilities. Where necessary, the Plan presents research topics that are specific to promoting participation among particular subpopulations of people with disabilities.

Research enhances the scientific basis for a wide range of policies and practices aimed at promoting the societal participation of individuals with disabilities. Research may include evaluation of specific participation-promoting programs, interventions and products, as well as development of methods, measures and theories to enhance the scientific rigor of these evaluations. NIDRR sponsors research to improve knowledge of individual- and societal-level factors that may serve as barriers to, or facilitators of, participation among all people with disabilities.

The Context for Research on Participation and Community Living

The current policy context for research that promotes full participation of people with disabilities is supportive and encouraging. There are two major components of this context. The first is the *Olmstead* decision, which upholds the integration mandate from Title II of the ADA, requiring public entities to provide services "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." Just as encouraging is the 2003 report of the President's New Freedom Commission on Mental Health, which makes recommendations that would enable adults with serious mental illnesses and children with serious emotional disturbance to live, work, learn and participate fully in their communities.

The *Olmstead* decision holds that States must place people with disabilities in community settings rather than institutions whenever appropriate. This decision and subsequent efforts by States to abide by it have spotlighted the many barriers to meaningful community participation of people with disabilities. These barriers include, but are not limited to: (1) A shortage of affordable and accessible housing in the community, (2) a shortage of personnel to serve as personal assistants in the community, (3) a lack of accessible and appropriate community-based health and dental care, (4) a lack of accessible transportation, (5) problems and gaps in the mental health service delivery system, and (6) a persistent bias in Medicaid-funded long-term care programs that channels resources away from communities and into institutions. Many States are models of effective planning for *Olmstead* implementation. Full implementation of these thoughtful plans could lead to enhanced integration and participation of people with disabilities.

Future research on community integration, IL and participation of people with disabilities also will be influenced by the 2003 report of the President's New Freedom Commission on Mental Health, "Achieving the Promise: Transforming Mental Health Care in America." The report provides six major goals for our nation's mental health efforts that are directly related to the participation of individuals with psychiatric disabilities. These goals are (1) Americans understand that mental health is essential to overall health, (2) mental health care is consumer and family driven, (3) disparities in mental health services are eliminated, (4) early mental health screening, assessment,

and referral to services are common, (5) excellent mental health care is delivered and research is accelerated, and (6) technology is used to access mental health care and information.

The above-mentioned report shows a mental health system in disarray. For children and adults with psychiatric disabilities, the service delivery systems, policies, finances and treatment options are fragmented, confusing and inadequate. Unnecessary institutionalization remains a problem, as do the practices of seclusion, restraint and forced treatment. Stigma remains a major obstacle to treatment, and suicide continues to be a major public health problem. People with psychiatric disabilities are overrepresented in the homeless population and in the juvenile and criminal justice systems. Existing policies frequently force parents of children with psychiatric disabilities to relinquish custody to ensure that their children receive adequate mental health care.

To respond to the challenges described in the preceding paragraphs, NIDRR research in the area of participation develops and evaluates strategies for services, interventions, products and modifications to the built and social environment that would allow individuals with all types of disabilities to live and participate in their communities. These services, interventions, products and environmental modifications differ for specific subgroups of people with disabilities. NIDRR-funded researchers are among the vanguard of measurement experts seeking to develop new and improved theories and measures of participation and community living so that the impact of these specific strategies and interventions can be more accurately determined.

Accomplishments in Participation Research and Community Living

NIDRR-sponsored research has been associated with a number of significant outcomes related to the participation of people with disabilities. These accomplishments are categorized as related to (1) theories, measures, and methods or (2) interventions, products and devices, and environmental adaptations.

Research on Theories, Measures, and Methods Has

- Addressed the full range of independent living issues, from the development of conceptual frameworks to policy research, to research addressing the management needs of centers for independent living (CILs).
- Led to the acceptance of the concept of consumer-direction and control among a broad population of people with disabilities. This concept originated among working-age individuals with physical disabilities, but more recently has been accepted by leadership in both the aging and developmental disability communities.
- Led to the development of new measures of participation and community integration among people with disabilities. Measures developed in the past include the Community Integration Questionnaire and the Craig Handicap Assessment and Reporting Technique (CHART).

Research on Interventions, Products, Devices and Environmental Adaptations has:

- Led to the development and expansion of a range of services and programs designed to directly support individuals with disabilities in their communities.
- Helped determine that, from the consumer perspective, consumer-directed PAS are delivered in a manner that is no less safe than traditional agency-directed services.
- Increased the knowledge base about PAS programs and best practices among a wide variety of stakeholders, including local, State and Federal-level policymakers, service-providers, and disability advocates.
- Clarified the extent of PAS use, as well as the unmet need for PAS in the United States.
- Led to advances in treatment options and community-based supports for individuals with mental illness and psychiatric disability. These advances include recovery-oriented services and practices; psychiatric rehabilitation; peer supports and other natural supports in community and employment settings; supported education services in higher education, employment services that integrate mental health and vocational rehabilitation services; psychosocial rehabilitation; services that are provided by mental health consumers, and systems of care and wraparound services in children's mental health.
- Led the Alzheimer's Association and the Arc of the United States to use recommendations derived from NIDRR-funded research to promote constructive approaches to community care for people with intellectual and developmental disabilities affected by dementia.
- Promoted participation by creating the concept of universal design, which holds that all people, regardless of their physical or mental abilities, can feasibly create products and environments for use.
- Promoted participation by applying universal design principles to create accessible voting kiosks, ATMs, computers and other mass-market products that allow people with disabilities to participate in their communities.
- Promoted participation through the development of disability-accessibility guidelines for the World Wide Web.
- Promoted participation through design and application of a wide variety of technological products that allow easier navigation of indoor and outdoor environments by people with sensory disabilities. For example, "Talking Signs®" technology allows individuals with low vision to navigate indoor and outdoor environments. This remote infrared technology has been deployed in numerous cities throughout the U.S., Europe and Asia. Other NIDRR-sponsored research-based advances include wayfinding applications, combinations of global positioning technologies with Braille capabilities, audio descriptions in theaters and closed-captioning in public spaces.

Research Agenda

The expected outcome of NIDRR's research efforts, at the individual level, is the development of new knowledge that can be used to increase the capacity of people with disabilities to plan and direct their own lives, choosing among options for maintaining the level of independence and social involvement that they desire.

The expected outcome of NIDRR's research efforts, at the systems level, is the production of knowledge that can be used to improve options and services for achieving independence and social involvement, and the supports necessary to realize those options.

Theories, Measures, and Methods

Effective theories, measures and methods to achieve optimal levels of participation among individuals with disabilities are important because they:

- Improve understanding of the wide range of activities that may be associated with enhanced participation among people with disabilities.
- Improve tools that measure multiple dimensions of participation among individuals with disabilities.
- Improve the ability to scientifically identify and evaluate effective services and policies that impact the participation levels of individuals with disabilities.

By bolstering understanding of the complex meaning of participation and employing new and improved measures

that adequately reflect this concept. NIDRR will build a stronger foundation of research-based knowledge upon which participation-focused services and policies can be based.

NIDRR will continue to promote research that develops and strengthens theories for understanding and promoting community integration, IL and participation, as well as new methods for measuring these ultimate outcomes. NIDRR will continue to lead the way in the development of participation and community living measures. Current measures of participation and community integration largely have been developed by researchers working in the context of medical rehabilitation, and have been applied to populations of people with physical disabilities. Measurement of participation and community living among people with intellectual or cognitive disabilities still is in its infancy. NIDRR will sponsor research to construct reliable and valid theories and measures for participation and community integration of individuals with intellectual, cognitive, and psychiatric disabilities. These advances will provide a foundation for high quality research on these issues.

NIDRR also plans to pursue research to develop advanced theories of disability and participation to capture the complex interaction of environmental and individual factors. That will require improvements in the ability to measure the influence of environmental factors on participation levels of people with disabilities. An increased understanding of the environment's role will sharpen understanding of the specific physical or social barriers to be addressed, and the facilitators on which to build enhanced participation.

Interventions, Products, Devices and Environmental Adaptations

New and improved interventions, products, devices and environmental adaptations are important because they:

- Improve participation outcomes for all individuals with disabilities. Improved participation outcomes would include quantitative increases in the number of individuals with disabilities living and interacting in the community, as well as qualitative improvements in the nature and quality of that social involvement.
- Provide access to individualized services and supports to promote participation among all people with disabilities.
- Apply conceptually sound theories of societal participation for specific subgroups of people with disabilities.
- Can be tailored to the specific needs of individuals with physical, sensory, cognitive or psychiatric disabilities to reduce environmental barriers to participation.

NIDRR is interested in promoting rigorous research based on well-developed theories, using validated measures and appropriate methods that examine the efficacy and effectiveness of interventions and programs designed to promote community integration. These interventions may include Federal, State, and local programs, or improved environmental adaptations or devices that enhance the ability of individuals to live independently in the community. NIDRR is especially interested in sponsoring research on programs and interventions that will (1) promote participation in educational opportunities over the life span, (2) enhance access to recreation and transportation, (3) enhance access to PAS and direct-care providers, (4) promote the availability of accessible, affordable housing for people with disabilities, (5) enhance asset-accumulation practices among people with disabilities, and (6) enhance participation and integration of parents with disabilities, and families with children with disabilities.

NIDRR intends to place particular emphasis on research related to direct supports and services that will enable individuals with disabilities to have options for participation and to implement their choices in their environments. The aim of this research would be to develop best practices for providing supports for people with disabilities living in the community.

NIDRR also will sponsor research to determine the ways in which people with disabilities can use applications of universal design to reach their participation goals. This research will illuminate the barriers to, and facilitators of product utilization, and will guide future dissemination and marketing of state-of-the-art technologies.

Research Agenda

NIDRR's research agenda in the domain of participation and community living is designed to:

- Strengthen the scientific basis of policies and practices aimed at enhancing participation among people with disabilities by providing information and analyses that improve understanding of participation levels among individuals with disabilities and the multiple barriers to and facilitators of their participation.
- Strengthen participation-related research and practice by increasing the availability of validated theories, measures, and methods. These theories, measures and methods will improve data sources and estimates, and will enable better identification, evaluation and prediction of the factors that facilitate or impede participation and community living. These improvements will enhance the credibility of research and thus increase the utilization of research findings.

C. Health and Function

Overview

Maximizing health and function among people with disabilities is critical to the achievement of NIDRR's mission and the associated higher-order goals of employment and community participation. Functional ability reflects the complex interaction between individuals and the environments in which they live. Accordingly, NIDRR conceptualizes and examines issues of health and function at the systems and the individual levels.

At the systems level, NIDRR-supported research focuses on the structure, organization, and delivery of health care and medical rehabilitation services. Individual level research focuses on the development and testing of new interventions that improve functional and health outcomes for individuals. At the systems level, NIDRR also studies access to health care and rehabilitative medicine, and the complex delivery systems used for those services.

In conceptualizing health and function research to improve the lives of individuals with disabilities, NIDRR posits a growing need for research on medical rehabilitation interventions to improve function and for health status research to improve overall health and wellness of people with disabilities.

The Context for Health and Function Research

NIDRR sponsors research to improve the health and function of individuals with disabilities, as well as to understand and improve the system of health care services delivery, including the delivery of medical rehabilitation services.

Individual Level: Ongoing research and clinical efforts have produced a wide variety of programs, interventions, and products aimed at enhancing the health and function of individuals with disabilities. The scope of research in medical rehabilitation is as broad as the numerous conditions that result in disablement, and may focus on the onset of new conditions, the exacerbation of existing conditions, or

the development of coexisting conditions. Accordingly, there are important opportunities for advancements in a range of body systems.

Over the course of the last several decades, neurobiologists have been advancing the understanding of the central nervous system and the complex mechanisms by which cells and neurons are able to compensate for and potentially heal injuries and lesions. NIDRR is well positioned to capitalize on these basic science findings by funding research to develop rehabilitative interventions that are based on the expanding knowledge of neurobiological processes. There is continuous research on prevention of secondary conditions among people with disabilities. Conditions such as pain, muscle weakness, obesity, cardiovascular de-conditioning, and depression are especially prevalent for persons with disabilities, to a great extent because of their sedentary lifestyle. Studies have indicated that persons with disability are more susceptible to earlier age-related functional declines when compared to their non-disabled counterparts.

NIDRR will continue to sponsor research that examines the impact of exercise and activity on the functional independence and overall health status of individuals with both newly diagnosed and long-term disabling conditions. Related to this research on the impact of physical activity on the health and function of people with disabilities are recent findings on the impact of complementary and alternative therapies. Interventions such as yoga, acupuncture, martial arts, and reflexology have enhanced effects on rehabilitation outcomes when coupled with conventional rehabilitation treatment modalities.

There is also a growing body of research on the use of pharmacological interventions to improve health and functional outcomes. There are several examples in treating symptoms of major brain injuries, including new uses for existing drugs that may be effective in treating agitation and fatigue and addressing states of minimal consciousness. New drugs now in testing may show promise for managing spasticity in spinal cord injury (SCI) and multiple sclerosis (MS) and pain management in the arthritis population. Research in medical rehabilitation must remain attuned to pharmacological advances and be prepared to examine their use with rehabilitative interventions.

Research on health and function also involves research on new technologies that improve diagnosis and measurement of disabling conditions, as well as devices to support enhanced function. Under investigation is the extent to which home-based tele-rehabilitation interventions are compliant with current clinical standards. Researchers are looking at multimedia and virtual reality technologies to minimize pain in burn treatment and to provide cognitive retraining for individuals with traumatic brain injury and stroke. Examples of other emerging technological interventions aimed at enhancing individual function include microelectronic connections between the central nervous system and muscle groups affected by injury or disease, and artificial intelligence to enable walkers and wheelchairs to navigate varied terrains.

All of these research-based innovations that have developed over the course of the last decade provide the context and foundation for continuing advances in theories, interventions, and products that will help promote the health, wellness, and community participation of people with disabilities.

Systems Level: The complex, ever-evolving health care delivery system in the U.S. plays a major role in the promotion and maintenance of health by all people, including people with disabilities. People with disabilities should have access to an integrated continuum of health care services, including primary care and health maintenance services, specialty care, medical rehabilitation, long-term care, and health promotion programs.

While health services researchers are increasingly attuned to racial and ethnic disparities in health care, less attention and fewer resources are devoted to disability-related disparities and the innovations in policy and practice that might reduce them. Physically inaccessible offices and equipment, shortened appointments, and physician attitudes are significant barriers to the use of appropriate preventive services by people with disabilities. The relative lack of access to health care services by people with disabilities is likely to become an increasingly serious problem as the full implementation of the *Olmstead* decision shifts some individuals out of institution-based health care into mainstream health services.

People with a range of disabilities disproportionately experience depression and other mental health conditions, and there is a substantial amount of unmet need for mental health services. The NFI strongly promotes improvements to the Nation's mental health care delivery system for individuals with severe mental illness. All people with disabilities—not just psychiatric disabilities—would benefit from increased access to mental health services.

The population of people with disabilities is heterogeneous in terms of type of disabling condition, sociodemographic characteristics, and specific health care needs. Researchers must make concerted efforts to sample and collect data from the wide diversity of people with disabilities, including racial and ethnic minorities and people in low-income categories. The health care experiences of these doubly underserved populations are different than the experiences of white, middle-income people with disabilities.

The relatively small number of studies focusing on health care delivery for people with specific types of disability, sociodemographic backgrounds, and health care coverage, makes it difficult to piece together a coherent picture of the impact of the health care delivery system on health and wellness of people with disabilities. Given the relative lack of research resources in this important area, researchers must work together to synthesize this work to create a coherent body of knowledge that delineates specific practices and policies that are either beneficial or harmful to the health and wellness of people with disabilities. In addition to this synthesis of studies into a coherent mosaic, there is a need for large-sample, longitudinal research projects to determine the impact of health care systems on the health and wellness of the diverse population with disabilities. This endeavor will require increased inter-agency cooperation on health services research for people with disabilities.

Accurately and appropriately measuring the health status of individuals with disabilities is critical to our understanding of the impact of the health care delivery system on their health and wellness. One barrier to accurate measurement of the health status of individuals with disabilities is the tendency of widely used measures to conflate functional ability with health. Functional capacity and health are distinct concepts; disability is not the same as poor health. NIDRR-funded research has demonstrated that people with lower levels of functional capacity are, in the aggregate, less likely to report positive levels of health. Despite this association, a substantial number of individuals with low functional levels report that their health is good or excellent. Researchers need measures of health that do not rely on estimates of

functional capacity. The SF–36, developed by RAND to assess outcomes of medical care, is the most widely used health status measure in the world. Its holistic conceptualization of health is generally appropriate, but it is widely criticized by disability researchers for its tendency to conflate functional ability with health.

Over the course of the last two decades, NIDRR's investment has been instrumental to the development of appropriate and effective measures of health and function for people with disabilities. NIDRR-funded research led directly to the development of the current standard for measuring functional independence in rehabilitation settings, the Functional Independence Measure (FIM) (Granger *et al.*, 1993).

There has been considerable discussion about the problems of classifying specific interventions in medical rehabilitation, which is characterized by its overlapping teamwork approach practiced by physical therapists, occupational therapists, and other allied health professionals. NIDRR is funding groundbreaking research in this area. However, the lack of consensus on how to define and measure the multitude of interventions that take place within the "black box" of rehabilitation is a persistent barrier to a more rigorous and targeted evaluation of rehabilitation outcomes. The robustness of outcomes research findings requires that the intervention be delineated specifically so that it can be replicated or adapted by researchers or practitioners.

Accomplishments in Health and Function Research

Research on theories, measures, and methods has advanced the field of medical rehabilitation at both the individual and systems levels. At the level of the individual, NIDRR has supported research on theories, measures, and methods that has:

- Supported the development of the Functional Independence Measure (FIM), the most commonly used functional assessment tool in rehabilitation medicine.
- Promoted the conceptual analysis of disability and functional outcomes as the interaction of the individual with his/her environment. NIDRR-funded researchers developed, tested, and implemented the use of the Craig Hospital Inventory of Environmental Factors (CHIEF) instrument to quantify a variety of environmental factors that promote or hinder functional independence and community participation.
- Developed computer-assisted methods for efficiently assessing health and functional status outcomes for individuals with disabilities.
- Developed, tested, and implemented widespread use of instruments such as the Craig Handicap Assessment Research Tool (CHART) and the Community Integration Questionnaire (CIQ) to measure community participation following medical rehabilitation.
- Supported development of quality of life instruments that take a person-centered perspective in evaluating long-term outcomes of disability.
- Developed instruments such as the Walking in Spinal Cord Injury (WISCI) to measure specific functional activities and mobility after spinal cord injury. This measure has been adopted by the European Clinical Trials Group in SCI.
- Developed information resources such as the Center for Outcomes Measurement in Brain Injury (COMBI), which provides detailed reliability, validity, and instructions for using the major outcomes assessment tools in traumatic brain injury (TBI).

NIDRR research on theories, measures, and methods also has made many advances that inform the future agenda at the systems level:

- Documented that individuals with disabilities use a disproportionate amount of services from across the health care spectrum and incur higher per capita medical expenditures than do people without disabilities.
- Documented a persistent lack of consistent access to a broad spectrum of health care services by people with disabilities, including specific cancer screenings, and primary care, specialty care, and medical rehabilitation services.
- Described and documented a number of systematic barriers to health care for people with disabilities, as well as the consequences of those barriers for individuals' health, wellness, functional ability, and social participation.
- Determined that there are a number of health care quality factors that are unique to the population with disabilities, and that these factors are not reflected in population-based health care quality tools that are in current use.
- Improved the ability of State service agencies and education departments to meet the needs of children with mental health disorders by influencing changes in policy and practice regarding parent participation, and improving State financing mechanisms for children's mental health.
- Developed the conceptual, empirical, and technological base of the field of psychiatric rehabilitation and promoted widespread adoption of psychiatric recovery-oriented systems, services, and practices.
- Promoted access to mental health services, including alcohol and drug treatment services, for adults and children with physical and/or psychiatric disabilities.
- Supported the ongoing translation of the ICF classification system into the next generation of post-acute measures of function, performance of activities, and participation.
- Supported applications of state-of-the-art statistical modeling techniques and computer adapted testing methods for bringing increased efficiency and accuracy to the process of outcomes data collection.

Achievements in research on interventions, products, devices, and environmental adaptations have created a basis at the individual level from which to direct future research. This research has:

- Established and maintained model systems programs in SCI, TBI and burn rehabilitation. These programs have collected longitudinal data to characterize the population and outcomes of individuals with these injuries as well as developed new evidence-based interventions to improve long-term functional, vocational, cognitive, and quality of life outcomes.
- Developed specific exercise protocols designed to strengthen and enhance flexibility among individuals with severe arthritis. These protocols have been adopted for use in both the clinic and home-based setting, but require further evaluation.
- Led to the development of novel methods of treating a number of secondary conditions associated with SCI, including urinary tract infections, dyslipidemia, cardiovascular disease, and pressure ulcers.
- Developed new computerized technology for the proper alignment of leg prostheses, to improve the mobility of individuals with foot amputations.
- Developed and tested therapeutic interventions focused on enhancing functional capacity following stroke. Further, NIDRR-funded stroke rehabilitation researchers have systematically documented the natural history of stroke impairment, short- and long-term disability, and the implications of these findings for rehabilitation practice and quality of life after stroke.
- Developed and disseminated an effective health behavior education curriculum that is being used by agencies in the U.S. and internationally to improve the physical activity and

recreational skills of people with intellectual and developmental disabilities.

- Developed the conceptual, empirical, and technological base of the field of psychiatric rehabilitation, and promoted widespread adoption of psychiatric recovery oriented systems, services, and practices, including alternative health practices.
- Identified best practices in comprehensive burn care, focusing on early intervention of rehabilitation to improve psychological well-being, functional status and employment status of burn survivors.
- Generated descriptive findings about the nature and etiology of a wide variety of disabling conditions that have set the stage for testing innovative interventions and rehabilitative treatments.
- Documented the increased propensity for persons aging with disability to encounter issues such as onset of new chronic conditions, decline of functional ability as a result of changed health status, diminished psychological well-being and quality of life, and diminished family and social supports (Thompson *et al.*, 2001).
- Described and documented the dynamic psychosocial factors that affect community integration and participation of people with multiple sclerosis.
- Developed numerous assistive devices to improve the health and functional abilities of individuals with disabilities. Examples of these devices include prostheses, orthoses, communication aids, and mobility aids.
- Supported development of repetitive motion techniques on the treadmill, to improve stability and mobility of individuals with SCI and other mobility impairments.
- Developed and implemented telehealth and telerehabilitation initiatives to expand the ability of the organized healthcare and rehabilitation systems to diagnose, treat, and monitor ongoing needs of individuals with disabilities.
- Developed technological advances such as pressure garment materials to prevent contractures among burn survivors.
- Examined the use of portable hand-held devices to support cognitive functioning for individuals with TBI and other neurological conditions.
- Developed a product to support gait recovery in individuals with stroke that has been commercialized and is now sold in the U.S. and Japan.

Research on interventions, products, devices, and environmental adaptations at the systems level has:

- Demonstrated that a substantial number of people with disabilities who need medical rehabilitation services and/or assistive equipment have difficulty accessing them, regardless of whether they are covered by managed care or fee-for-service health plans. This body of research consistently indicates that access difficulties occur most frequently among those reporting the most severe disabilities, those in the poorest health, and those with the fewest monetary resources.
- Demonstrated that a substantial percentage of individuals with moderate to severe disabilities do not have systematic access to preventive medicine and screening services.
- Led to the adoption of a new policy statement by the Medical Advisory Board of the National Multiple Sclerosis Society, which recommends rehabilitation as a necessary component of quality health care for people with MS at all stages of the disease.
- Led to the adoption of the "Living Well With a Disability" health education curriculum by a large health plan in California that serves 9,500 individuals with disabilities.
- Increased the interest and commitment among some State Departments of Mental Health to adopt recovery-oriented rehabilitation systems for persons with mental illness.

Research Agenda

At the individual level, NIDRR will fund research that supports the development and evaluation of new interventions, products, devices, and environmental adaptations aimed at improving the health status and functional abilities of people with a wide range of disabling conditions. Many of these new interventions will address the needs of people who are aging with disability, with particular emphasis on minimizing secondary conditions. To aid in the evaluation of these new interventions, NIDRR also will fund research that leads to the development of the next generation of valid and reliable measures of health and functional status among people with disabilities.

These new measures will be applicable in a wide variety of clinical and community settings, and will incorporate consumer perspectives in order to assess the extent to which health status and functional capacity relate to the ability to perform valued activities in the community. NIDRR will conduct research that identifies effective methods for translating data from these new outcomes measures into information that can be used to inform decisions made by consumers, payers, provider organizations, and clinicians.

At the systems level, NIDRR will fund research that will generate new knowledge about the systematic causes and consequences of substandard access to rehabilitation, health care and mental health care services for people with a wide range of disabling conditions. This research will scientifically identify and evaluate the effectiveness of specific service delivery approaches and reimbursement models aimed at minimizing physical, social, and economic barriers to the full spectrum of health, mental health, and rehabilitation services that are needed by people with disabilities.

Thus, NIDRR's research agenda in the area of health and function is designed to:

- Increase the number of validated new or improved methods for assessing function and health status.
- Increase the number of interventions, products and devices demonstrated to be efficacious in improving health and function outcomes in targeted disability populations.
- Increase understanding of the underlying structures and processes that facilitate or impede equitable access to rehabilitation and physical and mental health care by people with disabilities.

Technology for Access and Function

Overview

Everywhere, Americans are using technology to make their lives easier, more enjoyable, and more productive. Americans with disabilities, however, depend upon technology for much more than convenience or a competitive edge. Technology plays a vital role in the lives of millions of Americans with disabilities by helping them to overcome functional and cognitive deficits, thus enabling them to lead more independent, secure, and productive lives. In the past, persons with significant disabling conditions often were considered to lack potential for habilitation or rehabilitation and were subsequently consigned to institutions or segregated facilities such as nursing homes, denying them the opportunity to live full and meaningful lives. In 2004, barely three decades after the birth of rehabilitation engineering, individuals with significant disabilities are able to live, often independently, in their own homes, and to participate in society in meaningful and productive ways.

Advances in science and engineering have had an extraordinary impact on all areas of disability and rehabilitation.

Research has emerged from a period focused primarily on impairment to a period that focuses on a broad range of issues of function and access. NIDRR's leadership in rehabilitation engineering and assistive technology development has played a major role in creating technology for use in rehabilitation services, for use by individuals with disabilities to conduct their daily lives, and to inform policy and adapt environments to meet the needs of persons with disabilities.

NIDRR's Logic Model depicts technology as encircling the goals of sustaining health and function, employment, and participation, because technology is a critical contributor to successful outcomes for persons with disabilities in all these areas. This section of the Plan discusses the societal and scientific contexts of disability technology research, and describes its applications at the individual and systems levels. At the individual level, the primary focus is on assistive technology devices; at the systems level, the areas emphasized include environmental modifications and accessible IT. Also included are instruments for use in medical and rehabilitative interventions, such as tools for diagnoses, assessments, and therapeutic interventions.

The Context for Research on Technology for Access and Function

NIDRR is well positioned to continue its leadership in rehabilitation engineering and assistive technology research. NIDRR maintains an environment in which rehabilitation engineering and assistive technology research is part of an institutionalized continuum that includes related medical, clinical, public policy, psychological, economic, vocational and social research. NIDRR continues to promote the value of rehabilitation engineering and assistive technology research while raising the national conscience about the value of research relating to people with disabilities.

Advances in basic biomedical science and technology have resulted in new opportunities to enhance the lives of people with disabilities. Recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro-electro-mechanical systems (MEMS), sensor technologies, and the neurosciences provide a potential wealth of opportunities for individuals with disabilities and should be incorporated into research focused on disability and rehabilitation.

NIDRR supports technology-related research at both individual and systems levels. At the individual level, assistive technology is used to enhance the physical, sensory, and cognitive abilities of people with disabilities and to assist them to participate in and function more independently in the home, at work, in recreational settings, and at cultural and religious events. At the systems level, technology R&D activities are applied in ways that enhance community integration, independence, productivity, competitiveness and equal opportunity by mitigating or eliminating barriers found in large social systems such as public transportation, telecommunications, IT, and the built environment.

Assistive technology often is described as either "high tech" or "low tech". High tech generally encompasses devices that are complex, and often expensive, to produce and use, while low-tech devices are those that often can be made at home or in a hobbyist's workshop, and are simple to create and operate. One NIDRR researcher frequently states that what is needed is "not high tech or low tech, but the right tech" to meet the needs of a specific individual.

Most assistive technology for people with disabilities falls into the category of orphan technology because of the specialized nature, limited demand, and consequent limited markets. This translates into reduced economic rewards for manufacturers. Strategies to address the problem of small markets include universal design and capitalizing on the growing recognition that many improvements intended for people with disabilities serve similar functions for others. For example, closed captioning is useful to all in noisy environments like airports, and in improving English literacy; curb cuts improve access for people pushing baby carriages or luggage; and voice recognition technologies are used throughout the Nation's telecommunications systems.

Consumer participation in rehabilitation engineering and assistive technology research is vitally important. Without end-user input, products tend to be developed in a vacuum; invariably, such products miss critical elements of design that facilitate adoption and successful use by persons with disabilities. The incidence of abandonment of assistive devices has been distressingly high throughout the history of the field. There appears to be a variety of reasons for abandonment, including: Poor fitting; mismatch to the user's needs; inadequate training in use of the device; equipment failures; objection to size, appearance or cumbersomeness of the device; and individual or cultural beliefs and values. Inherent in poor design and mismatch, in particular, is the paucity of customer reference or consumer involvement at each level of product development. In order for products to gain widespread acceptance and adoption, there must be detailed and exacting analysis of user feedback at each stage of product evolution, especially during the earliest stages of development. To continue use of the device, the consumers must find that the functional gains brought by the device outweigh the various inconveniences.

In sum, the principal function of technology research is to support the end-user outcome of participation, including employment, community integration and independent living, and the maintenance of health and function.

Accomplishments

The outputs of recent NIDRR-supported research, along with recent advancements in the field of technology as a whole, serve to describe the state-of-the-science and to indicate the most promising areas for future NIDRR investments.

Universal design principles have been incorporated into IT systems to create accessible public information kiosks, electronic voting systems, ATMs, postal kiosks and airport information systems. Universal design principles can be applied to the built environment, IT, telecommunications, transportation, and consumer products. These systems are basic to community integration, education, employment, health and economic development. The application of universal design principles at each step of the R&D process would incorporate the widest range of human engineering factors into technological systems. Universal design applications may result in the avoidance of costly retrofitting, a wider market base, and cost stability or reduction over time. NIDRR has taken a leadership role with regard to the development and promulgation of universal design principles that can be applied to the built environment, telecommunications, IT, transportation, consumer products and the World Wide Web.

The IT revolution is fundamentally altering the way Americans work, purchase goods and services, communicate and play. Today, one can access information using any number of electronic devices and networks, including computers connected to "plain old telephone lines" (POTS), televisions connected to cable or digital

satellite networks, cellular telephones or wireless hand-held personal digital assistant devices. Unlike earlier information technologies (*i.e.*, print, radio, telephone, television and telefax), mobile communications networks, the Internet and the World Wide Web did not seep into our daily lives gradually—rather, they exploded onto the scene. While the economic impact of this transformation has not been fully evaluated at either the individual or systems level, it is significant. The ubiquitous nature of IT brings with it a host of opportunities as well as challenges—especially for people with disabilities.

NIDRR, through its network of grantees, has provided critical expertise and leadership for policy, regulatory and standards development related to wheelchairs, wheelchair restraint systems, and wheelchair seating systems. Specifically, NIDRR-sponsored researchers have created standards for wheelchair safety in motor vehicles, for docking devices for public transit, and for measuring and testing wheelchair seating component strength, seating posture and cushion design. Other NIDRR-sponsored research resulted in the development of a manual entitled "Landmarking Manual for 3–D Anthropometry" to enhance and expand a prototype database of individuals who use both powered and manual wheelchairs.

NIDRR researchers identified problems with reproducibility of the standard measure (ANSI C.63.19) used by the Federal Communications Commission (FCC) as a basis for its rule on wireless phones and hearing aids, and developed consumer guidance for hearing aid wearers. NIDRR-sponsored research resulted in a consumer-tested tool for evaluation of TTY error rates over digital wireless phones. This tool has been transferred to industry, where it is now the industry standard measurement tool. The first Web guidelines (Mosaic Access Guidelines, Unified HTML Accessibility Guidelines) were developed and adopted by the World Wide Web Consortium (W3C) as the starting point for their Web Content Accessibility Guidelines work. Representatives from several RERCs have been working with the International Committee for Information Technology Standards (INCITS) on the development of the V2 interoperability standards for augmentative and alternative communication, assistive technology, and IT.

Related to technology for hearing, NIDRR researchers developed instrumentation for the objective measurement of certain types of tinnitus. The rate of growth of evoked otoacoustic emissions with input signal level is abnormal in the frequency region of the tinnitus. Differences in the growth functions provide a means for identifying and measuring different forms of tinnitus. The instrument can be used to obtain objective measurements of tinnitus generated in the auditory periphery.

NIDRR's technology research is well situated to contribute to the realization of goals in the three outcome areas. Research on technology to support employment has led to the creation of a model system for applying ergonomic technologies to accommodate disabled and elderly workers, developed tools for evaluating workers and jobs, and developed ergonomic solutions for disabled workers.

Research on technology to support health and function led to a simple yet highly functional prosthetic hand for children, and a novel transtibial prosthetic socket fabrication technology that greatly reduces the time and money needed for manufacture of prostheses. Other research has produced novel phone features such as "Touch One to Call" and "Flip to Call", which allow individuals who have significant cognitive impairments to use mainstream phones; an instrument for cost-effective early detection of hearing loss based on evoked otoacoustic emissions in the ear canal; and a technique for in situ measurements of hearing aid distortion, internal noise and other forms of interference in a hearing aid.

Research on technology to support participation and community living resulted in the design of an affordable universally designed kitchen, an adjustable height bathroom vanity, universally accessible laboratory furniture and an easy to use screen door handle; and also created the first cross-disability accessible building entry system. Implemented first in public housing in San Francisco, that system allows access to the building directory and entrance security by individuals with low vision, blindness, physical disabilities, hearing impairments, deafness, and reading disabilities.

Research Agenda

NIDRR will continue to further the development and application of universal design principles to promote the full participation of people with disabilities in mainstream society. As the American population ages and the associated prevalence of disability increases over the course of the next 20 years, the importance and visibility of universal design applications will be greatly enhanced. These applications will include universally designed homes, buildings, vehicles, communication devices, media interfaces, entertainment venues, and other advances related to all aspects of life. These products and environmental adaptations will be universally designed for use by people of all ability levels, so that people can continue to lead active lives in their communities following the occurrence of trauma- or age-related disabilities.

NIDRR will sponsor research to improve and build upon disability-specific products and environmental adaptations that have been developed to enhance participation and community integration. That will include the improvement of current augmentative communication technology so that it is smaller, easier to use, and provides a more life-like human voice for its users.

NIDRR research will address the principal function of technology, to support the end user outcome of participation. This requires research on techniques to enhance use and reduce abandonment by emphasizing consumer investment at each level of product development, including studies that illuminate potential population-specific factors (*e.g.*, behavioral patterns, cultural and societal values, or other variables). Because most assistive technology for disabled individuals falls into the category of orphan technology and is of a specialized nature, researchers often do not consider this cost-effective product development and employers sometimes do not consider this as a cost-effective mechanism for retaining injured workers or accommodating potential employees.

NIDRR will sponsor research that builds upon an understanding of the impact of economic factors on technology development, production, availability, and use, including studies that enhance understanding of the determinants of technology development and transfer, and use within specific industries or community environments. All of these factors must be considered within the realm of technology R&D, and in some instances across other areas of the NIDRR research agenda. Increasingly R&D researchers will be required to pay attention to environmental issues, societal factors and cultural norms during the research and product development process, particularly in an environment where globalization influences outcomes for the technology market and changing demographics dictate technology needs. NIDRR intends to benefit from this international research agenda by providing the opportunity for

researchers around the world to collaborate on product development and to examine technology needs through the lens of the international community. This creates a critical mass with related scientific expertise, leading to possibilities for new discoveries and information that otherwise would not benefit people with disabilities in this nation.

NIDRR's research agenda in the area of technology for access and function is designed to:

- Strengthen the science basis of rehabilitation engineering and assistive technology through the development of theories, validated measures and appropriate research methods for the identification and solution of problems to be addressed through technology.
- Increase the number and availability of empirically validated products, devices or environmental adaptations that promote increased mobility, interactive control and manipulation of relevant features of the environment and access to information and technology communications systems by people with disabilities to promote independence in the home, community and workplace.
- Increase the number of empirically based standards for products and devices and the built environment to ensure safety, accessibility and usability by and for people with disabilities.

Disability Demographics

Overview

In carrying out its statutory mandate to work with other Federal agencies to produce demographic and statistical data describing the population of Americans with disabilities, NIDRR has continued to support important research in disability demographics. Good demographic data are a critical component of NIDRR's broader mission of supporting research that contributes to improvements in the lives of people with disabilities.

Demographic data contribute to NIDRR's mission by helping to:

- Allocate NIDRR resources among competing topical areas.
- Inform policy within NIDRR and within the Federal government as a whole.
- Identify potential changes in the characteristics and needs of the disabled population.
- Understand changes over time in disablement.
- Inform service delivery.
- Plan research to address current and emerging needs.
- Inform consumers and their families and advocates.

NIDRR researchers strive to understand the processes by which individuals vary in participation and, when appropriate, to foster strategies or interventions that may help bridge the gap between preference and feasibility in an existing environment. The dynamic nature of ability and the continuing advances in technology, policy, and human resources practices offer great promise toward maximizing participation of individuals with disabilities in all areas of life.

This chapter clarifies NIDRR's work in the context of disability demographics; and describes past activities and achievements in demographic studies. Examples of achievements in this area include: The establishment of a Disability Statistics Center; elucidation of the complex concept of an "emerging universe of disability"; and delineation of problems and gaps in the current disability demographics effort. The chapter further identifies target areas for priority attention and presents a future agenda for NIDRR.

The Context for Disability Demographics

Many organizations continue to collect important information about individuals with disabilities. At least five major national surveys are in existence, along with untold numbers of minor surveys and databases related to the use of specific programs and surveys.

An overarching concern in disability demographics is the assessment of the intersection of the individual and the environment. At the individual level, one may note varying degrees of function, variation in demographic factors and variation in preferences. National datasets focus on measurements that allow one to describe the individual in isolation from his or her surroundings. At the environmental level, researchers are beginning to explore measures of barriers and facilitators to participation. Measures of participation vary, although sources such as the National Health Interview Survey/Disability (NHIS–D) and the Survey on Income and Program Participation (SIPP) move toward evaluating the gestalt of social performance.

A lack of standardized definitions, terminology, coding, classification, and measurement of disability and functioning often limits generalization of research findings. Extending use of research findings or population trends to inform policy or clinical interventions is limited due to the difficulty of extrapolating knowledge about disabilities that is gathered from a disparate range of data sources, classification and coding systems, and measures of disability. For example, it is important to estimate future potential demands on rehabilitation systems, but existing population data sources do not adequately provide for planning, development and evaluation of rehabilitation services and population trends. The ICF, which is described elsewhere in this plan, is a coding system that promises to allow the assessment of disability as a dynamic interaction between the person and the environment.

NIDRR's mission and its measurement tools are complicated by the interaction of static and dynamic variables that describe the background of disabilities. For example, people age, health changes, economic circumstances vary, and accidents occur. Point-in-time data sources may describe facets of disability, if enough questions are asked, but the environmental context often is absent.

A range of researchers and consumers of data have noted the problem in obtaining valid and reliable data about disability prevalence and its consequences. For policy purposes, the Census is a critical resource, as is the American Community Survey (ACS). Federal, State, and local planning underscore the role of the Census. Nonetheless, as noted by the NCD, there are methodological problems with the measures used in the Census.

Descriptions of the Population With Disabilities From Existing Surveys

Due to the variety of measurement tools for disability, no simple answer exists to the question of how many people with disabilities are living in the United States. Drawing upon key national sources of data, overall estimates of the prevalence of disability range from five or six percent up to more than 20 percent depending upon the data source. For purposes of prevalence, 54 million Americans with disabilities is a figure often cited by policymakers, advocates and the media.

Measures of disability in Federal surveys reflect a variety of needs across agencies for gathering such data. Data from the ACS, and the SIPP, both by the U.S. Census Bureau in 2002, on prevalence of disability show a range from 13.5 percent of adult males 18 years of age to 64 years of age in the ACS to 14.8 percent for a similarly aged population in the SIPP. Also, for example, adult females from 18 years of age to 64 years of age had a prevalence rate of disability of 13.4 percent in the ACS compared with 20.1 percent in the

SIPP. For females 65 years of age and older, the ACS reported a disability prevalence rate of 43.5 percent while the SIPP reported a 50.4 percent rate. Males age 65 and older had a 41.0 percent rate of disability according to ACS data and 40.4 percent according to the SIPP.

It must be noted that each of the national surveys is tied to a program mandate other than the estimation and characterization of disability, especially as it is presented in the NIDRR paradigm. Major data collections generally are related to health status, employment status, benefits recipient status and program usage. Thus, it is understandable that they use varying definitions of disability and sample parameters.

Measures of severity of disability are critical for purposes of the Act. Each of the national datasets can be used to estimate the prevalence of significant disability. Generally, limitations in activities of daily living (ADLs)—for example, bathing, eating and getting dressed—reflect the greatest severity, with limitations in instrumental activities of daily living (IADLs)—cooking, shopping and managing money—and in working also are components of severity. For working-age adults, working at a job or business is often a major life role, and work limitation figures show the impact of disability on the ability to work. Overall trends regarding employment and disability have emerged from various data sources. Generally, disability is associated with lower labor force participation and earnings.

Review of the NHIS, SIPP and Census indicate variations in estimates, reflecting methodological differences such as question wording, data collection and coverage. These three data sources were examined for prevalence estimates of ADLs, IADLs and work limitations among adults aged 18 through 69. In 2000, the NHIS reported a prevalence estimate for ADLs of 1.8 percent, the SIPP reported 3.8 percent and the Census reported 9.0 percent. For IADLs, the NHIS prevalence estimate was 4.2 percent, the SIPP was 6.2 percent and the Census was 9.8 percent. Looking at limitations on work, the NHIS provides estimates of limitations in ability to carry on work and other age-appropriate major activities. The SIPP and the Census also measure what are frequently called work limitations, with the Current Population Survey (CPS) sometimes being used as a source of numbers on "work disability." Again, there is variation in the questions on these surveys. Prevalence estimates for work limitation from the NHIS, the SIPP and the Census were 2.6 percent, 8.6 percent and 11.9 percent, respectively.

Measures of self-care, and the need for personal assistance or technologies, provide rich data for understanding more severe disability. Exploration of such needs also highlights cultural and socioeconomic variations in access to help. Across data sources that measure need for help with personal care, such as the NHIS and the SIPP, there are consistent trends showing that increasing age is a key factor in need for assistance. Thus, aging is strongly correlated with disability and with the need for functional supports including technology and environmental access. Predicted changes in the demographics of the general population will have substantial impact on the distribution of disability and the need for specialized technologies to assist individuals with disabilities. The U.S. Census Bureau has projected substantial increases during the next several decades in the percentage of the general population ages 65 and older.

Emerging Universe: Population Demographics and Disability

In its 1999–2003 Long-Range Plan, NIDRR noted a phenomenon it called an "emerging universe of disability." The emerging universe was defined by changes in the distribution of disability according to demographic characteristics. This "universe" encompassed changes in the age, ethnic composition, income, education, and immigrant status of the population, as well as the appearance of new impairments, and different etiologies and consequences of existing disabilities. Research supported by NIDRR has tended to validate this construction, and to provide a description of the emerging universe.

As noted earlier, certain trends are common across national data systems that measure disability. Individuals with disability are likely to have less education, less likely to be employed, more likely to be older, to be black or Native American as opposed to white or Asian, to have public as opposed to private health insurance, and to be poor or near poor. In addition, there is a geographic imbalance, with disability rates highest in the South.

Poverty as both an input to disability and an outcome of disability requires better understanding. As an underlying variable, poverty may discourage full social participation by people who are from minority backgrounds and have disabilities. As Fujiura and his colleagues write, "across all ethnic/racial and age cohorts, rates of disability were higher among low income households; above the low income threshold, group differences were greatly attenuated. Black and Hispanic children with a disability lived disproportionately in low-income, single-parent homes." (Fujiura, 2000) One must disentangle economic, health and social risks and policies to fully understand the impact of disability on persons from diverse backgrounds. The flux of the general population, due to increasing diversity, immigration, the growth of the Hispanic population, and the graying of the baby boom generation, presents challenges to existing service systems. Emergent health conditions are yet another factor that introduces complexity. Ultimately, NIDRR researchers will need to evaluate the impact of all of these factors on the equalization of access, opportunity and successful outcomes for people with disabilities in fulfilling a range of social roles.

Achievements in Disability Demographic Research

- *Disability Statistics Center (DSC)*—NIDRR has long funded a DSC as a resource for researchers, policymakers, service providers, consumers, and others. That investment has yielded a number of key reports about the status of individuals with disabilities and their lives. In addition, through its investment in a statistics center, NIDRR has played a significant role in C-B by nurturing disability researchers to understand and analyze demographic data.
- *Emerging Universe of Disability*—Description and increased understanding of the emerging universe of disability, which refers to a disabled population that is shaped by several elements including demographic changes in age, immigrant status, and other socioeconomic factors; new types of conditions; consequences of treatments of existing conditions; and differential distribution of conditions and their consequences. NIDRR researchers' work in examining and explaining this phenomenon has helped to increase attention in the last six years on the unique needs of this "emerging universe," including a focus on cultural and economic factors affecting disability.
- *Publications of Disability Data*—In addition to reports from its DSC, NIDRR has funded a series of Chartbooks that present important data in formats that are accessible to those who are not researchers. Most recently, NIDRR has published a Chartbook on Mental Health and Disability.

• *Improved Measurement*—NIDRR has been a key player in the development, dissemination, and adoption of the shift in conceptualization of disability from a medical to a sociomedical model. As part of that work, NIDRR grantees have contributed to the development of improved survey questions that measure issues of health, well-being, and participation as they relate to individuals with disabilities. In addition, NIDRR has played a significant role in the development of the ICF that offers potential to facilitate better understanding of individuals with disabilities across a variety of disparate data sources.

• *Primary data collection*—NIDRR supports data collection in a variety of venues. Through its model systems, NIDRR collects data that addresses the efficacy of a variety of rehabilitation methods. NIDRR grantees have collected population-based data that describe specific populations such as individuals with MS or other conditions. Recently, NIDRR designed and funded a national survey regarding the use of and need for assistive technologies.

• *Interagency collaboration*—Through its leadership in the ISDS and other mechanisms, NIDRR has been a leader in promoting the collection of data about individuals with disabilities using a variety of Federal surveys. NIDRR has provided both financial and intellectual support for such efforts.

Research Agenda

NIDRR's demographic performance goals are intended to increase the ability to describe the characteristics and circumstances of people with disabilities and their family members by:

• Improving the ability to collect disability data through the joint development of a standard nomenclature and methodological standards, including sampling, in collaboration with other Federal and non-Federal entities.

As a key objective, NIDRR will continue to support efforts that utilize multiple sources to examine the current state of affairs and trends that allow the projection of future needs. It is important to draw upon the diversity of available information. In part, existing data sources are sometimes contradictory, suggesting an intermediate need to evaluate the reasons for the inconsistencies. No one current source can provide all the important information needed about key inputs such as PAS, assistive technology, environmental facilitators and barriers, and their interactions. In the absence of a valid and reliable national disability survey, meta-analysis threads together the best available sources of topic-specific data.

In conjunction with other Federal partners, NIDRR will support the methodological work that yields the tools needed to implement a national survey of disability across the life span. The 1994–95 NHIS on Disability is a good model for future efforts, with the necessary addition of consumer experts to evaluate the content areas. Of note is that efforts to develop a national disability survey will be of great value even if such a large survey cannot be fielded in the foreseeable future. Each component of a cohesive national survey will have utility in surveys that are agency or mission specific. Resolution of complex sampling issues will benefit any survey that must include a representative proportion of individuals with disabilities. Development of topical modules with reliable and valid measures will yield instruments that can be used in a variety of data collections so that information is available about varying subgroups or the interaction of a variety of factors.

• Enhancing the understanding of the number and characteristics of people with disabilities through targeted studies of existing data.

Through much of its research portfolio, NIDRR will continue to support secondary analyses that lead to understanding of the basic life-cycle events and experiences of people with disabilities. Parsing the population of people with disabilities through cross-tabulation with other demographic variables will continue to be a focus. Linking the national and smaller data sources will be a priority. In the near and mid term, NIDRR will continue its work to evaluate and analyze existing data.

• Improving the science of disability demographics by developing and/or improving the measures of the interaction between technology and the physical environment, the social environment, and social policy as they affect people with disabilities.

NIDRR will stimulate the development of new measures of the interaction between technology and the physical environment, the social environment and social policy. Such data are important for evaluating policies, including those enumerated in the NFI. Researchers must develop measures and indicators to assess the impact of environmental barriers and facilitators and encourage widespread use of these measures to evaluate how technology enables people with disabilities to succeed in school, work, and community and lead more productive and rewarding lives.

The ultimate goal of NIDRR's disability demographics effort is to generate new information that can be used by intermediate and intended beneficiaries who are working to identify and eliminate disparities in employment, participation and community life, and health and function. Personal care, work, culture, and health are several of the rich areas that NIDRR and its grantees have studied. First, the concern with data threads through virtually all components of the study of disability. In order to understand needs and impacts, and to evaluate outcomes, quantitative analyses play a key role. In addition, one must often consult multiple sources of data to develop range estimates or compare trends. NIDRR has long funded studies that mine data to address the full range of social, health, and economic facets of disability and that compare findings across data sources. There are significant correlations with disability, such as aging, and there are a variety of links between disability and culture, race, and ethnicity. Supporting multiple sources for examining the current state of affairs for people with disabilities will provide important data that can be used to advance many areas of disability and rehabilitation research.

Research has identified gaps in data, such as the sparse measurement of the interface between individual and environment. NIDRR will nurture the methodological work that will address those gaps. Along with improved measures, there is much to be done to address problems in sampling and data collection. There is a great need to see the effects of long-term impacts of interventions to facilitate participation. In particular, research must address geographically and ethnically diverse populations to ascertain differences in needs.

To be useful for policy, research, programs, and services, data must be grounded in an appropriate organizational framework, such as the ICF. The ICF is a scheme organized around function, activity, participation, and environmental context. To evaluate the potential uses of the ICF, a variety of measurement tools and data systems must be examined in addition to further evaluation of the implications of the classification system for U.S. populations.

II. Capacity Building

Overview

This chapter addresses a critical research building block, C–B,

recognized as one of the three short-term arenas through which NIDRR achieves its goals. An important function of this chapter is to define C–B and its key dimensions in a context that reflects NIDRR's mission. The following sections describe the multidimensional aspects of C–B, provide a brief review of selected NIDRR C–B accomplishments, and discuss future directions and specific goals and objectives in C–B.

Definition of Capacity Building

As illustrated in the Logic Model (see Appendix 2), C–B is foundational for NIDRR's agenda. NIDRR C–B includes three major components: (1) Improving and building a larger and better quality supply of individuals to conduct research, (2) building a research infrastructure at institutions to carry out research and related activities, and (3) increasing the ability of consumers to interpret and use research and to play an active role in the research process.

At the individual level, NIDRR focuses on C–B to ensure a source of researchers to carry out the research agenda. In addition, NIDRR C–B at this level enhances the ability of researchers to generate useful new knowledge. NIDRR historically has sought to increase the number of individuals from underrepresented groups in this effort, particularly those with disabilities. At the organizational or systems level, NIDRR C–B supports the framework for carrying out individual level research work. At a systems level, all NIDRR programs may be said to involve C–B, in that NIDRR funding is intended to increase the capacity of the field to conduct high quality research directed at the long-term goals and objectives identified in the Logic Model. Another important dimension of NIDRR C–B is the development of strategies to assist individuals with disabilities and their families, as well as practitioners, to use research findings to assist with choices of interventions and improve consumer involvement in the research process. This process begins at research development and extends to implementation, evaluation and dissemination.

Context for Capacity Building

NIDRR's principal statutory mandate for training is to support advanced instruction for researchers and service providers. Consistent with this mandate, the 1999–2003 NIDRR Long-Range Plan defined C–B building as multidimensional and involving training for those who participate in all aspects of the disability research field, including scientists, service providers and consumers. NIDRR also has a mandate, strengthened in the 1992 Act amendments, to train peer reviewers, particularly consumers, and to train consumers to apply new research knowledge and to use assistive technology.

Individual Level

At the individual level, NIDRR's current C–B activities focus primarily on support for individuals, most of whom already have selected research as a career, and have completed doctoral studies. Both the Fellowship program and the ARRT program provide support to individuals who fall within this category. While this support assists with developing careers of young investigators, it may not be optimal for supporting other research C–B, particularly with regard to recruitment and career development for individuals with disabilities or those from underrepresented racial and ethnic populations. NIDRR acknowledges the need for supporting increased development of research as a career at the secondary school and undergraduate educational levels, particularly focusing on students with disabilities and those from diverse cultural groups. NIDRR will look for opportunities to partner with other Federal agencies on research initiatives in this area.

Systems Level

NIDRR has several program mechanisms by which it funds C–B. The programs include the ARRT program, Fellowship program, NIDRR Scholars, Minority Development/Section 21 program, RRTCs, and RERCs.

ARRTs provide research training that integrates disciplines, teaches and enhances research methodology skills, and trains researchers in disability and rehabilitation science. These training programs operate in interdisciplinary environments and provide training in rigorous scientific methods.

The Fellowships augment scholarly careers in the field, and function in an integrative capacity to define new frontiers of disability and rehabilitation research. This program provides opportunities for interaction among the fellows and for exposure to established researchers and policymakers. Additionally, fellows have the opportunity to participate in an annual research dissemination program where their findings are presented and discussed with research experts.

The NIDRR Scholars program recruits undergraduates with disabilities to work in NIDRR-funded research centers and to participate in research activities that expose them to disability and rehabilitation research issues, while at the same time providing work experience and income. This program is an innovative approach aimed at generating interest in research careers for individuals with disabilities and other underrepresented populations.

The Minority Development program focuses on research C–B for minority entities such as Historically Black Colleges and Universities (HBCU) and institutions serving primarily Hispanic, Asian and American Indian students. Program administration activities include strategies to assist minority entities with networking activities focusing on collaboration, exchange of expertise and advanced training.

Training activities conducted by funded entities such as those participating in the RRTC and RERC programs capitalize on the existing critical mass of expertise and knowledge to provide:

- Experiential and academic training for researchers and clinicians at the undergraduate, graduate, and post-graduate levels, including continuing education activities.
- In-service training for rehabilitation practitioners.
- Training for consumers, their families, and representatives in implications and applications of new research-based knowledge.

Accomplishments

NIDRR has built capacity for research in a number of ways. Most obvious is its investment in C–B programs to increase the skills of qualified researchers in the disability and rehabilitation field. The NIDRR-supported programs also have had the effect of increasing the numbers of disability researchers who are individuals with disabilities or members of minority populations. The ARRT program, while intended to promote research contributions in the long term, focuses primarily on increasing the number of individuals qualified to conduct rehabilitation research. These may include professionals in clinical settings who wish to sharpen their research skills through institution-based training programs. NIDRR has funded 29 programs under this rubric since 1992. The Fellowship program, while encouraging individuals to increase their expertise in research through the fellowship experience, focuses directly on promoting contributions to the knowledge base. There have been more than 200 fellows funded since the inception of this program with the first "class" in 1983. The fellowship experience allows for an intensely focused one-year research activity that is investigator-initiated and involves

independent research. This fellowship program has resulted in numerous peer-reviewed journal articles, books and book chapters, as well as refinements in instruments originally developed in other settings.

Most of those who have received funding under these two programs have remained in the disability and rehabilitation research field. In recent years, there has been a "progression" from those who received structured mentoring under the ARRT program to their place as full-fledged principal investigators in NIDRR centers or other programs. However, the fellowship opportunity allows for the support of individual researchers, including those not based at universities, and the flexibility of this approach and the camaraderie engendered in this program have received considerable praise from former participants.

NIDRR has made a major investment in the infrastructure of research through development of the model systems programs in SCI, TBI, and burn. These model systems have made major advancements in the capacity to conduct care for individuals with these conditions. Models systems also have contributed to C–B by putting into place a system for conducting multicenter trials.

Future Agenda

The capability to conduct first-rate research depends on a commitment to providing opportunities for learning the multiple skills required for designing scientifically sound studies, selecting appropriate research methods, analyzing data, and interpreting and reporting findings. NIDRR intends to support C–B activities that incorporate training in the application of research findings to the real-world needs of people with disabilities and the entities that impact their lives, including policymaking. Training aimed at transferring research findings into practical use is critical for C–B at the organizational and individual levels. However, the training must take into account scientific advancements across relevant disciplines, the state-of-the-science, the emerging universe of disability, cultural diversity, and the changing demographic profile of the Nation; otherwise this training is no longer relevant and cannot contribute effectively to research C–B.

NIDRR supports diversification initiatives and training that will attract and increase the participation of researchers, particularly individuals with disabilities and those from diverse cultural backgrounds, and will provide them with high level preparation. NIDRR will place increased emphasis on institutional C–B and building research infrastructure, in addition to developing a plan of evaluation of C–B. NIDRR C–B will extend to increased training for KT of research and the expansion of multidisciplinary research.

NIDRR has invested in C–B programs to increase the number and skills of researchers qualified to work in the disability and rehabilitation field. There are a number of external factors that may affect the success of an effort to build capacity in research, including the anticipated availability of funding for research, the potential for increased attention to preparation for service delivery at the expense of research knowledge and skill building; and the changing demographic profile of the student, professional and disability communities. Understanding these issues via research activities can inform training and practice needs, and help to ensure that policies are sensitive to these concerns.

Thus, NIDRR intends to:

- Enhance the capacity to solve problems in creative, state-of-the-art ways by encouraging researchers from different cultural, racial, and academic backgrounds to conduct culturally-competent research in new settings that represent the contextual experiences of individuals with disabilities and stakeholders.
- Enhance cross-disciplinary and advanced research training opportunities in disability and rehabilitation-related fields for rehabilitation professionals, qualified individuals, including students with disabilities and individuals from minority backgrounds.
- Increase the capacity of persons with disabilities, family members, and advocates to understand and use research findings through training and the application of participatory action research principles.
- Strengthen its research portfolio by increasing the number and type of partnerships with Federal and non-Federal research and development agencies that conduct clinical trials and experiment with innovative approaches to R&D infrastructure development.

Various projects have been funded to study the cultural and contextual nature of disability experiences. These projects may help in training the field to design its research efforts using a framework different than the traditional view of disability, but also may put forth new ways in which disability research is conducted. For example, a recent research priority focused on generating greater emphasis on promoting collaboration between minority and non-minority entities and examining the implications of traditional methods, models, and measurement for traditionally underrepresented populations. The changing profile of the disabled population will require intercultural competence, and engaging collaborative research is one approach to meeting those needs. Essential to this process of improving collaboration is the necessity to identify factors that are effective in facilitating collaborative research endeavors across disciplines and the research community, including partnerships between minority and majority entities and relevant disciplines. The community-based research initiative, which fosters partnerships between academic institutions and disability organizations and advocates, illustrates this point.

Other priorities in examining the contextual nature of disability include studies that illustrate the influence of the intersection of the person and environment; exploration of context and culture with regard to specific disability populations; and topics such as assistive technology, disability rights, health promotion, family relationships, and community reintegration. Adding research that examines the evolutionary processes of policy, science, practice, and business or clinical culture can be an important element in creating a better understanding of the factors that shape both professional and disability experiences. Preparing researchers to examine environments where advanced technology, emerging disabilities, economics, and other factors influence training, practice and rehabilitation outcomes can help to improve the development, planning, implementation, and evaluation of programs to promote disability rights, health maintenance, family relationships, and community reintegration. NIDRR anticipates continued leveraging of the strong base of activity of NIDRR's RRTCs and RERCs serving as Centers for National Excellence in rehabilitation research, to further enhance programmatic C–B through these centers.

III. Knowledge Translation

Overview

The KT process actively engages disability researchers, researchers from other disciplines, service providers, policymakers, and persons with disabilities and their families in the interchange, synthesis and application of rehabilitation research knowledge. KT activities are a central part of NIDRR's mission and provide an important pathway for improving the quality of life for individuals with

disabilities. Outlining a central role for KT in this Plan is consistent with NIDRR's authorizing statute as well as the expressed interests of stakeholders collected throughout the long-range planning process. It also builds upon the strong history of KDU activities conducted by NIDRR and its grantees. NIDRR will focus its specific KT activities in the domains of employment, home and community, health and function, and technology.

Definition of Knowledge Translation

For NIDRR, the definition of KT refers to the multidimensional, active process of ensuring that new knowledge gained through the course of research ultimately improves the lives of people with disabilities, and furthers their participation in society. The process is active, as it not only accumulates information, but it also filters the information for relevance and appropriateness, and recasts that information in language useful and accessible for the intended audience. KT includes transfer of technology, particularly products and devices, from the research and development setting to the commercial marketplace to make possible widespread utilization of the products or devices.

NIDRR is particularly focused on ensuring that disseminated information is of high quality and based on scientifically rigorous research and development. To advance its dissemination of high quality research, NIDRR may analyze aspects of successful procedures used for review, synthesis and dissemination of research findings by other agencies for potential usefulness in NIDRR KT activities. NIDRR is especially interested in using models that encourage a thorough discussion of research findings among researchers, with emphasis on rigor and application possibilities. NIDRR also wants to ensure that potential end users of information will have the information they need to judge the quality of research and development findings and products, from NIDRR and other agencies, and the relevance of these findings and products to their particular needs.

The most appropriate target audience for KT will be determined in large part by the primary outcome arena that is under consideration. For example, research on theories, measures and methods will find a primary audience among researchers and practitioners, whereas the primary target for activities related to new and improved products and environmental adaptations will be people with disabilities. The scope of KT as envisioned in this Plan covers a wide range of activities and involves a variety of mechanisms, including publication of research results, determination of the effectiveness of research applications, development of targeted materials, and the transfer of technology.

The Context for Knowledge Translation

The Institute has had a mission to disseminate its research findings, and promote their utilization with a range of audiences, since its establishment. As NIDRR expanded its conceptions and practice of KT, the focus shifted from the perception of dissemination and utilization as a linear, mechanical process of information transfer—in which knowledge is packaged and moved from one place to another—to a highly complex, nonlinear, interactive process, critically dependent on the beliefs, values, circumstances and needs of intended users. This refocusing provided a key element for successful KT activities potential users now take an active role in acquiring and using new knowledge. This change has paralleled the progressive improvement in models used in disability research that position people with disabilities in a highly integrative role as opposed to a non-participatory role.

Most NIDRR centers and projects now fund information and dissemination activities, with these activities becoming more coordinated and integral to planning in recent years with the establishment of a national center to disseminate NIDRR grantees' research. NIDRR also has carried out specific KT activities through grants and contracts monitored by NIDRR staff.

NIDRR intends that every new research project funded under this Plan should develop and share new knowledge to improve the lives of citizens with disabilities. In the United States, NIDRR and many other research agencies have endeavored to make scientific results accessible to all citizens, particularly results of Federal government-supported research. Several science-related institutions including the National Academy of Sciences (NAS), the National Science Foundation (NSF) and the National Institutes of Health (NIH) have developed portals of information that present research results, in various formats, to a large numbers of users. Since 1994, NIDRR has funded the National Center for Dissemination of Disability Research (NCDDR) for many of its KT activities. Most of the NCDDR work is done through databases and Web pages linked to other critical sources of research information. Researchers, educators, service providers, and individuals with disabilities use these easily accessible sources.

Challenges in Knowledge Translation

The biggest challenge faced by NIDRR, and other major research agencies, is to diversify KT activities to better serve various constituencies. While research organizations generally are good at peer-to-peer dissemination, the leap required to move from research to practice can be much more difficult. This process demands filtering the information, determining the quality of the findings (source and content), and aggregating research information from a number of NIDRR research venues (no single project addresses all aspects of a problem). It also requires a clear determination of how the research was conducted and how it might fit the user's needs. KT also requires the development of expertise in a number of media areas and development of strategies that could be employed to reach end users. The tasks of translation require regular contact between the translator and the original researcher. While a researcher might not be the best person to do the final dissemination, his/her involvement is essential to KT. The research must envision the target system in the beginning of research, the creation of a dissemination plan, and the development of a plan to evaluate the outcome.

NIDRR intends to assist people with disabilities and their families, and the general public, to efficiently access information. This may require "mediated navigation," that is, individuals may need an intermediary to help them in the search for answers to their questions. Some of the most common intermediary roles are librarian, information specialist, knowledge management specialist, database coordinator, or trainer. Similarly, many stakeholders may benefit from appropriate translation of information into accessible forms. The use of multiple mechanisms for dissemination will be employed including knowledge sharing practices that make the maximum use of Web servers, subscriptions systems, e-forums, feedback systems, databases, Communities of Practice (COP), virtual libraries and other solutions related activities. COPs involve groups of people who share a concern, set of problems, mandate, or sense of purpose. COPs serve to reconnect individuals with each other in self-organizing, boundary-spanning communities. COPs complement existing information structures by promoting collaboration, information exchange, and sharing of

best practices across boundaries of time, distance, and organizational hierarchies.

Accomplishments

For more than 20 years, NIDRR has funded several research databases for individuals with disabilities. These and other vehicles of KDU have served as important resources for consumers, practitioners, policymakers and researchers. NIDRR-funded databases have focused on applied rehabilitation research and the provision of resources to provide access to up-to-date information on assistive technology and other useful consumer information. In the last decade, NIDRR has refocused and strengthened its KDU effort through focusing on the end users of information, by capitalizing on technology and by creating a technical assistance resource and a network of KDU centers (KDUCs). By refocusing on the end users of information, the KDU program has made researchers increasingly aware of the need to look beyond parochial dissemination channels to the information needs of stakeholder audiences such as people with disabilities and their families, disability organizations, policymakers and researchers in other fields.

The KDU program increased the outreach of grantees in many ways including by taking advantage of the growth of the World Wide Web and distance learning techniques to promote electronic dissemination. Through publication of Research Exchange issues on dissemination, reinforced by presentations at the National Association of Rehabilitation Research and Training Centers (NARRTC), SCI and RERC meetings, and technical assistance in one-on-one sessions, the number of NIDRR grantees with Web sites increased from 33 percent to more than 85 percent over a five-year period. Currently, almost all NIDRR grantees have Web sites. By continually monitoring the sites and referring grantees to tools such as the Web Accessibility Initiative (WAI), NIDRR has seen major improvements in the accessibility of the grantee Web sites to people with disabilities.

Specific KDUCs, which have focused on such topics as IL, have provided an array of "translated" material derived from NIDRR research. The material is presented in language that can be used readily by consumers. The materials produced by KDUCs have helped the public understand issues regarding the *Olmstead* decision, the capabilities of people with mental disabilities or illness, and the success that people with disabilities can have as parents. They also have encouraged private entities such as the Pew Foundation, to include disability as an issue of importance in reports and grants.

The NIDRR KDU program also has expanded its component projects and increased their utility to the public by establishing a public Web site with about 60,000 holdings on NIDRR disability research. Instant online searching of that information is available. A NIDRR Program Directory provides descriptions on and contact information for the wide range of NIDRR-funded activities. A searchable online database was created to provide ready access to findings and results of NIDRR grantees' research, and is updated weekly. Through the centralization of information, numerous reports and data on many NIDRR grantees are readily available, thus reducing the need to search every NIDRR grantee's Web site for research outcomes. More than 1,200 resources now are entered in the Electronic Library, and 250 entries are in the Spanish version, the Biblioteca Electronica.

In addition, NIDRR has funded the premier database of information on assistive technology, ABLEDATA, since 1980; it is a national resource for assistive and rehabilitative technology product information. Using the World Wide Web, the database is searched more than 1 million times annually, and generates telephone inquiries. The database offers more than 30,000 assistive technology products from domestic and international sources, and information on more than 6,000 manufacturers, and has been cited as a model for the development of similar systems.

To enable rehabilitation service providers to work more effectively with individuals born outside the United States, NIDRR funded a series of 11 monographs that described the cultures and customs of foreign countries. The 11 countries chosen for the monographs were those with the highest number of emigrants to the United States. The monographs addressed issues that are crucial for service providers to understand in their work to achieve successful rehabilitation outcomes with foreign-born individuals who have disabilities.

Future Agenda

NIDRR is interested in developing improved ways to make information accessible to the research community and to disability-related agencies and organizations. NIDRR will continue to encourage and support dissemination of research information to consumers as an important aspect of its mission and legislative mandate. Building on NIDRR's solid foundation of peer-to-peer dissemination, individual centers will be encouraged to reach out to their constituent populations.

NIDRR intends to strengthen the dissemination work done by its specific content-based KT centers and regional networks of technical assistance centers. NIDRR will examine the use of its regional networks of technical assistance centers that focus on the ADA and educational technology, and look at expanding their scope to include high quality review and discussion of research results from NIDRR researchers before translation and dissemination to the public. NIDRR will advance its KT activities by emphasizing expert judgments on the value of information for further dissemination; better accountability for outputs produced by NIDRR researchers, and improved methods for making this information available beyond the research community. NIDRR will support all centers as they maintain and disseminate information of wide relevance to persons with disabilities and will encourage the effective use of electronic transmission, accessible media, and translation into multiple formats. In this effort, NIDRR will focus on ways of publishing and disseminating research to the public that will improve upon the traditional dissemination tools and methods and advance the use of technology to promote accessible video libraries and virtual libraries, among other methods.

Future Research Activities

NIDRR will further the development of a theory of KT, the development of measures of success, and uniform definitions and requirements of NIDRR grantees and contractors. These complex endeavors will be undertaken with support from the network of all NIDRR's DRRP and KT projects. The efforts will concentrate on developing mechanisms to learn how research results are relevant to stakeholder needs and how the research results can help people with disabilities improve their conditions—for example, achieve better access to education, employment, independent living and wellness.

NIDRR will increase its KT activities by examining the needs of the end users of information. The new approach will look at the user needs in terms of: characterizing users of NIDRR's research; identifying users' goals or purposes; assuring alignment of the nature and quality of the information disseminated with the goals of the users; providing support and assistance to different users to help them find the

information that they need; and meeting the accessibility requirements of people with disabilities. This approach also will facilitate NIDRR's growth in the KT area by addressing questions on methods for KT including: a mechanism for the review and validation of project results as a stage in translation; assistance to projects in using existing clearinghouses; and a mechanism to track specific results to identify long-term accomplishments.

NIDRR will focus on high quality peer review and discussion of one major product for each research and development area each year. This type of peer discussion and consensus by researchers will be facilitated through a special database and the results will be reviewed for accuracy and completeness.

Thus, NIDRR's agenda in the area of KT is designed to:

- Increase the availability of relevant information to NIDRR's intermediate and intended beneficiaries by developing and implementing a systematic approach to vetting information.
- Increase understanding of how best to communicate new knowledge to beneficiaries.
- Increase the availability of technologies that enable independent mobility, control and manipulation of the home, community and workplace environments and access and use of information through technology transfer.

Appendix 1—Steering Committee Members

Elena Andresen, a professor and chief of the epidemiology division in the Department of Health Services Research, Management and Policy at the University of Florida, has over 15 years of experience in the area of epidemiology. Her research interests include women's health and chronic disease epidemiology, disability, and the use of outcomes measures in clinical, epidemiologic and health services research. Andresen's grant review participation includes the Centers for Disease Control and Prevention (CDC), the National Institutes on Aging, and Department of Veterans Affairs (VA). She also has served on committees for the Institute of Medicine, the Agency for Healthcare Research and Quality (AHRQ), and the CDC. Andresen is a member of the American Public Health Association, the American College of Epidemiology, the Association of Teachers of Preventive Medicine, and the Society for Epidemiologic Research. Andresen has a doctoral degree in epidemiology from the University of Washington.

Bobbie J. Atkins, a professor in the Master's Program in Rehabilitation Counseling at San Diego State University, has over 25 years of experience in teaching, research, writing, and service in rehabilitation counseling. She has distinguished herself as a leader nationally and internationally with expertise in diversity, alcohol and drug prevention, AIDS education, and supervision. In 1999, the National Association for Multicultural Rehabilitation Concerns named its research award the Bobbie J. Atkins Rehabilitation Research Award. Atkins has received numerous awards including the Mary E. Switzer Fellow from the National Rehabilitation Association and has served on the President's Committee on Employment of Persons with Disabilities. She is the 2003 recipient of the National Rehabilitation Association (NRA) Presidents' Award for outstanding contributions to the field of rehabilitation. As the current project director of Project Success, a Rehabilitation Services Administration (RSA) funded capacity-building project, she is directly impacting people of color through training and technical assistance on grant writing and submission. Atkins' doctoral degree in rehabilitation counseling psychology is from the University of Wisconsin-Madison.

Henry B. Betts, chairman of the Rehabilitation Institute of Chicago (RIC) Foundation, is a pioneer in the field of rehabilitation medicine. He has served the RIC as president, chief executive officer and medical director. He was chairman of the Department of Physical Medicine and Rehabilitation at Northwestern University's Feinberg School of Medicine until October 1994 and also the first Paul B. Magnuson Professor in that department. Betts has spent his life changing attitudes and improving conditions for people with disabilities. At RIC, he created what is now one of the nation's largest residency programs in physical medicine and rehabilitation. He has advocated for many issues including the Americans with Disabilities Act of 1990, improved accessibility in public buildings and walkways, and seat belt and drunk driving laws. He works vigorously on issues of employment of people with disabilities. Betts serves as a board member on many professional and community organizations. The Prince Charitable Trusts honored his efforts in 1990 by establishing the Henry B. Betts Award, conferred annually upon an individual whose work has benefited the disability community. Betts has a medical degree from the University of Virginia.

Frank G. Bowe, the Dr. Mervin Livingston Schloss Distinguished Professor at Hofstra University, teaches courses in special education, technology and rehabilitation in the department of counseling, research and special education. His first job was working with the late Mary E. Switzer, America's foremost leader and trailblazer for innovative programs at the National, State and local levels for people with disabilities in vocational rehabilitation. As the founding chief executive officer of the American Coalition of Citizens with Disabilities (ACCD) in the late 1970s, Bowe was instrumental in the implementation of historic civil rights for people with disabilities, including sections 501–504 of the Rehabilitation Act, housing, transportation and special education. He has held several congressional and presidential appointments. For over 25 years, Bowe has advised the U.S. Senate, the U.S. House of Representatives and executive branch agencies on Federal disability policy. He has received numerous awards including the Distinguished Service Award of the President of the United States and the Americans with Disabilities Act Award for his role in the enactment of the legislation. Bowe has a doctoral degree in educational psychology from New York University.

Judi Chamberlin, a psychiatric survivor, author and activist is a co-founder of the Ruby Rogers Advocacy and Drop-In Center, a self-help center run by and for people who have received psychiatric services. She is the author of On Our Own: Patient Controlled Alternatives to the Mental Health System. Chamberlin is the Director of Education and Training at the National Empowerment Center and is a senior consultant at the Boston University Center for Psychiatric Rehabilitation where she directed a research project on user-run self-help services. She has spoken at conferences and meetings throughout the U.S. and abroad and has appeared on many radio and television programs discussing the topics of self-help and patients' rights. Chamberlin has received numerous awards for efforts including the Distinguished Service Award of the President of the United States by the President's Committee on Employment of People with Disabilities, the David J. Vail National Advocacy Award, and the 1995 Pike Prize, which honors those who have given outstanding service to people with disabilities.

Dudley S. Childress is a professor of biomedical engineering in the Department of Physical Medicine and Rehabilitation at Northwestern University and a research health scientist in the VA's Chicago Health Care System-Lakeside Division where he directs the Prosthetics Research Laboratory. At Northwestern, he directs NIDRR's RERC in Prosthetics and Orthotics and is the executive director for the Prosthetics and Orthotics Education Program. His present research and development activities are concentrated in the areas of biomechanics, human walking, artificial limbs, ambulation aids and rehabilitation engineering. He engages in the development of engineering systems that assist people with ambulation problems and that provide control for artificial hand/arm replacements. Childress, a recipient of numerous honors and awards including the Missouri Honor Award for Distinguished Service in Engineering, is also a member of the Institute of Medicine of the National Academy of Sciences. Childress has a doctoral degree in electrical engineering from Northwestern University.

Patrick E. Crago is a professor and chairman of the Department of Biomedical Engineering at Case Western Reserve University. With over 25 years of engineering experience, Crago's research interests include restoration of movement by functional neuromuscular stimulation and in normal and pathological movement control and regulation. His current research projects include biomechanical, neural and neuroprosthetic control of the wrist, forearm and elbow, and the clinical implementation and evaluation of neuroprostheses for hand grasp and proximal arm control. Crago has

served on many committee and advisory boards for numerous organizations and Federal agencies. Crago has a doctoral degree in biomedical engineering from Case Western Reserve University.

Eric Dishman, a senior social scientist and principal engineer at Intel Corporation, is director of the Intel Proactive Health Lab. His team's current fieldwork and technology trials focus on helping mild cognitive impairment patients to maintain independence, function, and quality of life from their own homes through the use of wireless sensor networks and other computing technologies. In partnership with the American Association of Homes and Services for the Aging, Dishman serves as the chair of the Center for Aging Services Technologies, and he also recently co-founded the Everyday Technologies for Alzheimer's Care consortium with the Alzheimer's Association. Dishman is a nationally known speaker on the topics of aging and home health care technologies, and he serves as an advisor to numerous companies, universities, and Congressional members on assistive technologies, telemedicine, and home healthcare. Dishman has a master's degree in Speech Communication from Southern Illinois University at Carbondale.

Pamela W. Duncan, a physical therapist and epidemiologist, is recognized nationally and internationally as a leader in rehabilitation outcomes research and practice. Duncan recently joined the faculty at the University of Florida and is the director of the University's Brooks Center for Rehabilitation Studies and the Rehabilitation Outcomes Research Center of Excellence at the North Florida/South Georgia Veterans Health System. Her research provides leadership in evaluating the effectiveness of medical rehabilitation, the development of health status measures for the chronically disabled, and the design of clinical trials to evaluate exercise interventions for frail elders and stroke survivors. Duncan has served as co-chair of the Agency for Health Care Policy and Research (AHCPR) Post-Acute Stroke Guidelines and has served on the advisory committees for Health Care Financing Administration (HCFA), Canadian Stroke Network and the National Institute of Neurological Disorders and Strokes (NINDS). As a member of the American Heart Association (AHA) public policy committee, she advocates for national funding for rehabilitation services and research and development of quality indicators for stroke care. She is on the editorial board of numerous journals and her work has been published in a variety of journals including Stroke, the Journal of the American Geriatric Society, the Journal of Gerontology Medical Science, and the Archives of Physical Medicine and Rehabilitation. Duncan has a doctoral degree in epidemiology from the University of North Carolina-Chapel Hill.

Glenn T. Fujiura is an Associate Professor of Human Development and Director of Graduate Studies in the College of Applied Health Sciences at the University of Illinois at Chicago (UIC). Dr. Fujiura's research has focused on the fiscal structure and demography of the disability service system, on family policy, evaluation of long-term care services, poverty and disability, ethnic and racial issues in disability, and on the statistical surveillance of disability. In addition, he has a long-standing interest in research methodology, statistical analysis, and philosophy of science. He teaches research methods, advanced research concepts, and statistics for the graduate program in Disability Studies at the UIC. His current major projects include a NIDRR-supported epidemiological study of disablement in the third world using data from the World Bank and State level program evaluations. He has worked extensively in both the creation of large national data sets in mental retardation and developmental disabilities, and in the secondary analysis of national statistical surveillance systems. Dr. Fujiura was a recipient of the National Rehabilitation Association's Switzer Scholar award, served as a member of the President's Committee on Mental Retardation, and was Chair of the U.S. Administration on Developmental Disabilities Commissioner's Multicultural Advisory Committee. Fujiura has a doctoral degree in special education from the University of Illinois at Urbana-Champaign.

Allen C. Harris, the director of the Iowa Department for the Blind, has served as a chief in the Bureau of Field Operation and Implementation for the New York State Commission for the Blind and Visually Handicapped. Harris has been the recipient of numerous awards including the Lifetime Achievement Award from the National Federation of the Blind of Michigan and the Distinguished Blind Educator of the Year from the National Association of Blind Educators. He serves on several boards including the Lions Club of Iowa, the National Organization of Rehabilitation Partners and the National Council of State Agencies for the Blind. Harris has a master's degree in education from Wayne State University.

David Mank, the director of the Indiana Institute on Disability and Community, is a professor in the School of Education at Indiana University. A writer and researcher, Mank has an extensive background in the education and employment of persons with disabilities. He has extensive responsibility for Federal and State grant management of more than 20 projects as principal investigator, director or co-director. His interests include transition from school to adult life and community living. He is also past president of the Association of University Centers on Disabilities and a member of the Governing Council of the International Association for the Scientific Study of Intellectual Disabilities. In 2001, he received the Franklin Smith Award for National Distinguished Service by The Arc of the United States. Mank has a doctoral degree in special education and rehabilitation from University of Oregon.

Kathleen Martinez, deputy director of the World Institute on Disability (WID), is an internationally recognized disability rights leader with particular focus on employment, minority and gender issues. At WID, Martinez is responsible for the development and supervision of all of WID's international, technical assistance, employment and training projects. She currently supervises Proyecto Visión, a National Technical Assistance Center for Latinos with Disabilities and the five-year International Disability Exchanges and Studies for the New Millennium Project. Through these projects, Martinez oversees the production of the bilingual international webzine, Disability World, and a Web site designed to connect U.S. based disabled Latinos to the world of employment. In July 2002, she was appointed by President George W. Bush as a member of the National Council on Disability. On the Council, she chairs the International Watch Committee and is a leader in the Council's employment and diversity initiatives. Martinez has a bachelor's degree in speech and communications studies from San Francisco State University.

John L. Melvin, the Jessie B. Michie Professor and chairman of the Department of Rehabilitation Medicine at the Jefferson College of Medicine of the Thomas Jefferson University, served as medical director of the Curative Rehabilitation Center of Milwaukee, vice president for medical affairs of Moss Rehab and chairman of Physical Medicine and Rehabilitation at the Albert Einstein Medical Center of Philadelphia. Melvin has been the president or chairman of 11 major national and international organizations and has served on 41 national and international expert advisory committees including the Institute of Medicine and the National Research Council of the National Academy of Sciences. He is currently chair of the advisory board for the Boston University RRTC for Measuring Rehabilitation Outcomes sponsored by NIDRR. Melvin has a medical degree from Ohio State University.

Erica Nash, is president and executive director of Help-Your-Self, an organization that is dedicated to helping any person with disabilities improve and maintain his or her lifestyle by providing tools and services to enable community integration, independence, and increased self-sufficiency and productivity, in accordance with individual goals. Nash is a member of the Mayor's Committee on Persons with Disabilities and on other committees including the D.C. Medical Assistance Administration and the Office of Disabilities and Aging. Nash has a bachelor's degree in international communications and public relations for arts management from American University, and will complete her master's degree in technology and management for non-profit and arts organizations from American University in June of 2005.

Margaret G. Stineman is an associate professor of rehabilitation medicine in the Department of Rehabilitation Medicine, a senior fellow of the Institute on Aging, a senior fellow with the Leonard Davis Institute of Health Economics, and an associate scholar in the Clinical Epidemiology Unit of the Center for Clinical Epidemiology and Biostatistics at the University of Pennsylvania. She was the principal architect of the patient classification approach used by the Centers for Medicare and Medicaid Services in its prospective payment system for inpatient rehabilitation facilities. She has consulted

with the World Health Organization in Geneva, Switzerland, on community-based rehabilitation. Her current work focuses on addressing social and environmental barriers to the participation of people with disabilities in activities that are meaningful to them. Stineman has a medical degree from Hahnemann University.

Carl Suter, originally from the state of Illinois, is the executive director of the Council of State Administrators of Vocational Rehabilitation (CSAVR). Prior to joining the CSAVR, Mr. Suter was the director of the Illinois Office of Rehabilitation Services for five years. He oversaw a budget of nearly $500 million dollars that included programs such as vocational rehabilitation, a $300 million dollar in-home care program for persons with disabilities, three schools for children with disabilities, and disability adjudicative services for determining eligibility for benefits for the Social Security Disability Insurance Program and Supplemental Security Income in Illinois. During his tenure as State director, he led sweeping reforms of the Illinois Vocational Rehabilitation Services Program to provide world-class customer service to the nearly 70,000 individuals with disabilities served through its programs. Suter has also served as the executive director of the Illinois Council on Developmental Disabilities and as the associate director of the Illinois Association of Rehabilitation Facilities. Suter has a bachelor's degree in speech communication from the University of Illinois at Urbana-Champaign.

BILLING CODE 4000–01–P

Appendix 2

NIDRR Logic Model: Targeted Outcome Arenas

[FR Doc. 05–14741 Filed 7–26–05; 8:45 am]
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Federal Register

Wednesday,
July 27, 2005

Part III

Securities and Exchange Commission

17 CFR Parts 232, 239, 249 et al.
Rulemaking for EDGAR System; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 239, 249, 259, 269, 270, and 274

[Release Nos. 33–8590; 34–52052; 35–28002; 39–2437; IC–26990 File No. S7–16–04]

RIN 3235–AH79

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today is expanding the information that we require certain investment company filers to submit to us electronically through our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system and making certain technical changes to that system. We are requiring that certain open-end management investment companies and insurance company separate accounts identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). In addition, we are adding two investment company filings to the list of those that must be filed electronically and making several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR. These amendments are intended to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff.

DATES: Effective September 19, 2005; except §§ 232.11; 232.101(b); 232.313; 239.64, 249.444, 259.603, 269.8, and 274.403 (Form SE); and 239.65, 249.447, 259.604, 269.10, and 274.404 (Form TH) are effective February 6, 2006; and §§ 232.101(a) and 232.101(c) are effective June 12, 2006.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rules, please contact one of the following members of our staff: In the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel; or Carolyn A. Miller, Senior Financial Analyst, at (202) 551–6989; for technical questions relating to the EDGAR system, in the Office of Information Technology, Richard D. Heroux, EDGAR Program Manager, at (202) 551–8168.

SUPPLEMENTARY INFORMATION: Today we adopt amendments to the following rules relating to electronic filing on the EDGAR system: [1] Rules 11, 102, 201, and 311 of Regulation S–T [2] and Forms SE [3] and TH [4] under the Securities Act of 1933 (Securities Act or 1933 Act),[5] the Securities Exchange Act of 1934 (Exchange Act),[6] the Public Utility Holding Company Act of 1935 (Public Utility Holding Company Act),[7] the Trust Indenture Act of 1939 (Trust Indenture Act),[8] and the Investment Company Act of 1940 (Investment Company Act).[9] We also adopt new Rule 313 under Regulation S–T.

Over the past several years, we have initiated a series of amendments to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff. In April 2000, we adopted rule and form amendments in connection with the modernization of EDGAR.[10] In the modernization proposing release, we noted that, as the use of electronic databases grows, it becomes increasingly important for members of the public to have electronic access to our filings. We stated in that release that we were contemplating future rulemaking to bring more of our filings into the EDGAR system on a mandatory basis. In May 2002, we adopted rules requiring foreign private issuers and foreign governments to file most of their documents electronically.[11] In May 2003, we adopted rules requiring electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) [12] of the Exchange Act.[13] In February 2005, we adopted rule amendments to enable registrants to submit voluntarily supplemental tagged financial information using the eXtensible Business Reporting Language (XBRL) format as exhibits to specified EDGAR filings.[14]

Today we are adopting amendments that will require that open-end investment companies and insurance company separate accounts issuing variable annuity contracts or variable life insurance policies (collectively referred to as contracts) to electronically identify in their filings to which of their series and classes (or contracts) the filing relates. In addition, we are adding two investment company filings to the list of those that must be filed electronically and making several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

In the S/C proposing release, we requested comment on the impact and feasibility of our proposal to require certain open-end management investment companies and insurance company separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). We asked commenters to provide detailed information on any difficulties and considerations unique to these proposed requirements. We asked commenters to address the issues of the general approach of the proposed requirements, the length of time it may take for investment companies to prepare for the proposed requirements, and the language of the new and amended rules. We asked for specific details and alternative approaches in the event commenters believed that any aspect of the proposed requirements would be burdensome.

We received three comment letters in response to our requests for comment. One commenter expressed only a concern about a technical software issue.[15] The other two commenters affirmatively supported our proposal to include series and class (contract) identifiers; one expressed some concerns in connection with the proposed new mandatory electronic filings. No commenter expressed objections to our proposed technical corrections to Regulation S–T electronic filing rules and forms. Each of the two substantive commenters requested clarification on technical points which we address later in this release. We

[1] We proposed these amendments in March 2004. See Rulemaking for EDGAR System, Release No. 33–8401 (Mar. 16, 2004) [69 FR 13690] (the S/C proposing release).

[2] 17 CFR 232.11, 232.102, 232.201, and 232.311.

[3] 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

[4] 17 CFR 239.65, 249.447, 259.604, 269.10, and 274.404.

[5] 15 U.S.C. 77a *et seq.*

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 79a *et seq.*

[8] 15 U.S.C. 77sss *et seq.*

[9] 15 U.S.C. 80a–1 *et seq.*

[10] See Rulemaking for EDGAR System, Release No. 33–7855 (Apr. 24, 2000) [65 FR 24788] (the modernization adopting release). See also Release No. 33–7803 (Feb. 25, 2000) [65 FR 11507] (the modernization proposing release).

[11] See Mandated EDGAR Filing for Foreign Issuers, Release No. 33–8099 (May 14, 2002) [67 FR 36678].

[12] 15 U.S.C. 78p(a).

[13] See Mandated EDGAR Filing and Web Site Posting for Forms 3, 4, and 5, Release No. 33–8230 (May 7, 2003) [68 FR 25788] (the EDGAR Section 16 release).

[14] See XBRL Voluntary Financial Reporting Program on the EDGAR System, Release No. 33–8529 (Feb. 3, 2005) [70 FR 6556].

[15] This commenter requested upgrading of the EDGAR software to be compatible with Windows XP, a step that we have already taken. See Adoption of Updated EDGAR Filer Manual, Release 33–8454 (Aug. 6, 2004) [69 FR 49803] (the EDGAR Filer Manual Release).

received no substantive comments on the details of our approach to the identification of series and classes (contracts), and we are adopting these amendments largely as proposed. We are adopting our proposal to add mandatory electronic filings with changes to reflect commenters' concerns. We are adopting our proposal to make technical corrections to Regulation S–T electronic filing rules and forms as proposed.

We take this action in light of the primary goals of the EDGAR system since its inception, to facilitate the rapid dissemination of financial and business information in connection with filings, including filings by investment companies. We believe that requiring these entities to identify the series and classes (or contracts) to which filings relate will benefit members of the investing public and the financial community by making information contained in Commission filings more easily searchable and readily available to them.

We also are adding two investment company filings to the list of filings that must be made electronically and making a number of technical amendments to rules and forms in connection with filing on the EDGAR system.

I. Identification of Open-End Management Investment Company Series and Classes and Contracts Issued by Insurance Company Separate Accounts

A. Background

In the modernization adopting and proposing releases, we requested comment on the use of eXtensible Markup Language (XML) for EDGAR tagging in EDGAR submissions. We requested comment on the impact of our requiring, where applicable, that filers provide XML tagging concerning fee-related data; for investment companies, identification of individual series (portfolios) and classes; and for variable insurance products, identification of contracts issued by separate accounts. Commenters agreed that XML tagging will be useful and potentially a very powerful tool.[16]

In this age of information, we believe that filings made with us are of much greater use to investors if they are readily available in electronic form. We today, therefore, adopt rules that will allow the investing public and our staff to more easily track filings made with regard to series and classes of mutual funds and individual contracts of insurance company separate accounts. Our rules will accomplish this technologically through expanded use of XML tagging.

Many open-end investment companies, commonly known as mutual funds, registering on Form N–1A [17] are organized as single registrants with several series (sometimes referred to as portfolios) under Sections 18(f)(1) and (2) [18] of the Investment Company Act and its Rule 18f–2.[19] Each series may also issue more than one class of securities under Rule 18f–3 [20] under the Investment Company Act. Classes typically differ based on fee structure, with each class having a different sales load and distribution fee. Series and classes of a registrant are often marketed separately, without reference to other series or classes or to the registrant's name.

Insurance company separate accounts frequently register and issue multiple contracts. Each separate account is a registrant under the Investment Company Act. Generally, each contract issued by a separate account is separately registered under the 1933 Act and is assigned a separate 1933 Act file number. Insurance company separate accounts and the contracts issued by them are registered on Form N–3 [21] (management investment companies that issue variable annuities), Form N–4 [22] (unit investment trusts that issue variable annuities), or Form N–6 [23] (unit investment trusts that issue variable life insurance). Insurance company separate accounts organized as management investment companies registering on Form N–3 may have multiple series.

Any particular filing for a single registrant may be filed for only some of its series and classes (or contracts, in the case of separate accounts). A single registrant may make multiple filings of the same type (for example, post-effective amendment filings), each covering different series and/or classes (or contracts) of that registrant. We keep records of filings on an investment company registrant basis, but the EDGAR system currently does not generate a record of filings on a series, class or contract basis.[24] Funds must currently provide information in the text of their filings identifying for which series or classes (or contracts) their filings are being made, but currently they do not provide this information as part of the electronic identifying data they enter in the EDGAR submission template. Today we are adopting rules that will require that open-end management investment companies and separate accounts that register on Forms N–1A, N–3, N–4, and N–6 (collectively, S/C Funds) obtain identifiers for their series and classes (or contracts, in the case of separate accounts) and electronically identify for which series and classes (or contracts) of the S/C Fund a particular filing is made.

1. Implementation of Requirement for Series and Class (Contract) Identifiers—Existing Series and Classes (Contracts)

We are implementing the requirement for S/C funds to identify their series and classes (contracts) by having all S/C Funds enter their existing series and class (and contract) identification onto a special section of the EDGAR Filing Web site [25] (the Series and Classes (Contracts) Information Page).[26] Each S/C Fund will enter information for each of its existing series and classes (or contracts) at this Web site page; each will provide series names,[27] class (or contract) names,[28] and ticker symbols, if

[16] See discussion under "EDGAR Tags" in Section I.L of the modernization proposing release.

[17] 17 CFR 239.15A and 274.11A.

[18] 15 U.S.C. 80a–18(f)(1) and (2).

[19] 17 CFR 270.18f–2.

[20] 17 CFR 270.18f–3.

[21] 17 CFR 239.17A and 274.11b.

[22] 17 CFR 239.17b and 274.11c.

[23] 17 CFR 239.17c and 274.11d.

[24] As indicated above, generally, each contract issued by a separate account is assigned a separate 1933 Act file number.

[25] The address for the EDGAR Filing Web site is *https://www.edgarfiling.sec.gov/*.

[26] Each S/C Fund will enter information on the Series and Classes (Contracts) Information Page concerning only their series and classes (contracts) currently in existence. Series and classes (contracts) which come into existence on or after the Mandatory Series/Class (Contract) Identification Date (discussed below) will enter the information for their new series and classes (contracts) in a separate section of the EDGAR submission template of the initial registration statement or post-effective amendment filing by which they add the new series or class (contract).

A S/C Fund that is not organized as a series company and that has no separate classes will be deemed to have one series and class. See footnotes 54 and 57 and accompanying text.

[27] A S/C Fund must enter a unique name for each of its series, *i.e.*, a S/C Fund may not enter duplicate series names for its own series (although a series might have the same name as series of other S/C Funds). For each of its series, the S/C Fund should enter the name by which that series is most commonly known. For example, if the "Acme Trust" complex has a series named the "Bond Fund" which is known and marketed as "the Acme Bond Fund," the fund should enter the name "Acme Bond Fund" as the name of the series.

[28] A S/C Fund must enter a unique name for each of its classes (contracts) existing under each series, *i.e.*, a S/C Fund may not enter duplicate class (contract) names for classes (contracts) of the same series. Most class names are letters or names such as "Institutional" or "Retail." Class A, for example, typically has a front-end sales load; Class B often has a deferred sales load and a higher annual distribution fee. For each contract issued by an insurance company separate account, the separate account should enter the name by which that contract is most commonly known to the public (*i.e.*, the name by which it is marketed). For example, if the "Acme Insurance Company Variable Account C" issues a contract called "Acme

Continued

any.[29] After this information is entered, we will issue series and class identifiers. These identifiers will be ten characters in length (nine numbers preceded by an "S" for series identifiers and a "C" for class (contract) identifiers) and will uniquely, and persistently, identify each series and/or class (or contract). These identifiers will be available to the public. Information filed with us containing these identifiers will be searchable by the public and our staff using the series and class (contract) identifiers and also using the series and class (contract) names without the need for reference to the S/C Fund issuing the series and/or class (contract). The information relating to its series and classes (contracts), including their identifiers, will be available to the S/C Fund quickly via e-mail notification following the entering of information and at the EDGAR Filing Web site, from which the S/C Fund may copy it as needed. The S/C Fund will also use the Series and Classes (Contracts) Information Page to update series and class (contract) information as required upon specified events, such as name change and deactivation, liquidation, or other events resulting in the elimination of a series or class or deregistration of the S/C Fund.

For insurance company separate accounts, only separate accounts registered as management investment companies (*e.g.*, Form N–3 filers) with multiple series (portfolios) within the separate account will be able to have more than one series (and therefore be issued more than one series identifier). In those cases, each series (portfolio) within the separate account would be required to obtain its own series identifier. A separate account organized as a unit investment trust (*e.g.*, Forms N–4 and N–6 filers) will be deemed to have a single series; this single series will have the same name as the separate account, notwithstanding any division of the separate account into sub-accounts corresponding to underlying investment options available under a contract. In addition, a separate account will be deemed to have multiple classes corresponding to the different contracts issued by the separate account and will be required to obtain class (contract) identifiers for each contract. Sub-accounts corresponding to different accumulation unit values under a single contract would not be considered different "classes" for purposes of obtaining identifiers under this rule.

The Series and Classes (Contracts) Information Page on the EDGAR Filing Web site is currently open for entry of information for existing series and classes on a voluntary basis. All S/C Funds will be required to have entered information for their existing series and classes (contracts) and received their series and class (or contract) identifiers no later than February 6, 2006. We have set than February 6, 2006, as the date on and after which EDGAR will not accept specified filings without required series and class (contract) identifiers (the "Mandatory Series/Class (Contract) Identification Date"). Appendix J to the EDGARLink Filer Manual outlines the specifics and formatting requirements of the information the S/C Funds are to enter onto the system, and the Filer Manual will specify information that they will need to include in specified filings on and after the Mandatory Series/Class (Contract) Identification Date.

2. Implementation of Requirement for Series and Class (Contract) Identifiers—New Series and Classes (Contracts)

If a S/C Fund adds a new series or class (contract) on or after the Mandatory Series/Class (Contract) Identification Date, the S/C Fund is not to enter information concerning the new series or class (contract) on the Series and Classes (Contracts) Information Page on the EDGAR Filing Web site.[30] Instead, the S/C Fund must enter information concerning its new series or classes (contracts) which come into existence on or after the Mandatory Series/Class (Contract) Identification Date in a separate area of the EDGAR submission template as part of the substantive filing by which it adds the new series or class (contract). For example, on and after the Mandatory Series/Class (Contract) Identification Date, a newly registered open-end management investment company (mutual fund) filing on Form N–1A will add its new series and/or classes (contracts) in its initial "N–1A" submission template and, where necessary, in a pre-effective amendment ("N–1A/A" submission); an existing mutual fund must add its new series in the "485APOS" EDGAR submission template for its filing under Securities Act Rule 485(a) and will add its new classes in a "485APOS" submission template; a newly registered separate account organized as a management investment company filing on Form N–3 must add its new series and/or contract information in its initial "N–3" submission template; and newly registered separate accounts filing on Forms N–4 and N–6 must add their new contract information in the initial "N–4" or "N–6" submission template, respectively, filed to register the new contract. The identifiers for new series and classes added via the submission template will be available to the S/C Fund quickly via e-mail notification following the filing in which the information was entered.[31] These identifiers will also be available at the EDGAR Filing Web site. The identifiers may be copied from this site by the S/C Fund. This site may also be utilized for required updates of series and class (contract) information as required upon specified events, such as name change and deactivation of a series or class or deregistration of the S/C Fund.

3. Mandatory Series/Class (Contract) Identification Date

We are requiring that funds receive their series and class (contract) identifiers for existing series and classes no later than February 6, 2006, the Mandatory Series/Class (Contract) Identification Date. Since third party filers, including parties to mergers, will need to use this information in filings, all S/C Funds will need to ensure that the information concerning their existing series and classes (contracts) has been entered prior to the Mandatory Series/Class (Contract) Identification Date.

After the Mandatory Series/Class (Contract) Identification Date, we will post notice on the "Information for EDGAR Filers" page of the Commission's Public Web site (*www.sec.gov*) and the EDGAR Filing Web site (*www.edgarfiling.sec.gov*) as to the date on which we will close the Series and Classes (Contracts) Information Page for entry of information concerning existing series

Retirement Strategies II Deferred Variable Annuity," which is known and marketed as "Acme Retirement Strategies II," the separate account should enter the name "Acme Retirement Strategies II" as the name of the contract.

[29] S/C Funds will enter their ticker symbols, if any, at the class (contract) level (in addition to their class name).

[30] If a S/C Fund makes a filing on behalf of a new series or class (contract) before the Mandatory Series/Class (Contract) Identification Date, the S/C Fund will enter the information concerning that new series or class (contract) on the Series and Classes (Contracts) Information Page on the EDGAR Filing Web site after the first filing made on behalf of the new series or class (contract); this is consistent with the procedure for other series and classes (contracts) in existence before the Mandatory Series/Class (Contract) Identification Date.

[31] The notice of acceptance or suspension for any submission requiring series and class (contract) identifiers will contain the included existing identifier(s) and series and class (contract) name(s) in addition to the information that is currently contained in the notice. A notice of acceptance will also contain new identifiers, if any, added in the filing; a notice of suspension will necessarily not include identifiers that were to have been added with the intended filing.

and classes. On and after that date, the Series and Classes (Contracts) Information Page will be used only for retrieving and editing series and class (contract) information. After the closing of the Series and Classes (Contracts) Information Page for entry of data for existing series and classes (contracts), if a S/C Fund fails to enter its information in a timely manner and receive its identifiers, the staff may require the S/C Fund to file a post-effective amendment to generate the identifiers via the submission template. Until the S/C Fund provides the information concerning its series and classes (contracts) and is issued identifiers, it will be unable to make other filings that require series and class (contract) identifiers.

We believe that this method for S/C Funds to obtain identifiers for their existing series and classes (contracts) will provide the most flexibility for S/C Funds. This method will allow S/C Funds an extended period of time in which to provide the information and obtain the identifiers. A S/C Fund may choose to obtain its identifiers for all its existing series and classes at one time via the Series and Classes (Contracts) Information Page. Or, a S/C Fund may choose to spread out its entering of information and receipt of identifiers through the period prior to than February 6, 2006. Each S/C Fund will need to make sure, however, that it has obtained its identifiers for all its series and classes (contracts) in existence prior to the Mandatory Series/Class (Contract) Identification Date.

4. Requirement To Include Series and Class (Contract) Identifiers in EDGAR Filings; Consequence of Non-Compliance

On and after the Mandatory Series/Class (Contract) Identification Date, S/C Funds must use series and class (contract) identifiers in certain EDGAR submissions specified in the EDGAR Filer Manual. We are adding the series and class (or contract) identification requirement to the EDGARLink header templates of certain investment company EDGAR submissions.[32] We believe the method we have chosen for S/C Funds to obtain identifiers for their existing series and classes (contracts) will help ensure that identifiers are assigned to existing series and classes (contracts) well in advance of EDGAR filings requiring them. The only instances in which identifiers will be generated at the time of a filing by entry of information via the EDGAR submission template will be when a new S/C Fund comes into existence or when an existing S/C Fund adds new series or classes (contracts).[33] The S/C Fund will be able to "cut and paste" the series and class (contract) identifying information from the Web site into filings as needed.[34] We are requiring that S/C Funds include the identifiers in all filings relating to the series and classes (contracts). [35] Indeed, the identifiers will be a substantive requirement of the filing. Consequently, failure of a S/C Fund to include correctly the required identifiers will mean that a filing for that series and/or class (or contract) has not been made. [36] On and after the than February 6, 2006, Mandatory Series/Class (Contract) Identification Date, filings requiring series and class (contract) identifiers will be suspended if the identifiers are not included in the EDGAR filing or if the identifiers are not identifiers associated with the CIK [37] of the S/C Fund, necessitating a resubmission of the filing in question.[38]

By requiring that the S/C Fund electronically identify the series and classes (or contracts) for which a filing is made, we are facilitating the ability of the investing public and our staff to search easily for EDGAR filings made on behalf of specified series and classes (contracts). The electronic identification of series and classes (contracts) will enable the investing public to search our Web site for filings covering the series and classes (contracts) they need. We believe that our amendments today recognize that disclosures in filings are only as useful as they are available; we believe that our amendments will facilitate substantially the investing public's access to investment company information needed for their investment decisions. To this end, it is critical that S/C Funds obtain and include the correct identifying information in their filings.

5. Requirement To Update Information

S/C Funds will also have a duty to update and keep current their series and class (or contract) information. For example, filers will be required to update their information via the Series and Classes (Contracts) Information Page for series and class (or contract) name changes, addition of ticker symbols, or deactivation (if a series is never offered or no longer makes filings because of a merger, liquidation or other means of elimination or if the S/C Fund has deregistered).

6. Identification of Investment Company Type; Parties to a Merger

In conjunction with our rules to require the identification of series and classes (contracts), we are also adding to the submission templates of selected filings used by investment companies an additional field for identification of the type of investment company making the filing.[39] Companies may be required to check a box if they are investment companies (for certain submissions) and to select from a pull-down menu in the EDGAR submission template their investment company "type," where type is chosen according to whether a company's last effective registration

[32] Filings using the following EDGAR submission types will be subject to series and class (contract) identification: N–1A, N–1A/A, N–3, N–3/A, N–4, N–4/A, N–6, N–6A, 485APOS, 485BPOS, 485BXT, POS AMI, 497, 497K1, 497K2, 497K3A, 497K3B, 497J, 497AD, N–14, N–14/A, N–14AE, N–14AE/A, N–30D, N–30D/A, N–30B–2, N–CSR, N–CSR/A, N–CSRS, N–CSRS/A, NT–NCSR, NT–NCSR/A, N–PX, N–PX/A, 24F–2NT, 24F–2NT/A, NSAR–A, NSAR–A/A, NSAR–AT, NSAR–AT/A, NSAR–B, NSAR–B/A, NSAR–BT, NSAR–BT/A, NSAR–U, NSAR–U/A, NT–NSAR, NT–NSAR/A, N–Q, N–Q/A and all proxy submission types that may be filed by or with respect to investment companies.

[33] The following EDGAR submission types will allow for entry of information for new series: N–1A, N–1A/A, N–3, N–3/A, N–4, N–4/A, N–6, N–6/A, 485APOS, and POS AMI. The following submission types will allow for the entry of information for new classes (contracts): N–1A, N–1A/A, N–3, N–3/A, N–4, N–4/A, N–6, N–6/A, 485APOS, 485BPOS, and POS AMI. We note that these are the characteristics of the EDGAR submission types; nevertheless, S/C Funds should use only those EDGAR submission types that correspond to the form and rule under which the S/C Fund makes its substantive filing.

[34] Filers will also be able to cut and paste from any compatible source. For example, if filers have a listing of series and classes (contracts) in a word processing document, they should be able to cut and paste from that document. However, if filers do so, they must ensure that the secondary documents are kept up-to-date with the most current series and class data.

[35] We received comment requesting that we provide electronic notice of acceptance or rejection, describing the status of the filing and indicating the names of the series and classes (or contracts) and their corresponding identifiers. Companies will receive notices with this information, provided that they have entered a current e-mail address in their company information on our EDGAR filing Web site.

[36] See amendments to Rule 11 of Regulation S-T, discussed in Section I.B below. The staff will not have the ability to change series and class (contract) data via post-acceptance corrections. The staff will, of course, consider filing date adjustments under Rule 13(b) of Regulation S–T [17 CFR 232.13(b)], and grant relief pursuant to delegated authority in appropriate instances, depending on the facts and circumstances of each request.

[37] A filer's CIK (or "central index key") is a ten-digit number uniquely identifying that filer.

[38] Because of the potential consequences of failure to correctly include identifiers in filings, we note that the duty to insert the identifiers, as well as the duty of electronic filing in general, should be assigned to a person who has sufficient knowledge of the EDGAR system and filing requirements and the fund's structure and not delegated exclusively to a filing agent.

[39] S/C Funds, which are required to obtain series and class (contract) identifiers via the Series and Classes (Contracts) Information Page, will also enter information concerning their type on that page.

statement was filed on Form N–1 (open-end management investment company separate account that does not offer variable annuity contracts), Form N–1A (open-end management investment companies), N–2 (closed-end management investment companies, including business development companies),[40] N–3 (separate accounts organized as management investment companies that offer variable annuities), N–4 (separate accounts organized as unit investment trusts that offer variable annuities), N–5 (small business investment companies),[41] N–6 (separate accounts organized as unit investment trusts that offer variable life insurance policies), S–1 (face amount certificate companies),[42] S–3 (face amount certificate companies),[43] or S–6 (unit investment trusts, other than those filing on Forms N–4 and N–6).[44] S/C Funds will also be required to supply electronic information in the EDGAR template concerning the acquiring fund and the target (and their series and classes or contracts, if any, in existence) in connection with merger-related filings on Form N–14,[45] under Rule 425,[46] and under the proxy rules.

7. Identification Requirement Applicable to Non-Registrants Filing Proxies

We are also requiring non-registrant third parties making proxy filings with respect to investment companies to designate "type" of investment company and to include series and/or class (or contract) identifiers in designated proxy submission types. After the Mandatory Series/Class (Contract) Identification Date, when filings are made with series and class (contract) identifiers and specification of investment company type, this information will be available on the EDGAR page of our public Web site (*http://www.sec.gov*), as is currently each entity's CIK. We recommend that filers obtain this information from our public company database site at *www.edgarcompany.sec.gov*.

8. Electronic Filing Responsibilities

With respect to these requirements that we adopt today, including the updating requirements, we emphasize that it is the investment company's responsibility to ensure the correctness of this information and its use in each of its filings on the EDGAR system.[47] Each S/C Fund must ensure that it receives all of its series and class (or contract) identifiers for series and classes (contracts) in existence before the Mandatory Series/Class (Contract) Identification Date; that it enters correctly information concerning series and classes (contracts) coming into existence on or after the Mandatory Series/Class (Contract) Identification Date; and that its filings are made using the correct EDGAR codes, including series and class (or contract) identifiers. A S/C Fund may verify the codes and identifiers under which its filing was made and accepted by reading its electronic notice of acceptance, which will contain the CIK, file number(s) and, where applicable, series and class (or contract) names and identifiers.[48]

B. Regulation S–T and Related Form Amendments in Connection With Series and Class (Contract) Identification Requirements

1. New Rule 313 Under Regulation S–T

We are adding new Rule 313 under Regulation S–T in connection with identification of series and classes. New Rule 313 provides that all S/C Funds (*i.e.*, investment companies whose last registration statement was filed on Form N–1A, N–3, N–4, or N–6) must obtain identifiers for their constituent series existing under Sections 18(f)(1) and (2) of the Investment Company Act and Investment Company Act Rule 18f–2 and identify the series for which a particular filing is being made.[49] A S/C Fund that is not organized as a series company but is covered under this rule will be deemed to have one series and must obtain a series identifier and include that identifier in specified filings.[50] This requirement is to assure that investors, the public, and our staff will be able to electronically search within the same universe of filers for each entity operating as a mutual fund or separate account, for example, whether it is a mutual fund operating as a single series (a "stand alone" fund) or a series of a S/C Fund. It will also permit electronic searches of all Form N–3 filers, including separate accounts consisting of a single series as well as those with multiple series.

Under Rule 313, each such investment company or series that has multiple classes under Investment Company Act Rule 18f–3[51] (or that issues multiple contracts, in the case of insurance company separate accounts) will also be required to obtain a class (or contract) identifier for each class (or contract) and include that identifier in specified submission types.[52] S/C Funds or series that are not organized as multiple class companies are deemed to have one class and must obtain a class identifier and include that identifier.[53]

Rule 313 will require that S/C Funds or series provide identifying information when they file certain merger documents (Form N–14,[54] Rule 425,[55] and proxy filings), including information about both the target and acquiring fund or series, class(es), or contract(s).

Under Rule 313, S/C Funds will have a duty to keep the information regarding their series and classes up to date. S/C Funds will update their information via the Series and Classes (Contracts) Information Page if the name of a series or class (or contract) changed. S/C Funds also will deactivate the identifiers for a series and/or class (or contract) via the Series and Classes (Contracts) Information Page when the

[40] 17 CFR 239.14 and 274.11a–1.

[41] 17 CFR 239.24 and 274.5.

[42] 17 CFR 239.11.

[43] 17 CFR 239.13.

[44] 17 CFR 239.16.

[45] 17 CFR 239.23.

[46] 17 CFR 230.425.

[47] This responsibility includes ensuring the correctness and timeliness of updates to names and deactivations of series and/or class (contract) identifiers, as required by Rule 313. We advise funds that ensuring that the correct information is contained in their EDGAR submissions, including the correct use of CIKs and series and class (contract) identifiers, should be addressed in a fund's written policies and overseen by the fund's chief compliance officer. See Compliance Programs of Investment Companies and Investment Advisers, Release No. IC–26299 (Dec. 17, 2003) [68 FR 74713] at footnotes 24 and 75.

We also remind companies of their obligation to keep their company information current and accurate, particularly their address(es) and IRS numbers. See Section 1.2.6 (Changing Company Information) of the EDGARLink Filer Manual. (Investment companies organized as series funds may provide the IRS number of any one of their constituent series.) Companies may view and update their information using the EDGAR Filing Web site.

[48] Before a S/C Fund uses the Series and Classes (Contracts) Information Page, it must make sure it has only one CIK. S/C Funds must submit their Investment Company Act filings under only one Investment Company Act number (811–) and one CIK. (Registrants may have multiple 1933 Act numbers under a single CIK.) A S/C Fund wishing to obtain identifiers that has more than one 1940 Act number or more than one CIK, should call the IM EDGAR Inquiry Line at 202–551–6989 for assistance before proceeding.

[49] This determination is to be made without reference to any merger/proxy filings submitted on Form N–14

[50] This "dummy" series will be assigned the same name as the S/C Fund.

[51] 17 CFR 270.18f–3.

[52] Separate accounts registering on Forms N–4 and N–6 will be deemed to have one "dummy series" assigned the same name as the S/C Fund and will obtain a separate identifier at the "class" level (rather than series identifiers) for each of their contracts.

[53] This "dummy" class will be assigned the same name as the series to which it belongs. "Stand alone" funds with no separate series or classes will be deemed to have one series and one class, each assigned the same name as the S/C Fund.

[54] 17 CFR 239.23.

[55] 17 CFR 230.425.

series and/or class (contract) is no longer offered by the S/C Fund or the S/C Fund is deregistered. While EDGAR will suspend attempted filings which include deactivated series or class (contract) identifiers, information on deactivated series and classes (contracts) will remain available and searchable on the Commission's public Web site.

2. Rule 11 Under Regulation S–T

Currently, Rule 11 of Regulation S–T defines the phrase "official filing" to mean any filing that is received and accepted by us, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing. We are amending this definition to provide that the electronic identification of investment company type and inclusion of identifiers for series and class (or contract, in the case of separate accounts of insurance companies), as we are requiring under Rule 313 of Regulation S–T, will be deemed part of the official filing. On and after the Mandatory Series/Class (Contract) Identification Date, failure of a S/C Fund to include correctly the required identifiers will mean that a filing for that series and/or class (or contract) has not been made. We also stress that it is important for S/C Funds to keep their information up-to-date, including updating in a timely manner when a series and/or class (contract) deactivates. If a S/C Fund does not do so, we will assume that the S/C Fund is delinquent in reporting for a series or class (contract).

3. Forms TH and SE

Form TH[56] is the form that filers use as a cover for filings made in paper under a temporary hardship exemption under Rule 201 of Regulation S–T. Under Rule 201, confirming electronic copies of filings made in paper under temporary hardship exemptions must be made within [6] business days of the date of the paper filings. Form SE[57] is the form that electronic filers must use to submit any paper format exhibit permitted under Rule 201, 202, or 311 of Regulation S–T.[58] We are amending Forms TH and SE to require the inclusion of series and class (or contract) identifying information for those filings for which the identifiers will be required in the confirming electronic copy or associated electronic filing, respectively.

II. Mandatory Electronic Investment Company Filings

Until recently, investment companies could submit filings of fidelity bonds under Section 17(g),[59] sales literature filed with us under Section 24(b),[60] and litigation material filed under Section 33 of the Investment Company Act[61] in paper only. In August 2004, we modified the EDGAR system to allow companies to make these filings either in paper or electronically on a voluntary basis.[62] We are now amending Rule 101 to make two of these submissions mandatory electronic submissions and to continue to allow submission of the third electronically on a voluntary basis.

As of August 2004, companies could submit either in paper, or electronically on the EDGAR system on a voluntary basis, sales literature filed with us[63] under Section 24(b) of the Investment Company Act.[64] Because of the format and graphics which characterize these submissions, at the time of the original adoption of the EDGAR rules, we believed that the burden to registrants of electronically formatting sales literature appeared to outweigh the usefulness of developing an electronic database.[65] Given the advances in technology and the availability of HTML as a format for official EDGAR filings, we proposed to require filers to make these submissions electronically.[66] We note that, for filers who are required to file with us prospectuses submitted under Securities Act Rule 482[67] (482 ads), the filers must already submit the 482 ads electronically.[68] We requested comment on whether we should require filers to submit sales literature on EDGAR in HTML format. We also noted that, if we were to make mandatory the electronic submission of sales literature, under paragraph (c) of Rule 304 of Regulation S–T,[69] filers will be required to retain copies of sales literature documents including graphic materials for a period of five years and will be required to furnish to the Commission or the staff, upon request, a copy of any or all of such documents. We received no comments on this proposal, and we are adopting it as proposed.

Also as of August 2004, companies could submit in paper, or electronically on a voluntary basis, filings under Section 17(g)[70] and litigation material filed under Section 33 of the Investment Company Act. Filings under Section 17(g) consist of the registrant's fidelity bond, which is filed under Rule 17g–1(g)(1),[71] and claims and settlements filed under Rule 17g–1(g)(2) and (3), respectively.[72] Filings of litigation material under Section 33 include a wide variety of documents.[73] We believed that most filers would have electronic copies of their fidelity bonds and claims and settlements as well as litigation materials and that these filings should therefore be available to the public through our EDGAR system. However, the only comment that we received concerning filings under Section 17(g) and Section 33 stated that investment companies would be able to provide copies of fidelity bonds and related documents with the Commission if given sufficient transition time, but that it would be burdensome to require the electronic filing of litigation materials, since the materials may be voluminous and the technology to easily convert paper documents into either ASCII or HTML is not available. This commenter also requested that filers be given sufficient time to transition to the

[56] 17 CFR 239.65, 249.447, 259.604, 269.10, and 274.404.

[57] 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

[58] 17 CFR 232.201, 232.202, or 232.311.

[59] 15 U.S.C. 80a–17(g). *See* Release No. 33–6978 (Feb. 23, 1993) [58 FR 14848] and Release No. 33–7241 (Nov. 13, 1995) [60 FR 57682] at footnotes 26–32 and accompanying text.

[60] 15 U.S.C. 80a–24(b).

[61] 15 U.S.C. 80a–31.

[62] *See* the EDGAR Filer Manual Release at footnotes 6–10 and accompanying text.

[63] Most investment company registrants file sales literature with the National Association of Securities Dealers (NASD), in lieu of filing with us, as permitted by Rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3]. We are not proposing to change Rule 24b–3; these filers will continue to make their submissions to the NASD only.

[64] *See* Rules 24b–1, 24b–2, and 24b–3 [17 CFR 270.24b–1, 270.24b–2, and 270.24b–3].

[65] *See* Release No. 33–6978 at footnotes 51 and 52 and accompanying text.

[66] We are amending both Rule 101 of Regulation S–T and Rule 24b–2 under the Investment Company Act, which currently provide that filers submit such material to us in paper only.

[67] 17 CFR 230.482.

[68] *See* Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752 (Dec. 30, 1994)] at footnote 32 and accompanying text.

[69] 17 CFR 232.304(c).

[70] This includes submission of an investment company's fidelity bond; see Release No. 33–7241 at footnotes 30 and 31 and accompanying text.

[71] 17 CFR 270.17g–1(g)(1).

[72] 17 CFR 270.17g–1(g)(2) and (3).

[73] The documents include the following: (1) all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim; (2) any proposed settlement, compromise, or discontinuance of such action or claim; and (3) motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any of the documents in (1) or (2) above are delivered to the company or party defendant, Section 33 requires that the document be filed with the Commission not later than 10 days after receipt. If the document is filed in court or delivered by the company or party defendant, it must be filed with the Commission within five days after the filing or delivery.

electronic filing of Section 17 materials.[74]

We are adopting the requirements for the mandatory electronic filing of Section 17 fidelity bonds and claims and settlements, as proposed, but with a delayed effectiveness date to allow transition time.[75] However, we are not adopting these requirements with respect to litigation materials at this time due to the technical difficulty that many filers may have scanning and verifying the accuracy of these documents; instead, we will continue to allow companies to file litigation materials either in paper or electronically on a voluntary basis.[76] We will review the status of technology from time to time to determine whether and at what point we should make these filings mandatory electronic as well.

III. Technical Amendments to EDGAR System Filing Requirements

In the S/C proposing release, we also proposed technical corrections to our rules relating to paper exhibits for EDGAR filings and incorporation by reference by investment companies into documents filed on EDGAR. We are now adopting these proposals, as discussed below.

A. Rule 102(d) of Regulation S–T

Currently, paragraph (d) of Rule 102 provides that each electronic filing requiring exhibits must contain an exhibit index. It further requires that, whenever an exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the filer must place the letter "P" next to the listed exhibit in the exhibit index to reflect that the exhibit was filed in paper pursuant to such exemption. However, the rule does not require the designation "P" for an exhibit filed in paper other than pursuant to a hardship exemption. Nor does the rule require designation of the authority under which a filer was submitting an exhibit in paper. We are amending paragraph (d) to require the designation "P" for all exhibits filed in paper, the designation "Rule 311" next to the letter "P" in the exhibit index for exhibits filed pursuant to Rule 311 of Regulation S–T, and the letters "TH" or "CH," respectively, next to the letter "P" in the exhibit index for exhibits filed pursuant to temporary or continuing hardship exemptions.

The rule also currently requires that, whenever a confirming electronic copy of an exhibit is filed pursuant to a hardship exemption, the exhibit index must specify where the confirming electronic copy can be located and the filer must place the designation "CE" (confirming electronic) next to the listed exhibit in the exhibit index. We requested comment on the usefulness of the rule's requirement that the exhibit index must specify where the confirming electronic copy can be located. For example, we asked whether the provision is useful in locating the electronic confirming copy of the paper exhibit where an exhibit filed in paper under a temporary hardship exemption is later incorporated by reference into a filing. We encouraged commenters, if they found that the provision is not useful, to provide suggested revisions to make the rule more helpful to users of the information. We received no comments in response to our request, and we are not amending this provision.

B. Rule 102(e) of Regulation S–T

Paragraph (e) of Rule 102 provides that any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format. We are adopting as proposed an amendment to this rule to codify staff interpretation that incorporation by reference in an EDGAR filing by a registered investment company or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system. A filer may not incorporate by reference electronic filings made with us but not made via the EDGAR system.[77]

C. Rule 201 of Regulation S–T

Rule 201(a)(1) of Regulation S–T currently provides that, where a filer makes a paper submission pursuant to a temporary hardship exemption, a microfiche copy of the paper document is the official filing of the registrant. We no longer keep on microfiche the official copies of filings made in paper under the temporary hardship exemption; paper filings are now electronically imaged. Accordingly, we are amending, as proposed, Rule 201(a)(1) to reflect this change. We are also removing the phrase "of the registrant," since an official filing may be made by a non-registrant third party.

D. Rule 311(h)(1) of Regulation S–T

Rule 311 sets forth the requirements for filers submitting documents in paper under cover of Form SE. Paragraph (h)(1) of Rule 311 currently provides that, if the subject of a temporary hardship exemption is an exhibit only, a filer must file the exhibit under cover of Form SE no later than one business day after the date the exhibit was to be filed electronically. We are amending this provision, as proposed, to clarify the current requirement[78] that the filer must submit the exhibit and a Form TH (the cover form for submitting a filing under a temporary hardship exemption) under cover of Form SE.[79]

E. Form SE

We had proposed to make an additional amendment to Form SE that parallels the changes to the exhibit index requirement discussed above. Currently, Form SE does not require the filer to specify under which of these rules the filer is submitting the paper format exhibit. We are amending the form, as proposed, to require filers to indicate under which rule they are submitting the paper exhibit, *i.e.*, Rule 201 (Temporary Hardship Exemption), Rule 202 (Continuing Hardship Exemption), or Rule 311 (Permitted Paper Exhibit). We also are amending the General Instructions to Form SE to clarify that, if the filer is submitting the exhibit under a temporary hardship exemption, the filer must submit both the exhibit and a Form TH (the cover form for submitting a filing under a temporary hardship exemption) under cover of Form SE. Finally, we are adding to the General Instructions a statement of the current requirement that exhibits filed under a continuing hardship exemption must include the legend required by Rule 202(c) of Regulation S–T.[80]

IV. Effective Dates

The amendments to Rules 101(b), 102(d), 201(a)(1), and 311(h)(1) under

[74] This commenter also expressed concern with having to include series and class identifiers in complex filings such as Section 17 fidelity bonds. We note that these EDGAR submission types (40–17G and 40–17GCS and their amendments) are not among the submission types that we are at this time designating as requiring series and/or class (contract) identifiers.

[75] For administrative convenience, we are also delaying the effective date with respect to the mandatory electronic filing of sales literature under Section 24. As of the effective date, companies will have to submit these materials electronically, either as ASCII or HTML documents.

[76] The EDGAR submission types for these filings will be as follows: 40–17G (fidelity bond filed pursuant to Rule 17g–1(g)(1)); 40–17GCS (notice of claim or settlement filed pursuant to Rule 17g–1(g)(2) or (3)); 40–24B2 (sales literature filed pursuant to Rule 24b–2); and 40–33 (litigation material filed pursuant to Section 33 of the Investment Company Act).

[77] For example, a registrant could not incorporate by reference in an EDGAR filing to a document submitted electronically on the IARD system.

[78] See Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628] at footnote 213 and accompanying text.

[79] We are also making conforming amendments to Note 1 to Rule 201(a) of Regulation S–T (17 CFR 232.201(a)).

[80] 17 CFR 232.202(c).

Regulation S–T will become effective September 19, 2005.

Rule 313 under Regulation S–T and the amendments to Rule 11 under Regulation S–T and to Forms TH and SE (relating to the series and class (contract) identification requirements) will become effective February 6, 2006. The amendments to Rules 101(a) and 101(c) under Regulation S–T will become effective on June 12, 2006.

V. Cost-Benefit Analysis

We are sensitive to the costs and burdens of our rules. The rules we are adopting today reflect certain changes to the information currently provided in certain investment company submissions and technical amendments to our EDGAR filing rules. Specifically, these amendments will require certain open-end management investment companies and insurance company separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). This information is already required in the text of the filing itself; these amendments will require this information to be included in an electronically tagged form. In addition, these amendments will add two investment company filings to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

A. Benefits

We expect that the addition of series and class (contract) identifiers ultimately will result in considerable benefits to the securities markets, investors, and other members of the public, by expanding the accessibility of information, and increasing the types of information, filed and made available for public review through the EDGAR system. The primary goal of the EDGAR system since its inception has been to facilitate the rapid dissemination of financial and business information in connection with filings, including filings by investment companies. Requiring these entities to identify the series and classes (or contracts) to which filings relate will benefit members of the investing public and the financial community by making information contained in Commission filings more easily searchable and readily available to them.

We believe that it can be difficult to find filings on EDGAR related to specific series and classes of funds. It can also be difficult to find filings on EDGAR related to specific variable insurance contracts. This discourages both the public and Commission staff from fully using the EDGAR filing data. We believe the improvements that will result from the series and class (contract) identifiers will induce a substantial amount of new demand for the services provided by the EDGAR system and our public Web site. The amendments will result in the benefit to the public of the EDGAR page of our Web site being a comprehensive source from which to find series and class filings.

We also expect that our adoption of requirements for mandatory electronic filing of documents that previously could be filed only in paper format will result in economic benefits to current electronic filers. Investment companies should benefit from the increased efficiencies in the filing process for these filings resulting from the amendments. By electronically transmitting these documents directly to the Commission, investment companies will avoid the uncertainties and delays that can occur with the manual delivery of paper filings. Filers also will benefit from no longer having to submit multiple copies of paper documents to the Commission.

These amendments should benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating fidelity bonds and sales literature (not submitted to the NASD) filed with the Commission. The mandated electronic transmission of these documents will enable investors to access them more quickly. Currently, it requires a personal visit to the Commission's Public Reference Room to conduct a search for a particular filing that is in paper or microfiche. Some parties also use an agent at the Public Reference Room for these searches. After the implementation of this rule, an investor will be able to find and review the filing on any computer with an Internet connection by accessing the EDGAR data on the Commission's Web site or through a third party Web site that maintains EDGAR data. These amendments will also enable financial analysts and others to retrieve, analyze and disseminate more rapidly this information. An investor should be able to form more efficient investment decisions about particular investment companies. Both filers and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of these filings which will result from these amendments. Mandated EDGAR filing of these documents will result in their addition to the Commission's central electronic repository of filings that is free to anyone that has access to a computer linked to the Internet. Because the Commission's staff will be able to retrieve and analyze information contained in these filings more readily than under our current paper system, mandated electronic filing of these documents should facilitate the staff's retrieval and review of a particular document.

We expect the technical corrections to the Regulation S–T provisions should be beneficial to filers inasmuch as they, as have previous technical corrections, will clarify existing rules and make the filing community at large more aware of current practices and interpretations. These benefits, while qualitatively important, are necessarily difficult to quantify. Therefore, the Commission is unable to provide a quantitative estimate of the benefits of these new requirements and amendments to existing rules.

B. Costs

We believe that the rules we adopt today for identification of series and classes (contracts) impose few or no costs related to substantive disclosure. Rather, the amendments may result in initial costs in connection with entering information onto the EDGAR filing Web site to obtain identifiers. Filers may experience some minimal costs in initially keying in data on their series and classes (contracts) when they obtain their identifiers, although a representative of one fund group Commission staff contacted that had already obtained their identifiers stated that they incurred no additional cost in applying for identifiers. A representative of another fund group stated that it took approximately four hours to read the instructions on the EDGAR Filing Web site and obtain identifiers because, initially, the instructions were difficult to read; this representative declined to provide any cost estimate. If we assume a cost of $50.00 per hour for obtaining identifiers for the first time, the filer would have incurred a one-time cost of $200. The 982 fund groups (including insurance product groups) would, therefore, incur a total one-time cost of $196,400. We designed the EDGAR filing Web site screens and the detailed instructions in the EDGARLink filer manual to make it easy for anyone familiar with the series and class structure of the fund industry and her own funds to enter data easily, so we doubt that every fund group would incur that level of cost.

Additionally, filers may experience minimal programming costs in including the identifying data in specified filings and, when necessary,

obtaining identifiers for new series and classes (contracts). Some filers contacted by the Commission were unable to estimate the costs they would incur to use the identifiers in connection with filings. One filer who uses third party software to prepare EDGAR filings stated that the cost of purchasing updated software was unknown because the vendor has not yet updated the software. We question the importance of the cost of third party software to consideration of these rules because filers are not required to purchase any software to meet the new requirements; we will provide free EDGARLink software with fields for identifiers in filing templates. Disseminators of EDGAR data, third party software developers, and EDGAR filing agents may incur some transitional costs as they revise their software and, in some instances, hardware to accommodate the tagging changes to keep track of series and class identifiers for certain investment company filings. Disseminators may choose to reprogram their systems to take advantage of the new tagging scheme for identifying series and classes of mutual funds and contracts of insurance company separate accounts. As a result, disseminators may incur additional costs for processing.

We expect that the amendments to make certain filings mandatory electronic submissions will result in some costs to issuers. However, for the following reasons, we also expect that filers should not bear the full range of costs resulting from adoption of the amendments. The expected costs consist of ongoing costs,[81] and minimal initial costs.[82]

Filers may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements. The magnitude of these costs will depend on filers' levels of technological proficiency and their previous familiarity with EDGAR filing requirements. They will incur the costs associated with formatting and transmitting their documents on EDGAR. These filers have already incurred initial costs associated with the preparation of most of their filings in an electronic format. They have already trained their employees or hired an in-house information technology team or a third party agent, such as an Internet services company or financial printer, to format electronically their financial statements and other documents of interest to investors. These filers should be capable of electronically processing these documents for the EDGAR system. Consequently, the mandated EDGAR requirements should result only in costs related primarily to the electronic formatting of these documents in a format compatible with EDGAR, and transmission of the EDGAR formatted documents to the Commission.

Fidelity insurance companies issue fidelity bonds to management investment companies. Some filers contacted by Commission staff estimated a one-time cost of $600 to $650 per filing to format for EDGAR filing their fidelity bond documents (which are currently available to them only as paper documents) because of the cost of acquiring optical character reader software and equipment to convert the paper documents to electronic files.[83] We question the validity of this data for two reasons. First, optical character readers have many uses, so we do not believe the entire cost should be applied to the requirement to make certain filings mandatory electronic submission. In addition, one commenter stated that it anticipated that, in response to our proposal, insurance companies issuing fidelity bonds to investment companies would provide to their investment company clients electronic copies of fidelity bonds suitable for filing with the Commission.

We believe that the costs are justified in light of the benefits to the investing public in gaining access to information and to our staff in regulating the industry.

VI. Consideration of Effects on Competition, Capital Formation and Efficiency

Section 23(a)(2) of the Exchange Act requires us, when engaging in rulemaking under the Exchange Act, to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. In addition, Section 23(a)(2) 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. Furthermore, Section 2(b) of the Securities Act,[84] Section 3(f) of the Exchange Act,[85] and Section 2(c)[86] of the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation and to consider any anti-competitive effects of the amendments. In the proposing release, we requested comment on whether the amendments, if adopted, would promote efficiency, competition, and capital formation. We received no comments on this section of the proposals.

We believe it is likely that the amendments will not have any adverse effect on capital formation. We believe they will promote efficiency by making the information investors can receive electronically easier to find. The amendments will apply equally to all entities of the same types currently required to file on EDGAR. Because the amendments are designed to require filers to provide information in a format that will be more useful to investors, we believe that the amendments do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (Analysis) has been prepared in accordance with 5 U.S.C. 604 and relates to our amendments under the Securities Act, the Exchange Act, the Investment Company Act, the Trust Indenture Act, and the Public Utility Holding Company Act to require that open-end investment companies and insurance company separate accounts electronically identify in their filings to which of their series and classes (or contracts) the filing relates; to add two investment company filings to the list of filings that must be made electronically; and to make a number of technical amendments to rules and forms in connection with filing on the EDGAR system. Specifically, the amendments will require certain open-end management investment companies and

[81] Initial costs are those associated with the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not from the Commission's Web site. Initial costs also include those resulting from the training of existing employees to be EDGAR proficient or the hiring of additional employees or agents that are already skilled in EDGAR processing. Initial costs further include those associated with the formatting and transmission of a company's documents filed on EDGAR. These transmission costs may include those related to subscribing to an Internet service provider. All filers who will be affected by these amendments are current EDGAR filers who will experience no additional initial costs.

[82] Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings.

[83] We received 2,372 filings of EDGAR submission type 40–17G in calendar year 2004, only 30 of which were electronically filed. Even using the higher cost estimate of $650 per filing for converting paper documents to electronic files, the total one-time cost to the investment company industry would be only about $1.5 million.

[84] 15 U.S.C. 77b(b).

[85] 15 U.S.C. 78c(f).

[86] 15 U.S.C. 80a–2(c).

insurance company separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). In addition, they will add two investment company filings to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR. An Initial Regulatory Flexibility Analysis (IRFA), which was prepared in accordance with 5 U.S.C. 603, was published in the proposing release.

A. Reasons for, and Objectives of, the Amendments

Many open-end investment companies (mutual funds) registering on Form N–1A are organized as single registrants with several portfolios (series) under Sections 18(f)(1) and (2) of the Investment Company Act and its Rule 18f–2. Each series may also issue more than one class of securities under Rule 18f–3 of the Investment Company Act. Series and classes of a registrant are often marketed separately, without reference to other series or classes or to the registrant's name. Insurance company separate accounts organized as management investment companies registering on Form N–3 may also have separate series.

Insurance company separate accounts frequently register and issue multiple contracts. The individual contracts of insurance company separate accounts registering on Forms N–4 (funded by separate accounts organized as unit investment trusts) and N–6 (funded by separate accounts organized as unit investment trusts that offer variable life insurance policies)[87] make filings separately under the name of the Investment Company Act registrant.

Any particular filing for a single registrant may be filed for only some of its series and classes (or contracts, in the case of separate accounts). A single registrant may make multiple filings of the same type (for example, post-effective amendment filings), each covering different series and/or classes (or contracts) of that registrant. Currently, we keep records of filings on an investment company registrant basis, but the EDGAR system currently does not generate a record of filings on a series, class or contract basis. Our objective includes being able to track filings on a series and class (contract) basis by requiring that open-end management investment companies and separate accounts that register on Forms N–1A, N–3, N–4, and N–6 (collectively, S/C Funds) obtain identifiers for their series and classes (or contracts, in the case of separate accounts) and electronically identify for which series and classes (or contracts) of the S/C Fund a particular filing is made. It is also our objective to facilitate investors' access to information about mutual finds and separate accounts.

On and after the Mandatory Series/Class (Contract) Identification Date, S/C Funds will have to use series and class (contract) identifiers in certain EDGAR submissions specified in the EDGAR Filer Manual. The series and class (or contract) identification will be added as a requirement to the EDGARLink header templates of certain investment company EDGAR submissions.

The amendments will also require certain current paper filings to be submitted electronically. Currently, investment companies must submit in paper filings under Section 17(g)[88] and sales literature filed with us under Section 24(b).[89]

Finally, the amendments will modify Rule 102(d) of Regulation S–T regarding references to paper filings in electronic filings' exhibit indices to require references to all exhibits filed in paper and make changes to Form SE to make it more useful (*e.g.*, identify the applicable rule in Regulation S–T allowing the exhibit to be filed in paper).

We are adopting amendments to Rules 11, 101, 102, 201, and 311 of Regulation S–T and Forms SE and TH under the Securities Act, the Securities Exchange Act, the Public Utility Holding Company Act, the Trust Indenture Act, and the Investment Company Act, and new Rule 313 under Regulation S–T, pursuant to authority set forth in Sections 6, 7, 8, 10, and 19(a) of the Securities Act,[90] Sections 3, 12, 13, 14, 15(d), 23(a), and 35A of the Exchange Act,[91] Sections 3, 5, 6, 7, 10, 12, 13, 14, 17, and 20 of the Public Utility Holding Company Act,[92] Section 319 of the Trust Indenture Act,[93] and Sections 8, 30, 31, and 38 of the Investment Company Act.[94]

B. Significant Issues Raised by Public Comment

In the IRFA for the proposed amendments, we encouraged the submission of written comments with respect to any aspect of the IRFA. We requested specifically comment on the number of small entities that will be affected by the amendments and the likely impact on small entities. We asked commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact. We received no comments with respect to this section of the proposals.

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 of less as of the end of its most recent fiscal year.[95] Approximately 145 out of 5,025 investment companies registered on Form N–1A meet this definition.[96] We estimate that few, if any, separate accounts registered on Form N–3, N–4, or N–6 are small entities.[97]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments will require S/C funds to include in their EDGAR filings identification of their series and classes (contracts). It will also require them to provide information concerning the type of investment company and information about the other party to a merger filing. In addition, the amendments will add two investment company filings (fidelity bonds and sales literature not filed with the NASD) to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

The Commission estimates some one-time formatting and on-going burdens that will be imposed on all funds, including funds that are small entities.

[87] 17 CFR 239.17c and 274.11d.

[88] 15 U.S.C. 80a–17(g). See Release No. 33–6978 and Release No. 33–7241 at footnotes 26–32 and accompanying text.

[89] 15 U.S.C. 80a–24(b).

[90] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[91] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), and 78*ll*.

[92] 15 U.S.C. 79c, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, and 79t.

[93] 15 U.S.C. 77sss.

[94] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

[95] 17 CFR 270.0–10.

[96] 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.

[97] This estimate is based on figures compiled by the Division of Investment Management staff regarding separate accounts registered on Forms N–3, N–4, and N–6. 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)].

We note, however, that funds currently must keep track of their series and classes (or contracts) and that the addition of a number assigned to each should create only a *de minimis* burden. Also, funds must currently incur the cost of submitting fidelity bonds and sales literature in paper.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that will accomplish our stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the amendments, or any part of them, for small entities. The amendments will require S/C Funds to include in their EDGAR filings identification of their series and classes (contracts). They will also require them to provide information concerning the type of investment company and information about the other party to a merger filing.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, with regard to these amendments, will not be appropriate or consistent with investor protection. Different requirements for funds that are small entities may create the risk that the shareholders in these funds will not be as able as investors in larger funds to locate Commission filings and disclosure documents. We believe it is important that the benefits resulting from the amendments be provided to investors in all investment companies, not just investors in investment companies that are not considered small entities.

We have endeavored through the amendments to minimize the regulatory burden on all investment company EDGAR filers, including small entities, while meeting our regulatory objectives. Investors in small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as investors in other investment companies. Further clarification, consolidation, or simplification of the amendments for funds that are small entities will be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards with regard to these amendments to be consistent with our statutory mandate of investor protection.

VIII. Paperwork Reduction Act

The amendments will affect two forms that contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[98] The title of the affected information collections are the EDGAR Forms SE and TH.

Form SE (OMB Control Number 3235–0327) is used by electronic filers to submit exhibits in paper to the extent permitted under Rules 201, 202 and 311 of Regulation S–T; Form TH (Control Number 3235–0425) is used by electronic filers to submit paper filings pursuant to a temporary hardship exemption to the extent permitted under Rule 201 under Regulation S–T.

Compliance with the amendments will be mandatory. The information required by the amendments will not be kept confidential. The above forms will not impose a retention period for any recordkeeping requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We expect that the amendments will obligate applicants to disclose on Forms SE and TH essentially the same information that they are required to disclose today. We therefore believe that the overall information collection burden of Forms SE and TH will remain approximately the same. As a result, we have not submitted the revisions to the collections of information to the Office of Management and Budget for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

We solicited comment on the expected Paperwork Reduction Act effects of the amendments. In particular, we solicited comment on the accuracy of our estimate that no additional burden will result from the amendments. We further requested comment on whether the changes to the collections of information are necessary for the proper performance of the Commission's functions, including whether the additional information garnered will have practical utility. In addition, we solicited commented on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. We further solicited comment on whether there are ways to minimize the burden of information collection on those applicants who file Forms SE and TH, including through the use of automated collection techniques or other forms of information technology. Finally, we solicited comment on whether the amendments would have any effects on any other collection of information not previously identified in this section. We received no comments on this section of the proposal.

[98] 44 U.S.C. 3501 *et seq.*

IX. Statutory Basis

We adopt the rule amendments outlined above under Sections 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a), and 35A of the Exchange Act, Sections 3, 5, 6, 7, 10, 12, 13, 14, 17, and 20 of the Public Utility Holding Company Act, Section 319 of the Trust Indenture Act, and Sections 8, 30, 31, and 38 of the Investment Company Act.

List of Subjects

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 259

Electric utilities, Holding companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 269

Securities, Trusts and trustees, Reporting and recordkeeping requirements.

17 CFR Part 270

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Rule and Form Amendments

■ In accordance with the foregoing, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 232.11 by revising the definition of "official filing" to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Official filing. The term *official filing* means any filing that is received and accepted by the Commission, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing; except that electronic identification of investment company type and inclusion of identifiers for series and class (or contract, in the case of separate accounts of insurance companies) as required by rule 313 of Regulation S–T (§ 232.313) are deemed part of the official filing.

* * * * *

■ 3. Amend § 232.101 by:
■ a. Revising paragraphs (a)(1)(iv) and (c)(7);
■ b. Removing the word "and" at the end of paragraph (b)(8);
■ c. Removing the period at the end of paragraph (b)(9) and in its place adding "; and"; and
■ d. Adding paragraph (b)(10).

The revisions and addition read as follows.

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(iv) Documents filed with the Commission pursuant to sections 8, 17, 20, 23(c), 24(b), 24(e), 24(f), and 30 of the Investment Company Act (15 U.S.C. 80a–8, 80a–17, 80a–20, 80a–23(c), 80a–24(b), 80a–24(e), 80a–24(f), and 80a–29); *provided, however* that submissions under section 6(c) of that Act (15 U.S.C. 80a–6(c)) and documents related to applications for exemptive relief under any section of that Act, shall not be made in electronic format;

* * * * *

(b) * * *

(10) Documents filed with the Commission pursuant to section 33 of the Investment Company Act (15 U.S.C. 80a–32).

(c) * * *

(7) Promotional and sales material submitted pursuant to Securities Act Industry Guide 5 (§ 229.801(e) of this chapter) or otherwise supplementally furnished for review by the staff of the Division of Corporation Finance;

* * * * *

■ 4. Amend § 232.102 by revising paragraphs (d) and (e) to read as follows:

§ 232.102 Exhibits.

* * * * *

(d) Each electronic filing requiring exhibits must include an exhibit index which must immediately precede the exhibits filed with the document. The index must list each exhibit filed, whether filed electronically or in paper. Whenever a filer files an exhibit in paper pursuant to a temporary or continuing hardship exemption (§ 232.201 or § 232.202) or pursuant to § 232.311, the filer must place the letter "P" next to the listed exhibit in the exhibit index of the electronic filing to reflect the fact that the filer filed the exhibit in paper. In addition, if the exhibit is filed in paper pursuant to § 232.311, the filer must place the designation "Rule 311" next to the letter "P" in the exhibit index. If the exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the filer must place the letters "TH" or "CH," respectively, next to the letter "P" in the exhibit index. Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d)), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system, unless the document has been filed in paper under a hardship exemption (§ 232.201 or § 232.202) and any required confirming electronic copy has been submitted.

* * * * *

■ 5. Amend § 232.201 by revising paragraph (a)(1), the Note heading following paragraph (a)(4), and Note 1 to read as follows:

§ 232.201 Temporary hardship exemption.

(a) * * *

(1) An electronic imaged copy of the paper format document shall be the official filing for purposes of the federal securities laws.

* * * * *

Notes to paragraph (a):

1. Where a temporary hardship exemption relates to an exhibit only, the filer must file the paper format exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) under cover of Form SE (§§ 239.64, 249.444, 259.601, 269.8, and 274.403 of this chapter).

* * * * *

■ 6. Amend § 232.311 by revising paragraph (h)(1) to read as follows:

§ 232.311 Documents submitted in paper under cover of Form SE.

* * * * *

(h) * * *

(1) If the subject of a temporary hardship exemption is an exhibit only, the filer must file the exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) under cover of Form SE (§§ 239.64, 249.444, 259.601, 269.8, and 274.403 of this chapter) no later than one business day after the date the exhibit was to be filed electronically.

* * * * *

■ 7. Section 232.313 is added to read as follows:

§ 232.313 Identification of investment company type and series and/or class (or contract).

(a) Registered investment companies and business development companies must indicate their investment company type, based on whether the registrant's last effective registration statement or amendment (other than a merger/proxy filing on Form N–14 (§ 239.23 of this chapter) was filed on Form N–1 (§§ 239.15 and 274.11 of this chapter), Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), Form N–3 (§§ 239.17A and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), Form N–5 (§§ 239.24 and 274.5 of this chapter), Form N–6 (§§ 239.17c and 274.11d of this chapter), Form S–1 (§ 239.11 of this chapter), Form S–3 (§ 239.13 of this chapter), or Form S–6 (§ 239.16 of this chapter) in those EDGAR submissions identified in the EDGAR Filer Manual.

(b) Registered investment companies whose last effective registration statement or amendment (other than a merger/proxy filing on Form N–14 (§ 239.23 of this chapter) was filed on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17A and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), or Form N–6 (§§ 239.17c and 274.11d of this chapter) must, under the

procedures set forth in the EDGAR Filer Manual:

(1) Provide electronically, and keep current, information concerning their existing and new series and/or classes (or contracts, in the case of separate accounts), including series and/or class (contract) name and ticker symbol, if any, and be issued series and/or class (or contract) identification numbers;

(2) Deactivate for EDGAR purposes any series and/or class (or contract, in the case of separate accounts) that are no longer offered, go out of existence, or deregister following the last filing for that series and/or class (or contract, in the case of separate accounts), but the registrant must not deactivate the last remaining series unless the registrant deregisters; and

(3) For those EDGAR submissions identified in the EDGAR Filer Manual, include all series and/or class (or contract) identifiers of each series and/or class (or contract) on behalf of which the filing is made.

(c) Registered investment companies whose last effective registration statement or amendment (other than a merger/proxy filing on Form N–14 (§ 239.23 of this chapter)) was filed on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17A and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), or Form N–6 (§§ 239.17c and 274.11d of this chapter) must provide electronically, as specified in the EDGAR Filer Manual, in the EDGAR submission identifying information concerning the acquiring fund and the target fund (and the series and/or classes (contracts), if any, of each if in existence at the time of the filing) in connection with merger filings on Form N–14 (§ 239.23 of this chapter), under § 230.425 of this chapter, and in compliance with Regulation 14A (§ 240.14a–1 of this chapter), Schedule 14A (§ 240.14a–101 of this chapter), and all other applicable rules and regulations adopted pursuant to Section 14(a) of the Exchange Act, as referenced in Investment Company Act Rule 20a–1 (§ 270.20a–1 of this chapter).

(d) Non-registrant third party filers making proxy filings with respect to investment companies must designate in the EDGAR submission the type of investment company (as referenced in paragraph (a) of this section) and include series and/or class (or contract) identifiers in designated EDGAR proxy submission types, in accordance with the EDGAR Filer Manual.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 8. 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

■ 9. 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 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

■ 10. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 11. The authority citation for part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, and 78ll(d), unless otherwise noted.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 12. 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.

* * * * *

■ 13. Section 270.24b–2 is revised to read as follows:

§ 270.24b–2 Filing copies of sales literature.

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the Act (15 U.S.C. 80a–24(b)) either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 14. 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), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 15. Revise Form SE (referenced in §§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) to read as follows:

Note: The text of Form SE does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

OMB APPROVAL
OMB Number: 3235-0327 Expires: 05/31/2006 Estimated average burden hours per response: 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC

FORM SE
FORM FOR SUBMISSION OF PAPER FORMAT EXHIBITS BY EDGAR ELECTRONIC FILERS

_____ _____
Exact name of registrant as specified in charter — Registrant CIK Number

_____ _____
Electronic report, schedule or registration statement of which the documents are a part — SEC filer number, if available

S-_____ _____
(Series identifier(s) and names(s), if applicable; add more lines as needed)

C-_____ _____
(Class (contract) identifier(s) and names(s), if applicable; add more lines as needed)

_____
Report period (if applicable)

_____
Name of person filing this exhibit (if other than the registrant)

Identify the provision of Regulation S-T (§232 of this chapter) under which this exhibit is being filed in paper (check only one):

____ Rule 201 (Temporary Hardship Exemption)

____ Rule 202 (Continuing Hardship Exemption)

____ Rule 311 (Permitted Paper Exhibit)

SIGNATURES

Filings Made by the Registrant:

The registrant has duly caused this form to be signed on its behalf by the undersigned, duly authorized, in the City of _____, State of _____, on _____ 20___.

_____
Registrant

By: _____
(Name)

_____
(Title)

Filings Made by Person Other than the Registrant:

After reasonable inquiry and to the best of my knowledge and belief, I certify on _____ 20___, that the information set forth in this statement is true and complete.

By: _____
(Name)

_____
(Title)

BILLING CODE 8010–01–C

1. Rule as to Use of Form SE.

A. Electronic filers must use this form to submit any paper format exhibit under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, or the Investment Company Act of 1940, *provided that* the submission of such exhibit in paper is permitted under Rule 201, 202, or 311 of Regulation S–T (§§ 232.201, 232.202, or 232.311 of this chapter).

B. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. We direct your attention to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the electronic filing rules and regulations under these Acts.

2. Preparation of Form SE.

Submit in paper format four complete copies of both the Form SE and the exhibit filed under cover of the Form SE.

3. Filing of Form SE.

A. If you are filing the exhibit under a temporary hardship exemption, submit the exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) under cover of this Form SE no later than one business day after the date on which the exhibit was to have been filed electronically. See Rule 201 of Regulation S–T (§ 232.201 of this chapter).

B. If you are filing the exhibit under a continuing hardship exemption under Rule 202 of Regulation S–T (§ 232.202 of this chapter), or as allowed by Rule 311 of Regulation S–T (§ 232.311 of this chapter), you may file the exhibit in paper under cover of Form SE up to six business days before or on the date of filing of the electronic format document to which it relates; you may not file the exhibit after the filing date of the electronic document to which it relates. Exhibits filed under a continuing hardship exemption must include the legend required by Rule 202(c) (§ 232.202(c) of this chapter). If you submit the paper exhibit in this manner, you will have satisfied any requirements that you file the exhibit with, provide the document with, or have the document accompany the electronic filing. This instruction does not affect any requirement that you deliver or furnish the information in the exhibit to persons other than the Commission.

C. Identify the exhibit being filed. Attach to the Form SE the paper format exhibit and an exhibit index if required by Item 601 of Regulation S–K or S–B, as applicable (§§ 229.601 or 228.601 of this chapter).

4. Signatures.

A. Submit one copy signed by each person on whose behalf you are submitting the form or by that person's authorized representative. If the form is signed by the authorized representative of a person (other than an executive officer or general partner), file with the form the evidence of the authority of the representative to sign on behalf of such person, except that you may incorporate by reference a power of attorney for this purpose that is already on file with the Commission.

B. Signatures may be in typed form rather than manual format.

■ 16. Revise Form TH (referenced in §§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) to read as follows:

Note: The text of Form TH does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8010-01-P

OMB APPROVAL
OMB Number: 3235-0425 Expires: 05/31/2006 Estimated average burden hours per response: ..... .33

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC

FORM TH

NOTIFICATION OF RELIANCE ON
TEMPORARY HARDSHIP EXEMPTION

_____ _____

Report, schedule or registration statement to which the hardship exemption relates (give period of report, if applicable)

SEC file number(s) under which filing made (Required, if assigned)

_____

CIK of filer or subject company CIK, as applicable

_____

Name of Filer or subject company, as applicable

_____

Filed-by CIK (for subject company filings only)

_____

Name of "filed-by" entity (for subject company filings only)

S-_____ _____

(Series identifier(s) and names(s), if applicable; add more lines as needed)

C-_____ _____

(Class (contract) identifier(s) and names(s), if applicable; add more lines as needed)

Part I – Filer Information_____
Full Name of Filer

_____
Address of Principal Office

_____
Street and Number

_____
City, State, and Postal Code; Country, if other than US

BILLING CODE 8010–01–C

Part II—Information Relating to the Hardship

Furnish the following information:

1. A description of the nature and extent of the temporary technical difficulties experienced by the electronic filer in attempting to submit the document in electronic format.

2. A description of the extent to which the electronic filer has successfully submitted documents previously in electronic format with the same hardware and software, in test of required filings.

3. A description of the burden and expense involved to employ alternative means to submit the electronic submission in a timely manner.

4. Any other reasons an exemption is warranted.

Part III—Representation of Intent to Submit Confirming Electronic Copy

The filer shall include a representation that it shall cause to be filed a confirming electronic copy of the document filed in paper under cover of the Form TH and that its filing will be in accordance with Rule 201(b) of Regulation S–T (§ 232.201(b) of this chapter) and appropriately designated as a "confirming electronic copy" in accordance with the requirements of the EDGAR Filer Manual.

Part IV—Contact Person

Name, telephone number, and e-mail address of person to contact in regard to this filing under Form TH:

_____
Name
(( ) _____
(Area code) Phone number

_____
e-mail address

Part V—Signature

_____
Name of Filer (if registrant, name as it appears in charter)

has caused this Form TH to be signed on its behalf by the undersigned, being duly authorized:

Date: _____
By: _____

Instruction: This form my be signed by an executive officer of the registrant or by any other duly authorized representative.

General Instructions

1. Rule 201(a) of Regulation S–T (§ 232.201(a) of this chapter) requires an electronic filer relying on a temporary hardship exemption to file this Form TH in addition to filing a paper copy of a document otherwise required to be filed in electronic format.

2. Four signed copies of this Form TH must accompany the paper format document being filed pursuant to Rule 201; filers must file under Form TH within one business day after the date upon which the filer was originally to file the document electronically.

3. Signatures to the paper format document being filed with Form TH may be in typed form rather than in manual format. See Rule 302 of Regulation S–T (§ 232.302 of this chapter). Filers must satisfy all other requirements relating to paper format filings, including number of copies to be filed.

Dated: July 18, 2005.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–14712 Filed 7–26–05; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
July 27, 2005

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 2, 4, 8, 14, et al.
Federal Acquisition Regulations; Interim Rules and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–05; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–05. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–05 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acqnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Definition of Information Technology (Interim)	2004–030	Davis.
II	Documentation Requirement for Limited Sources under Federal Supply Schedules	2005–004	Nelson.
III	Payment Withholding	2004–003	Olson.
IV	Confirmation of HUBZone Certification (Interim)	2005–009	Cundiff.
V	Government Property Rental and Special Tooling	2002–015	Parnell.
VI	Technical Amendment.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–05 amends the FAR as specified below:

Item I—Definition of Information Technology (FAR Case 2004–030)

This interim rule amends FAR 2.101(b) to revise the definition of "information technology" to reflect the recent changes to the definition resulting from the enactment of Public Law 108–199.

The new language at Section 535(b) of Division F of Public law 108–199 permanently revises the term "information technology," which is defined at 40 U.S.C. 11101, to add "analysis" and "evaluation" and to clarify the term "ancillary equipment." This permanent change to the terminology necessitated this interim rule to amend the FAR.

Item II—Documentation Requirement for Limited Sources under Federal Supply Schedules (FAR Case 2005–004)

On June 18, 2004, DoD, GSA, and NASA published FAR case 1999–603 (69 FR 34231) amending the FAR to incorporate ordering procedures for orders against Federal Supply Schedules (FSS), including the documentation requirements for justifying sole source orders. The rule inadvertently established these justification and approval requirements for sole source orders instead of when an ordering activity restricts consideration of schedule contractors to less than the required number. This rule corrects that oversight. The final rule also based the content of the documentation requirements on that in FAR 6.303–2. By doing so, the rule established some unintentional and inapplicable content requirements, especially for orders under the simplified acquisition threshold (SAT). This rule corrects those unintended changes by establishing the standard for justifying restricted orders under the SAT and accurately specifying the justification content for restricted orders above the SAT. The rule will clarify the procedures for ordering activities.

Item III—Payment Withholding (FAR Case 2004–003)

Contracting officers and contracting officer's representatives who award or administer Time-and-Materials or Labor-Hour contracts or orders should be familiar with this amendment. Also, contractor personnel who are responsible for managing invoicing for those types of contracts should be aware of this new requirement. The amendment removes the mandatory requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials contract, unless it is necessary to withhold payment to protect the Government's interest or otherwise prescribed in the contract Schedule. It requires the use of a contract modification in order to make payment withholding and, in the event withholding is required, the contractor is responsible to withhold the amounts from its billings.

Item IV—Confirmation of HUBZone Certification (FAR Case 2005–009)

This interim rule amends FAR 19.703 and the clause at 52.219–9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of awards to HUBZone small business concerns under Government contracts.

Item V—Government Property Rental and Special Tooling (FAR Case 2002–015)

This final rule amends FAR Parts 45 and 52 to clarify the basis for determining rental charges for the use of Government property. The change, which is intended to promote the dual use of such property, will impact contracting officers and property administrators responsible for the management of Government property and contractors that desire to use Government property for commercial purposes.

Item VI—Technical Amendment

An editorial change is made at FAR 4.1102 in order to update a reference.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-05 is effective August 26, 2005, except for Items I, II, IV, and VI which are effective July 27, 2005.

Dated: July 15, 2005.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: July 19, 2005.

Patricia A. Brooks,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: July 14, 2005.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 05–14665 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005–05; FAR Case 2004–030; Item I]

RIN 9000–AK21

Federal Acquisition Regulation; Definition of Information Technology

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of "information technology" to reflect the changes to the definition resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004. The new language at Section 535(b) of Division F of Public Law 108–199 permanently revises the term "information technology," which is defined at 40 U.S.C. 11101(6), to add "analysis" and "evaluation" and to clarify the term "ancillary equipment."

DATES: *Effective Date:* July 27, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before September 26, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–05, FAR case 2004–030, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: farcase.2004–030@gsa.gov. Include FAC 2005–05, FAR case 2004–030, in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–05, FAR case 2004–030, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202, or Mr. Bill Sain, Procurement Analyst, at (703) 602–0293. Please cite FAC 2005–05, FAR case 2004–030.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements the changes to the FAR definition of "information technology" resulting from the enactment of Section 535(b), Division F, of Public Law 108–199, Consolidated Appropriations Act, 2004. The public law was effective January 23, 2004. The rule modifies the definition of "information technology" at FAR 2.101(b) to include "analysis" and "evaluation." The rule also modifies the term "information technology" to include peripheral equipment designed to be controlled by the central processing unit of a computer, and clarifies the term "ancillary equipment" to include imaging peripherals, input, output, and storage devices necessary for security and surveillance.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.*, because the interim rule revises the definition of information technology resulting from the enactment of Public Law 108–199, Consolidated Appropriation Act 2004. This is a minor technical change to the definition. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. However, the Councils will consider comments from small entities concerning the affected FAR Part 2 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–05, FAR case 2004–030), in correspondence.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the changes resulting from the enactment of Section 535(b), Division F, of Public Law 108–199, Consolidated Appropriations Act, 2004, that were effective January 23, 2004. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 2

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 2 as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 2 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. In section 2.101, amend paragraph (b), in the definition "Information technology," by adding the words "analysis, evaluation," after the word "storage," revising paragraph (2) of the definition; and in paragraph (3)(ii), adding "analysis, evaluation," after the word "storage,". The revised text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

Information technology * * *

(1) * * *

(2) The term "information technology" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

* * * * *

[FR Doc. 05–14666 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2005–05; FAR Case 2005–004; Item II]

RIN 9000–AK23

Federal Acquisition Regulation; Documentation Requirement for Limited Sources Under Federal Supply Schedules

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to make editorial and restructuring changes to clarify the procedures when an ordering activity limits consideration of schedule contractors.

DATES: *Effective Date:* July 27, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2005–05, FAR case 2005–004.

SUPPLEMENTARY INFORMATION:

A. Background

On June 18, 2004, DoD, GSA, and NASA published FAR case 1999–603 (69 FR 34231) amending the FAR to incorporate ordering procedures for orders against Federal Supply Schedules (FSS), including the documentation requirements for justifying sole source orders. The rule inadvertently established these justification and approval requirements for sole source orders instead of when an ordering activity restricts consideration of schedule contractors to less than the required number. This rule corrects that oversight. The final rule also based the content of the documentation requirements on that in FAR 6.303–2. By doing so, the rule established some unintentional and inapplicable content requirements, especially for orders under the simplified acquisition threshold (SAT). This rule corrects those unintended changes by establishing the standard for justifying restricted orders under the SAT and accurately specifying the justification content for restricted orders above the SAT.

The Councils agreed that the changes made did not substantively change the intent of the subpart but are merely a clarification and, therefore, publication for public comment is not required.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 8 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–05, FAR case 2005–004), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: July 20. 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 8 as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 8 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 8.401 by revising the definition "Multiple Award Schedule (MAS")" to read as follows:

8.401 Definitions.

* * * * *

Multiple Award Schedule (MAS) means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authorities for the MAS program are Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, *et seq.*) and Title 40 U.S.C. 501, Services for Executive Agencies.

* * * * *

■ 3. Amend section 8.405–1 in the second sentence of the introductory text of paragraph (c) by adding "at least three schedule contractors through" after the word "surveying"; and adding paragraph (e) to read as follows:

8.405–1 Ordering procedures for supplies, and services not requiring a statement of work.

* * * * *

(e) *Minimum documentation.* The ordering activity shall document—

(1) The schedule contracts considered, noting the contractor from which the supply or service was purchased;

(2) A description of the supply or service purchased; and

(3) The amount paid.

■ 4. Amend section 8.405–2 by adding paragraph (e) to read as follows:

8.405–2 Ordering procedures for services requiring a statement of work.

* * * * *

(e) *Minimum documentation.* The ordering activity shall document—

(1) The schedule contracts considered, noting the contractor from which the service was purchased;

(2) A description of the service purchased;

(3) The amount paid;

(4) The evaluation methodology used in selecting the contractor to receive the order;

(5) The rationale for any tradeoffs in making the selection;

(6) The price reasonableness determination required by paragraph (d) of this subsection; and

(7) The rationale for using other than—

(i) A firm-fixed price order; or

(ii) A performance-based order.

8.405–3 [Amended]

■ 5. Amend section 8.405–3 in paragraph (b)(2)(i) by removing the word "additional".

■ 6. Revise the section heading and text of section 8.405–6 to read as follows:

8.405–6 Limited sources justification and approval.

(a) Orders placed under Federal Supply Schedules are exempt from the requirements in Part 6. However, an ordering activity must justify its action when restricting consideration of schedule contractors to fewer than required in 8.405–1 or 8.405–2.

(b) Circumstances that may justify restriction include—

(1) Only one source is capable of responding due to the unique or specialized nature of the work;

(2) The new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order must not have been previously issued under sole source or limited source procedures;

(3) The item is peculiar to one manufacturer. A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer; or

(4) An urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays.

(c) When an ordering activity restricts consideration of schedule contractors to fewer than that required in 8.405–1 or 8.405–2, the ordering activity shall procure such requirements under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraphs (d) and (f) of this subsection.

(d) *Orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold as defined in 2.101.* For proposed orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the ordering activity contracting officer shall document the circumstances when restricting consideration of schedule contractors to fewer than required in 8.405–1 or 8.405–2.

(e) *Orders exceeding the simplified acquisition threshold.* (1) For proposed orders exceeding the simplified acquisition threshold, the requiring activity shall assist the ordering activity contracting officer in the preparation of the justification. The justification shall cite that the acquisition is conducted under the authority of the Multiple Award Schedule Program (see 8.401).

(2) As a minimum, each justification shall include the following information:

(i) Identification of the agency and the contracting activity, and specific identification of the document as a "Limited Source Justification."

(ii) Nature and/or description of the action being approved.

(iii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iv) Identification of the justification rationale (see 8.405–6(b)) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.

(v) A determination by the ordering activity contracting officer that the order represents the best value consistent with 8.404(d).

(vi) A description of the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted.

(vii) Any other facts supporting the justification.

(viii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that preclude the agency from meeting the requirements of 8.405–1 and 8.405–2 before any subsequent acquisition for the supplies or services is made.

(ix) The ordering activity contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(x) Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or requirements or other rationale for limited sources) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(f) *Justification approvals.* (1) For proposed orders exceeding the simplified acquisition threshold, but not exceeding $500,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order exceeding $500,000, but not exceeding $10 million, the justification must be approved by the competition advocate of the activity placing the order, or by an official named in paragraph (f)(3) or (f)(4) of this subsection. This authority is not delegable.

(3) For a proposed order exceeding $10 million, but not exceeding $50 million (or, for DoD, NASA, and the Coast Guard, not exceeding $75 million), the justification must be approved by—

(i) The head of the procuring activity placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer;

(B) If a civilian, is serving in a position in a grade above GS–15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (f)(4) of this subsection.

(4) For a proposed order exceeding $50 million (or, for DoD, NASA, and the Coast Guard, over $75 million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

8.405–7 [Removed]

■ 7. Remove section 8.405–7.

8.405–8 [Redesignated as 8.405–7]

■ 8. Redesignate section 8.405–8 as 8.405–7.

[FR Doc. 05–14667 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 32, and 52

[FAC 2005–05; FAR Case 2004–003; Item III]

RIN 9000–AJ94

Federal Acquisition Regulation; Payment Withholding

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by removing the mandatory requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials contract, unless it is necessary to withhold payment to protect the Government's interest or otherwise prescribed in the contract schedule. The final rule also amends FAR guidance that requires the use of a contract modification to withhold payment and to state that the withhold is to be made by the contractor.

DATES: *Effective Date*: August 26, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAC 2005–05, FAR case 2004–003.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 29838, May 25, 2004, with request for public comments. The proposed rule would permit contracting officers to use their judgment regarding whether to withhold payments under time-and-materials and labor-hour contracts so that the withhold would be applied only when necessary to protect the Government's interests. The proposed rule also made it clear that normally there should not be a need to withhold payments when dealing with contractual release requirements in a timely manner. Six respondents submitted comments on the proposed FAR rule. Three of the six respondents supported the proposed rule, two of the six respondents supported it but with certain additional changes that would align it with the Defense Federal Acquisition Regulations Supplement (DFARS) rule that was published in the **Federal Register** at 68 FR 69631, December 15, 2003, and one of the six respondents requested clarification. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with changes to the proposed rule. Differences between the proposed rule and final rule are discussed in Comments 1 and 2, below.

Align With DFARS

1. *Comment*: While five respondents supported the proposed rule, two stated that it is not consistent with the changes to relax the requirements included in the DFARS rule published in the **Federal Register** at 68 FR 69631, December 15, 2003. That rule stated that, if it was necessary to withhold payment to protect the Government's interest, the contracting officer would issue a modification requiring the contractor to withhold 5 percent of the amount due, up to a maximum of $50,000. One of the respondents stated the DFARS guidance should be applicable Governmentwide "because requiring withholds to protect the interests of the Government is a serious matter, necessitating, in our opinion, the execution of a formal contract modification." In addition, the same respondent believes that, in most situations, it would be more efficient and less costly for both contractors and the Government if contractors take the withhold prior to submission of their invoices.

Councils' response: Concur. The Councils believes that, based on the analysis performed for the DFARS rule, it would be more efficient and less costly for both contractors and the Government if contractors take the withhold prior to the submission of their vouchers. In addition, in order to make it clear that the Government is exercising its right to a payment withhold to protect its interests, a contract modification should be issued requiring the withhold of payment under time-and-materials and labor-hour contracts. Therefore, the Councils have revised the guidance at FAR 32.111(a)(7)(iii) and the clause at FAR 52.232–7(a)(2) to require the use of a modification to withhold payment and to allow for the withhold to be made by the contractor instead of by the Government payment office. The Councils note that this clause does not preclude the Government from withholding other amounts due to non-performance, delivery of non-conforming goods, or other failure(s) to comply with contract requirements.

Task Order Versus Entire Contract

2. *Comment*: A respondent stated that the proposed rule is unclear as to whether the $50,000 ceiling on withholding applies to an individual task or to an entire contract. It recommended the proposed rule be clarified to identify the basis for application of the ceiling. The respondent added that it had previously recommended in an audit report that the $50,000 ceiling be applied to each order where orders are closed separately. The respondent's recommendation is based on the belief that the clarification will assist contracting officers in performing their jobs.

Councils' response: The Councils agree that it would assist both contractors and the Government if the proposed rule were clarified as to whether the withhold ceiling applies to an entire contract or to individual orders. Such a clarification would reduce any possible confusion by either party as to the applicability of the ceiling and thus remove the potential for disagreements. The Councils agree that the withhold ceiling applies to the entire contract. Therefore, the Councils have revised the guidance at FAR 32.111(a)(7)(iii) and the clause at FAR 52.232–7(a)(2) to clarify that the withhold ceiling applies to the total contract.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to time-and-materials and labor-hour contracts. Time-and-

materials or labor-hour contracts with small business represent only approximately 2 percent of all contracts. In addition, the rule eases the impact of the current FAR by permitting the contracting officer to use judgment in deciding whether to withhold payments, thus the number of contracts affected is a subset of the 2 percent figure. This change is expected to have a small but beneficial impact on small businesses.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 14, 32, and 52

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 14, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 14, 32, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

14.408–3 [Amended]

■ 2. Amend section 14.408–3 in paragraph (b) by removing "See 32.111(c)(1)," and adding "See 32.111(b)(1)," in its place.

PART 32—CONTRACT FINANCING

■ 3. Amend section 32.111 by—

■ a. Removing from the end of paragraph (a)(5) the word "and";

■ b. Removing the period from the end of paragraph (a)(6) and adding "; and" in its place;

■ c. Adding paragraph (a)(7);

■ d. Removing paragraph (b); and

■ e. Redesignating paragraphs (c) and (d) as (b) and (c), respectively.

The added text reads as follows:

32.111 Contract clauses for non-commercial purchases.

(a) * * *

(7) The clause at 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(i) If the nature of the work to be performed requires the contractor to furnish material that is regularly sold to the general public in the normal course of business by the contractor and the price is under the limitations prescribed in 16.601(b)(3), the contracting officer shall use the clause with its Alternate I.

(ii) If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the contracting officer may use the clause with its Alternate II.

(iii) If the contracting officer determines that it is necessary to withhold payment to protect the Government's interests, paragraph (a)(2) of the clause permits the contracting officer to unilaterally issue a modification requiring the contractor to withhold 5 percent of amounts due, up to a maximum of $50,000 under the contract. The contracting officer shall ensure that the modification specifies the percentage and total amount of the withhold payment. Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims, as required by paragraph (f) of the clause.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.232–7 by—

■ a. Removing from the introductory text "32.111(b)" and adding "32.111(a)(7)" in its place;

■ b. Revising the date of the clause; and

■ c. Revising paragraph (a)(2).

The revised text reads as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

* * * * *

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (AUG 2005)

* * * * *

(a) * * *

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interests. The Contracting Officer may require a withhold of 5 percent of the amounts due under paragraph (a), but the total amount withheld for the contract shall not exceed $50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

* * * * *

52.232–8 [Amended]

■ 5. In the introductory text of section 52.232–8, remove "32.111(c)(1)" and add "32.111(b)(1)" in its place.

52.232–9 [Amended]

■ 6. In the introductory text of section 52.232–9, remove "32.111(c)(2)" and add "32.111(b)(2)" in its place.

52.232–10 [Amended]

■ 7. In the introductory text of section 52.232–10, remove "32.111(d)(1)" and add "32.111(c)(1)" in its place.

52.232–11 [Amended]

■ 8. In the introductory text of section 52.232–11, remove "32.111(d)(2)" and add "32.111(c)(2)" in its place.

[FR Doc. 05–14668 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–05; FAR Case 2005–009; Item IV]

RIN 9000–AK22

Federal Acquisition Regulation; Confirmation of HUBZone Certification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended.

DATES: *Effective Date*: July 27, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before September 26, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–05, FAR case

2005–009, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2005–009@gsa.gov*. Include FAC 2005–05, FAR case 2005–009 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–05, FAR case 2005–009, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–05, FAR case 2005–009.

SUPPLEMENTARY INFORMATION:

A. Background

Title 15 of the United States Code, section 632 requires that a qualified Historically Underutilized Business Zone (HUBZone) small business concern be certified by the Small Business Administration (SBA). A Department of Defense Inspector General report D–2003–019 "DoD Contractor Subcontracting With Historically Underutilized Business Zones (HUBZones) Small Businesses" found that prime contractors were overstating their HUBZone accomplishments because subcontractor's representations were not being verified. The FAR is being revised to clarify that prime contractors must confirm a subcontractor representing itself as a HUBZone small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended.

The specific changes revise FAR 19.703 and the clause at 52.219–9 to clarify that contractors shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration or by contacting the SBA.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this rule change will have a positive effect on small businesses who are certified HUBZone small business concerns and are losing subcontracting opportunities taken by another company falsely claiming to be a certified HUBZone small business concern. The FAR Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

Title 15 of the United States Code, section 632 requires that a qualified Historically Underutilized Business Zone (HUBZone) small business concern be on the list of qualified HUBZone small business concerns maintained by the Small Business Administration. A Department of Defense Inspector General report D–2003–019 "DoD Contractor Subcontracting With Historically Underutilized Business Zones (HUBZones) Small Businesses" found that prime contractors were overstating their HUBZone accomplishments because subcontractor's representations were not being verified. This interim rule revises the Federal Acquisition Regulation to require prime contractors to verify that its HUBZone small business concerns are qualified as required by 15 U.S.C. 632 *et seq.*, as amended.

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because certified HUBZone small business concerns will have additional subcontracting opportunities previously taken by other companies falsely claiming to be certified HUBZone small business concerns.

Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 19 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–05, FAR case 2005–009), in correspondence.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because some subcontractors incorrectly claim to be certified HUBZone small business concerns. Since prime contractors are not currently required to verify their subcontractors' HUBZone certifications through the SBA prior to reporting their subcontracting awards to DoD, many real HUBZone small business concerns are losing opportunities that they should have. This also results in the reporting of inaccurate data on the HUBZone program to Congress and SBA. Awards to improperly certified subcontractors can be stopped immediately, if prime contractors make a simple check on the CCR database or contact SBA. Pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: July 20. 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.703 by—

■ a. Removing "HUBZone small business," from the first sentence of paragraph (b);

■ b. Removing the last sentence of paragraph (b); and

■ c. Adding paragraph (c) to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(c)(1) The contractor shall confirm that a subcontractor representing itself

as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone web page at *http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm*;

(ii) In writing to the AA/HUB at U.S. Small Business Administration, 409 3rd Street, S.W., Washington DC 20416; or

(iii) E-mail at *hubzone@sba.gov*.

(2) Protests challenging HUBZone small business concern size status must be filed in accordance with 13 CFR 121.411.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (b)(8)(i) "(JAN 2002")" and adding "(JUL 2005")".

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUL 2005)

* * * * *

■ 4. Amend section 52.219–9 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraph (e)(4) as paragraph (e)(5); and

■ c. Adding a new paragraph (e)(4).

The revised and added text reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005)

* * * * *

(e) * * *

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

* * * * *

[FR Doc. 05–14669 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAC 2005–05; FAR Case 2002–015; Item V]

RIN 9000–AJ99

Federal Acquisition Regulation; Government Property Rental and Special Tooling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to incorporate a class deviation regarding use and charges, which has been applicable to the Department of Defense since 1998. This deviation is appropriate for application across the Federal Government. The change clarifies the basis for determining the rental charges for the use of Government property and is intended to promote the dual use of such property. The final rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property.

DATES: *Effective Date*: August 26, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2005–05, FAR case 2002–015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 42544, July 15, 2004, to incorporate two Department of Defense class deviations, 98–O0010, Use and Charges, and 98–O0011, Special Tooling, into FAR Part 45 and make appropriate revisions to FAR 52.245–9, Use and Charges, and FAR 52.245–17, Special Tooling. The final rule establishes, as the basis for rental charges, the time property is actually used for commercial purposes, rather than the time available for use; permits contractors to obtain property appraisals from independent appraisers; permits appraisal-based rentals for all property; and allows contracting officers to consider alternate bases for determining rentals. The final rule does not change the requirements for special tooling as originally proposed by the Councils because the Councils are now considering deleting the clause in its entirety rather than revising it based on comments received on the proposed rule. The Councils plan to solicit comments on the proposed deletion of the FAR clause at 52.245–17, Special Tooling, under another proposed rule.

Four respondents provided public comments. Consideration of these comments resulted in only minor administrative changes to the proposed rule. The resolution of the comments follows:

Summary of Comments Received/ Disposition

1. *Proposed Rule (PR): 52.245–9.* Deviation to the clause at 52.245–9 sets a fair and equitable method for applying a rent usage when Government property is used for commercial purposes or existing Government property is used for future contracts and equitable adjustment is needed to eliminate unfair competitive advantage.

Concur.

2. *PR: 52.245–17.* All respondents proposed the elimination of the special tooling clause.The Councils plan to solicit comments on the proposed deletion of the FAR clause at 52.245–17, Special Tooling, under another proposed rule.

3. *PR: 52.245–9(h).* Amend paragraph (h) to strike "person" and replace it with "contractor." Rationale is that a company would control their personnel through their administrative procedures when wrong is discovered and the Government may control the contractor in a like manner.

Nonconcur. The legal basis for this citation, 18 U.S.C. 641, applies to an individual, as well as a corporate entity.

4. *PR: 52.245–9.* It may make sense to provide a time frame where an immediate need for usage of property from another contract becomes imminent and use of the property would not interfere with the owning contract, and the ACO is not available for authorization, a period of 48 hours, documented by the losing contract, would be allowed for transfer of tooling and use of such tooling be paid for at a higher rate than the proposed schedule. Tooling would be returned immediately if authorization were not received.

Nonconcur. While there may be some instances where it would appear to be beneficial to allow contractors to make such a decision, other business and regulatory factors, including those associated with competition and appropriations law, must be considered before alternative use is allowed. This decision should be reserved to the Administrative Contracting Officer.

5. *PR: 45.106.* Add at 45.106(h)(3), "Contractors shall be encouraged to submit plans and enter into advance agreements to minimize unnecessary delays, administrative costs and possible legal exposure." Approved plans for use and charges of a contract, program, site, or entity would be beneficial to both the Government and the contractor in that the clause, as now written, will cause unnecessary delays, administrative cost and legal exposure. This type of plan would be similar to a site scrap plan as now provided for in FAR Part 45.

Nonconcur. Approval of commercial use, as part of a general plan or agreement, limits the Government's ability to regulate that said use serves the best interests of the Government. It may also restrict the Government's right to recall that property when needed to satisfy what the Government determines to be a greater need, *e.g.*, war fighting, civil defense, disaster assistance.

6. *PR: 45.306–5.* Eliminate the policy at 45.306–5 for special tooling.

The Councils plan to solicit comments on the proposed deletion of FAR 52.245–17, Special Tooling, and the related coverage at 45.306–5 under another proposed rule.

7. *PR: 52.245–9(a).* Change the definition of Government property to mean all "real and personal" property.

Nonconcur. This change is unnecessary.

8. *PR: 52.245–9(c).* Revise the exception of the use of Government property in this paragraph to be described as "production" material. Non-production material (expendable items) may be suitable for rental in some circumstances.

Nonconcur. There is no FAR classification differentiating between production material and non-production expendables. Rather, when an item does not lose its identity or is not consumed during the production process, it should not be classified as material. The property is more appropriately classified as equipment, agency peculiar property, or another class of property dependent upon its nature and use.

9. PR: 52.245–9(d)(2). Change estimated rental charge for "other" property to "personal" property.

Nonconcur. This change is unnecessary.

10. *PR: 52.245–9(g).* Request an additional requirement that the Government shall disclose any intent to revoke use authorization prior to agreeing to contractor use. A practice of full disclosure is necessary as part of good relations and business practices, otherwise contractors may acquire resources unnecessarily.

Nonconcur. There are many reasons why the Government may choose to revoke a use agreement. Not all of these are known at the time of approval. Some may involve emergency conditions that could not be anticipated at the initiation of an agreement. Therefore, it is not in the Government's best interest to limit its options by tacitly agreeing that there is no intention to revoke use.

11. *PR: 52.245–9(h).* Delete the section that states that unauthorized use of Government property can subject a person to consequences under 18 U.S.C. 641. There is no need to restate this law, or any other law, in a regulation. The contractor has an obligation to establish internal controls to prevent unauthorized use, and including a reference to the United States Code is unnecessary.

Nonconcur. We believe that it is beneficial to advise those who use Government property of the ramifications of unauthorized use. The repetition of the legal authority has precedent in other parts of the FAR, particularly when criminal liability is the result of inappropriate action. See also Comment No. 3, above.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies FAR coverage to clarify the basis for determining rental charges for the use of Government property and is intended to promote the dual use of such property. Therefore, this rule will allow small businesses more flexibility in the use of Government property.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0075.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 45 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 45 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

■ 2. Amend section 45.106 by adding paragraph (h) to read as follows:

45.106 Government property clauses.

* * * * *

(h)(1) Insert the clause at 52.245–9, Use and Charges—

(i) In fixed-price or labor-hour solicitations and contracts under which the Government will furnish property for performance of the contract;

(ii) In all cost-reimbursement and time-and-materials solicitations and contracts; and

(iii) In solicitations and contracts when a consolidated facilities contract or a facilities use contract is contemplated.

(2) The contracting officer may modify the clause if an alternative rental methodology is used in accordance with 45.403.

45.302–6 [Amended]

■ 3. Amend section 45.302–6 by removing paragraph (c); and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

■ 4. Revise section 45.403 to read as follows:

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245–9, Use and Charges. If the agency head determines it to be in the Government's interest, an alternative method for computing rent may be used.

(b) The contracting officer shall ensure the collection of any rent due the Government from the contractor.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Revise section 52.245–9 to read as follows:

52.245–9 Use and Charges.

As prescribed in 45.106(h), insert the following clause:

USE AND CHARGES (AUG 2005)

(a) *Definitions.* As used in this clause:

Acquisition cost means the acquisition cost recorded in the Contractor's property control system or, in the absence of such record, the value attributed by the Government to a Government property item for purposes of determining a reasonable rental charge.

Government property means all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and contractor-acquired property as defined in FAR 45.101.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which Government property is made available for nongovernmental purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) *Use of Government property.* The Contractor may use the Government property without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) *Rental.* If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) *General.* (1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) *Rental charge.*—(1) *Real property and associated fixtures.* (i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) *Alternative methodology.* The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) *Rental payments.* (1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the **Federal Register** semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms.

(g) *Use revocation.* At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines,

imprisonment, or both, under 18 U.S.C. 641.

(End of clause)

52.245–10 [Amended]

■ 6. Amend section 52.245–10 in the introductory paragraph by removing "45.302–6(d)" and adding "45.302–6(c)" in its place.

52.245–11 [Amended]

■ 7. Amend section 52.245–11 in the introductory paragraph by removing "45.302–6(e)(1)" and adding "45.302–6(d)(1)" in its place.

[FR Doc. 05–14670 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2005–05; Item VI]

Federal Acquisition Regulation; Technical Amendment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes an amendment to the Federal Acquisition Regulation (FAR) in order to make an editorial correction.

DATES: *Effective Date*: July 27, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–05, Technical Amendment.

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

4.1102 [Amended]

■ 2. Amend section 4.1102 by removing from paragraph (c)(1)(ii) "52.204–7(g)(1)(i)(3)" and adding "52.204–7(g)(1)(i)(C)" in its place.

[FR Doc. 05–14671 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–05 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–05 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far.*

FOR FURTHER INFORMATION CONTACT Laurieann Duarte, FAR Secretariat, (202) 501–4755. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–05

Item	Subject	FAR case	Analyst
I	Definition of Information Technology (Interim)	2004–030	Davis.
II	Documentation Requirement for Limited Sources under Federal Supply Schedules	2005–004	Nelson.
III	Payment Withholding	2004–003	Olson.
*IV	Confirmation of HUBZone Certification (Interim)	2005–009	Cundiff.
V	Government Property Rental and Special Tooling	2002–015	Parnell.
VI	Technical Amendment.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–05 amends the FAR as specified below:

Item I—Definition of Information Technology(FAR Case 2004–030)

This interim rule amends FAR 2.101(b) to revise the definition of "information technology" to reflect the recent changes to the definition resulting from the enactment of Public Law 108–199.

The new language at Section 535(b) of Division F of Public law 108–199 permanently revises the term "information technology," which is defined at 40 U.S.C. 11101, to add "analysis" and "evaluation" and to clarify the term "ancillary equipment." This permanent change to the terminology necessitated this interim rule to amend the FAR.

Item II—Documentation Requirement for Limited Sources under Federal Supply Schedules (FAR Case 2005–004)

On June 18, 2004, DoD, GSA, and NASA published FAR case 1999–603 (69 FR 34231) amending the FAR to incorporate ordering procedures for orders against Federal Supply Schedules (FSS), including the documentation requirements for justifying sole source orders. The rule inadvertently established these justification and approval requirements for sole source orders instead of when an ordering activity restricts consideration of schedule contractors to less than the required number. This rule corrects that oversight. The final rule also based the content of the documentation requirements on that in FAR 6.303–2. By doing so, the rule established some unintentional and inapplicable content requirements, especially for orders under the simplified acquisition threshold (SAT). This rule corrects those unintended changes by establishing the standard for justifying restricted orders under the SAT and accurately specifying the justification content for restricted orders above the SAT. The rule will clarify the procedures for ordering activities.

Item III—Payment Withholding (FAR Case 2004–003)

Contracting officers and contracting officer's representatives who award or administer Time-and-Materials or Labor-Hour contracts or orders should be familiar with this amendment. Also, contractor personnel who are responsible for managing invoicing for those types of contracts should be aware of this new requirement. The amendment removes the mandatory requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials contract, unless it is necessary to withhold payment to protect the Government's interest or otherwise prescribed in the contract Schedule. It requires the use of a contract modification in order to make payment withholding and, in the event withholding is required, the contractor is responsible to withhold the amounts from its billings.

Item IV—Confirmation of HUBZone Certification(FAR Case 2005–009)

This interim rule amends FAR 19.703 and the clause at 52.219–9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of awards to HUBZone small business concerns under Government contracts.

Item V—Government Property Rental and Special Tooling(FAR Case 2002–015)

This final rule amends FAR Parts 45 and 52 to clarify the basis for determining rental charges for the use of Government property. The change, which is intended to promote the dual use of such property, will impact contracting officers and property administrators responsible for the management of Government property and contractors that desire to use Government property for commercial purposes.

Item VI—Technical Amendment

An editorial change is made at FAR 4.1102 in order to update a reference.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–14672 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Wednesday,
July 27, 2005

Part V

Social Security Administration

20 CFR Parts 404, 405, 416, and 422
Administrative Review Process for Adjudicating Initial Disability Claims; Proposed Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 416, and 422

[Regulation Nos. 4, 5, 16, and 22]

RIN 0960–AG31

Administrative Review Process for Adjudicating Initial Disability Claims

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Social Security Administration is committed to providing the type of service the American people expect and deserve. In light of the significant growth in disability claims, the increased complexity of those claims, and the younger age of beneficiaries in recent years, the need to make substantial changes in our disability determination process has become urgent. We propose to amend our administrative review process for benefit claims you file under title II of the Social Security Act (Act) based on disability, and for applications you file for supplemental security income (SSI) payments based on disability or blindness under title XVI of the Act. We expect that the changes we are proposing will improve the accuracy, consistency, and timeliness of decision making throughout the disability determination process.

DATES: To be sure that we consider your comments, we must receive them by October 25, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (i.e., Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Disability and Income Security Programs, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

Electronic Version

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FOR FURTHER INFORMATION CONTACT: Mary Chatel, Executive Director, Disability Service Improvement, Social Security Administration, 500 E Street, SW, Suite 854, Washington DC, 20254, 202–358–6094 or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

We propose to amend our administrative review process for Social Security benefit claims based on disability and for applications for SSI payments based on disability or blindness in order to improve the accuracy, consistency, and timeliness of decision making throughout the disability determination process. We expect that our proposed changes will significantly reduce average disability determination processing time, increase decisional consistency and accuracy, and ensure that the right determination or decision is made as early in the disability determination process as possible. Our proposed changes will ensure that beneficiaries who are clearly disabled receive determinations within 20 calendar days or less of the date that their completed application for benefits is sent to the State agency for adjudication. We believe that our proposed changes will ensure that adjudicators are held accountable for the quality of disability adjudications made at every step of the process. In addition, we believe that our proposed changes will help ensure that disability claimants provide all material evidence to adjudicators in a timely manner, resulting in a more efficient disability determination process.

Program Trends

We currently decide claims for Social Security benefits based on disability under title II of the Act and for SSI based on disability or blindness under title XVI of the Act using an administrative review process that consists of four levels. Initial determinations as to whether or not you are disabled are made by a State agency. If you are dissatisfied with the initial determination, you may request reconsideration by the State agency. If you are dissatisfied with the reconsidered determination, you may request a hearing, which is held by an administrative law judge. Finally, if you are dissatisfied with the administrative law judge's decision, you may request review by the Appeals Council. Once you have completed these administrative steps and received our final decision, you may request judicial review of the final decision in Federal district court.

Over the years the Social Security and SSI disability programs have grown in size and complexity. There has been significant growth in the number of individuals who file claims for disability benefits each year. During the early years of the Social Security disability program, the number of claims for disability benefits filed each year was measured in the hundreds of thousands. Currently, more than two and a half million individuals apply for Social Security and SSI benefits based on disability each year. The volume of claims will grow even more in future years as baby boomers move into their disability-prone years.

The factors involved in determining disability claims have also changed. Since the beginning of the disability programs, the percentage of claims involving allegations of mental impairments has increased dramatically, particularly in the SSI program. Claims of disability involving mental impairments raise particular administrative resource issues because they involve complex psychological issues, and the evidence for these claims may be difficult to develop. The number of claims being decided on the basis of vocational considerations rather than meeting or equaling more readily determinable medical factors has also been increasing steadily. Thus, in addition to the exponential growth in the number of disability claims that must be adjudicated each year, there has been a corresponding increase in the complexity of those claims.

In addition, the average age of beneficiaries has fallen over the years because an increasing number of younger individuals have been found to be disabled. This trend has heightened the importance of improving our efforts to assist disabled individuals in returning to the workforce.

All of these trends have underscored the need for substantial change if our disability decision making process is to be able to provide claimants with accurate, fair, and consistent adjudications as early in the adjudication process as possible, and also provide them with the assistance they need to overcome barriers to employment.

The Service Delivery Budget Assessment

In 2001, we established a Service Delivery Budget Assessment Team to thoroughly investigate the current disability determination process from the perspective of an applicant for disability benefits. We hoped that this process would help us to understand and effectively manage the administrative challenges posed by growth and other changes in the disability programs. The team's research revealed that: (1) State Disability Determination Services (DDS) generally made an initial eligibility determination within three and a half months of a claimant's application; (2) forty percent of disability claimants were determined to be eligible for benefits at this initial stage; and (3) it took an average of 1153 days to pursue a disability claim through all stages of administrative appeal to obtain a final Agency decision.

The Team discovered that only seven days of this 1153-day period were spent actually working on the claim. Six hundred and twenty one days of this period were associated with delays in the administrative process, such as time spent waiting for an appointment or hearing, time spent waiting for forms to be sent in the mail, time spent waiting for medical reports and consultative examinations to be completed and received, and time spent attempting to locate misrouted or lost paper folders. One-third of these 621 days involved the mandatory delays associated with the due process rights of claimants, such as the 60-day time periods established in the Act and in our regulations for filing appeals after each of the first three adjudicatory levels. The Team also discovered that 525 days of the 1153-day period were related to the backlog of cases that are pending at each level of the administrative review process. As the backlogs are reduced, the amount of time spent waiting for the next action in the case will also be reduced.

Transition to an Electronic Disability Process

In an effort to improve the efficiency and timeliness of our disability determination process, we decided to accelerate our transition to an electronic disability process—one we usually refer to as eDib. In an electronic disability process, applications, claimant information, and medical evidence that have been processed in paper form in the past are processed in electronic form instead. Each adjudicative component involved in the disability determination process is able to work with claims by electronically accessing and retrieving information that is collected, produced, and stored as part of an electronic disability folder. This significantly reduces the delays that result from mailing, locating, and organizing paper folders. In addition, an electronic disability process allows more than one Agency component to work on a single claim at the same time if necessary, which alleviates the delays associated with transferring paper records from one component to another.

We also believe that the transition to an electronic disability process will improve the accuracy and integrity of our disability determination process. We have been impressed with the successful efforts of the Department of Veterans Affairs to offer patients an electronic health record. We understand that their reliance on an electronic health record has reduced errors and streamlined their record keeping process. We expect that our transition to an electronic disability process will help us avoid the kind of errors that result from misunderstanding handwritten notes, or misplacing or improperly filing important documents that are part of the record.

We expect that as eDib continues to be implemented throughout the country, the amount of time needed to process disability claims will decrease because claim files will be transferred instantly in electronic form between our offices. As eDib is implemented, we expect to reduce and eventually eliminate the delays currently associated with waiting for forms to be sent in the mail and with time spent attempting to locate misrouted or lost paper folders.

The transition to this new electronic disability process is currently taking place throughout the country. All of our field offices across the nation are now using the Electronic Disability Collect System (EDCS) that provides State agencies with an electronic folder. EDib was implemented at the first State agency DDS in January 2004, and additional State agency DDSs have continued to implement eDib ever since. Currently, all State agency DDSs, except New York, which is scheduled for rollout in November 2005, are adjudicating disability claims using an electronic folder.

At the same time, our Office of Hearings and Appeals (OHA) has begun using the Case Processing and Management System (CPMS), which is a new software system for processing cases and managing OHA office workloads. CPMS will enable OHA to work with the electronic file. Currently, all 140 hearing offices across the country are using CPMS and 73 hearing offices have been trained to begin adjudicating cases using an electronic folder.

The complete implementation of eDib throughout the country and at every level of the adjudicatory process will assist us in addressing to a significant degree the unacceptably long case processing times described earlier. EDib provides opportunities to manage and process workloads in ways that have not existed until now. However, eDib alone is not enough to improve the current process to the level that we believe is necessary. Further actions must be taken to improve our ability to adjudicate every claim in a prompt, fair, and accurate manner. We have concluded that to significantly improve disability adjudications, we must change the process itself. In addition, we believe we must revisit and update some of our policies regarding disability adjudications, including the revision and updating of medical listings, in order to sufficiently improve the entire process.

Answering the President's Questions

In formulating a new approach to improving the disability determination process, we were guided by three questions that the President of the United States posed during a meeting with the Commissioner in the spring of 2002. These questions were: (1) Why does it take so long to make a disability decision?

(2) Why can't people who are obviously disabled get a decision immediately?

(3) Why would a disability program beneficiary risk attempting to work after having gone through such a long disability determination process and having been found to be disabled?

In order to fully address the central and important issues raised by the President's three questions, we designed an approach that focuses on two overarching goals: (1) to make the right decision as early in the process as possible; and (2) to foster return to work at all stages of the process.

New Approach To Improve the Disability Determination Process

At a September 25, 2003 hearing before the House Ways and Means Subcommittee on Social Security, we first presented a new approach to improve the disability determination process. This new approach maintained some of the significant features of the current disability determination process:

- Initial claims for disability would continue to be handled by our field offices;

- The State DDSs would continue to adjudicate claims for benefits;
- Administrative law judges would continue to conduct de novo hearings and issue decisions; and
- Claimants would still be able to appeal the Agency's final decision to the Federal courts.

As we outlined in September 2003, the new approach also reflected some important differences from the current system:

- A Quick Disability Determination process would be established at the outset of the claims process to identify people who are clearly disabled;
- Medical and vocational expertise within a new Federal expert unit would be available to disability decision makers at all levels of the process, including the DDSs, reviewing officials, and administrative law judges;
- We would eliminate the reconsideration step of the administrative review process and end the disability prototype test being conducted in 10 States;
- We would institute both in-line and end-of-line quality assurance programs at every step of the process (but the hearing level in-line quality assurance program would not apply to administrative law judge decision making);
- Following the initial determination made by the DDS, a Federal reviewing official would review the claim upon the claimant's request. The reviewing official would be authorized to issue an allowance or to deny the claim. If the reviewing official did not allow the claim, he or she would be required to explain why the disability claim should be denied;
- If requested by a claimant who was dissatisfied with the reviewing official's decision, an administrative law judge would conduct an administrative hearing. If the administrative law judge determined that a favorable decision should be made, the administrative law judge would explain the basis for disagreeing with the reviewing official's decision;
- Claimants could continue to submit evidence to support their claim through the administrative law judge level of review. However, the record would be closed after the administrative law judge decision was issued;
- The Appeals Council stage of the current process would be eliminated. A portion of administrative law judge decisions would be reviewed by a centralized quality control staff. If the administrative law judge's decision was not chosen to be reviewed by the centralized quality control staff, the decision of the administrative law judge would become the final Agency decision;
- If the centralized quality control staff disagreed with an administrative law judge's decision, the disability claim would be referred to an Oversight Panel, consisting of two administrative law judges and one Administrative Appeals Judge. The Oversight Panel could affirm, modify, or reverse the administrative law judge's decision, making the panel's decision the final Agency decision;
- We would improve the quality of the administrative record by ensuring that evidence development is performed early in the disability determination process, and by ensuring that adjudicators sufficiently articulate the basis of their adjudications.

The Work Opportunity Initiative

We have recently implemented a number of work incentive programs that are designed to encourage an individual's return to work. Currently, beneficiaries may take advantage of several work incentive programs, including our Ticket to Work and Self-Sufficiency (TTW) program, our plans for achieving self-support (PASS) under the SSI program, and our Benefits Planning, Assistance, and Outreach (BPAO) program. Recognizing the importance of encouraging a return to work, the Act contains a number of other provisions that help us assist beneficiaries who would like to work, such as the provisions that allow us to provide expedited reinstatement of benefits, or continue benefit payments to certain individuals who recover medically while participating in an appropriate program of services. Despite these current work incentives, however, disability program beneficiaries still face significant barriers to work. These barriers may include:

- The adverse psychological impact of the lengthy disability determination process;
- The delays experienced when attempting to obtain needed health care, including the 24-month waiting period for Medicare benefits;
- Lack of access to the training, employment services, and other supports actually needed to obtain work;
- Strict SSI asset limits and strict disability insurance benefit offset rules; and
- The fear of work-related overpayments.

At the same time that we presented the new approach in September 2003, we outlined our Work Opportunity Initiative to foster voluntary return to work. This initiative responded to the President's third question (why would a disability program beneficiary risk returning to work after going through such a long process to receive benefits?). The initiative incorporates several demonstration projects designed to overcome the current barriers to work listed above and provides greater opportunities for disability beneficiaries and applicants who want to work.

Within the Work Opportunity Initiative, we targeted three different demonstration programs to provide supports, incentives, and work opportunities to people with disabilities at the early stages of the disability determination process. The *Early Intervention* demonstration project would provide immediate medical and cash benefits and employment supports to disability insurance applicants with certain impairments presumed disabling who elect to pursue work rather than proceed through the disability determination process. An *Accelerated Benefits* demonstration project would provide immediate cash and medical benefits for a two-to three-year period to applicants who are highly likely to benefit from aggressive medical care and, as a result, return to work. The *Interim Medical Benefits* demonstration project would provide immediate health insurance coverage to applicants who otherwise would not have insurance but whose medical condition is likely to improve with medical treatment.

Other demonstration projects within the initiative would provide ongoing employment supports and incentives to assist disability program beneficiaries obtain and sustain employment. A national *benefit offset* demonstration would test the effects of allowing disability insurance beneficiaries to work without total loss of benefits by reducing their monthly benefit one dollar for every two dollars of earnings above a specified level. Two different *ongoing medical benefits* demonstration projects would test the effects of providing ongoing health insurance coverage to disabled beneficiaries with (1) HIV/immune disorders and (2) mood and affective disorders who want to work, but who would otherwise lose access to affordable health insurance if they returned to work.

We believe that these demonstration projects will help people with disabilities return to work, and that they will help remove barriers for those disability applicants and beneficiaries who can and want to work.

Ideas, Concerns, and Comments on the New Approach

At the same time that we presented the new approach, we announced that

we wanted to hear the views and suggestions of all interested parties, so that we could take them into account as we continued to refine the new approach and develop proposed rules to improve the disability process. We also established an Internet site in order to hear from all interested parties and consider a wide variety of perspectives as we continued to develop proposed rules. Since that time, we have met with hundreds of interested organizations, groups, and individuals to hear their views regarding the new approach, including:

- Members of Congress and congressional staff;
- Groups and organizations representing claimants, beneficiaries, retired individuals, and members of the public;
- Organizations representing legal and medical professionals, including Federal judges and administrative law judges; and
- Organizations representing SSA and State agency employees who are engaged in the disability determination process.

A list of the groups and organizations with whom we met appears near the end of this preamble.

These interested parties provided views, suggestions, and recommendations that we considered as we developed our proposal to create an improved disability process. We particularly appreciate the interest that members of Congress expressed regarding our desire to improve the disability determination process and are thankful for the suggestions that they have provided to us. We also received hundreds of e-mails from individuals currently receiving disability benefits, individuals currently applying for benefits, and other interested citizens providing recommendations on how to refine the process.

In general, those commenting on the new approach were supportive. Most agreed that we need a disability process that is quicker and more responsive to the needs of disability applicants and beneficiaries. Some noted that the current disability determination process is too complicated and difficult to navigate. Others suggested that we should strive to achieve greater consistency in the determinations and decisions issued at different levels of review, as well as greater consistency in determinations and decisions issued throughout the country.

We are deeply indebted to all of the individuals and organizations who expended substantial time and resources both to consider and analyze the current disability determination process and to share with us their views, suggestions, and recommendations about how to improve that process. Our ability to propose an effective and comprehensive strategy for improving the disability determination process was greatly enhanced by these views, suggestions, and recommendations.

Proposal To Improve the Disability Determination Process

We believe that the changes we are proposing now will improve the overall disability determination process by shortening decision times, providing benefits and payments to people who are clearly disabled much earlier in the process, and improving quality, efficiency, adjudicatory consistency, and accountability throughout every step of that process. These changes will also help ensure that adjudicators have a complete administrative record when issuing the determination or decision and that there is proper documentation to support the determination or decision.

In a further effort to improve our disability programs, we will establish a Disability Program Policy Council to provide a forum for policy issues to be discussed in a collaborative fashion and to make policy and procedural recommendations. Council members will include a mix of disability adjudicators at all levels of the process as well as representatives from the Office of the General Counsel, the Disability Review Board, program analysts, operations, including field office personnel, etc. The Deputy Commissioner of Disability and Income Support Programs will serve as chair of the Council. The Council will meet on a regular basis, and the Deputy Commissioner will routinely report on policy recommendations to the Commissioner. The Council will be a channel for experts to escalate disability policy and procedural issues.

This proposed disability process is contingent on the eDib system. As with eDib rollout, we plan to roll out the proposed disability process carefully and gradually to ensure any problems can be corrected. We will start in one region and will expand to other regions over time. If the rollout goes well, we may accelerate the phased implementation of our new disability process.

As a result of our proposed improvements to the disability determination process, we expect:

- Average disability determination processing time to be reduced by at least 25 percent;
- Decisional consistency and accuracy to increase;
- Quick Disability Determination units in State agencies to provide favorable determinations within 20 calendar days for beneficiaries who are clearly disabled; and
- Accountability for the quality of decision making and documentation of the record to be reinforced at every step of the process.

We propose to apply these revised regulations when we administer claims for benefits and payments under title II and title XVI of the Act. Specifically, these improvements will:

- Establish a Quick Disability Determination process through which State agencies will expedite initial determinations for claimants who are clearly disabled;
- Create a Federal Expert Unit to augment and strengthen medical and vocational expertise for disability adjudicators at all levels of the disability determination process;
- Eliminate the State agency reconsideration step and terminate the disability prototype that we are currently conducting in 10 States;
- Establish Federal reviewing officials to review State agency initial determinations upon the request of claimants;
- Preserve the right of claimants to request and be provided a de novo hearing, which will be conducted by an administrative law judge;
- Close the record after the administrative law judge issues a decision, but allow for the consideration of new and material evidence under certain limited circumstances;
- Gradually shift certain Appeals Council functions to a newly established Decision Review Board; and
- Strengthen in-line and end-of-line quality review mechanisms at the State agency, reviewing official, hearing, and Decision Review Board levels of the disability determination process.

Quick Disability Determinations

We believe that many individuals who are obviously disabled wait too long to get Social Security disability benefits or SSI payments based on disability or blindness under our current disability determination process. Therefore, we propose to establish at the initial determination level a screening system for disability claims to identify those claims in which a wholly favorable decision may be made quickly. These claims will be processed in an expedited manner by State agencies and will be called Quick Disability Determination claims. State agencies will create special units

comprised of experienced disability examiners whose sole focus will be the efficient, accurate, and timely adjudication of Quick Disability Determination claims.

We initially believed that Quick Disability Determination claims should be adjudicated in regional units across the country, and not in the State agencies. However, many of the groups we met with and numerous individuals who submitted suggestions to us asserted that the State agencies could effectively adjudicate Quick Disability Determination claims. We have decided to propose that the State agencies be allowed to adjudicate these claims. We propose that a State agency adjudicating Quick Disability Determination claims must create a separate Quick Disability Determination unit that will be comprised of experienced examiners who will work exclusively on these claims and complete adjudication of these claims within the timeframes we have established.

We expect that the range of claims that will qualify to be adjudicated as Quick Disability Determination claims will be relatively small when we first begin implementing the proposed changes. However, as we gain experience with the Quick Disability Determination process and as we improve and fine-tune our case-selection tools, we expect that the range of potential Quick Disability Determination claims will increase over time.

We will make use of a predictive model screening software tool that will identify claims that indicate a high degree of probability that an individual both meets our definition of disability and has readily available medical evidence. This software will utilize data from the initial disability application and provide an alert to the State agency that the disability claim meets the criteria to be adjudicated as a Quick Disability Determination claim.

In these proposed regulations we require that the State agencies comply with timeliness standards for processing Quick Disability Determination claims in order to maintain their Quick Disability Determination adjudication responsibilities. We propose that the Quick Disability Determination units will provide favorable determinations of disability in 20 days or less to disability applicants who are clearly disabled and who meet our disability criteria. The Quick Disability Determination units will not make unfavorable determinations when processing potential Quick Disability Determination cases. Our proposed rules provide that if a favorable quick disability determination cannot be made within 20 days (either because the particular Quick Disability Determination criteria have not been met in the case or because the case involves impairments that require more than 20 days to properly evaluate), the case will be adjudicated by the State agency in the normal manner using our existing procedures.

Our proposed rules also provide that the State agency Quick Disability Determination units must ensure that a medical or psychological expert who has the qualifications required by the Commissioner verifies the particular diagnosis that is the basis of the claim in each case.

Our proposed rules explain that we will monitor the performance of the Quick Disability Determination units to ensure that these claims are being processed in a timely manner. We propose to establish special processing standards that the Quick Disability Determination units must meet in order to perform this important workload. Although these proposed rules do not change our existing rules regarding State agency responsibilities for performing the disability determination function, we intend to modify those rules, currently promulgated in subpart Q of part 404 and subpart J of part 416, in the future.

State Agency Determinations

We also propose to require the State agency to document and explain the basis for the determination made in every claim it adjudicates. We believe that more complete documentation and explanation of the basis for the determination will result in more accurate initial determinations and will assist adjudicators in claims that are reviewed by a Federal reviewing official or considered by an administrative law judge.

Medical and Vocational Expertise and the Federal Expert Unit

Making correct disability determinations and decisions in a consistent and timely manner is critically important to disability claimants, as well as to the general public. Ultimately, whether someone is disabled within the meaning of the Act is a legal question that often requires consideration of complicated medical and vocational evidence. In crafting the new approach, we realized from the beginning that having sufficient expertise to help us consider the medical and vocational issues in claims filed throughout the country would be essential to an efficient, accurate, and fair adjudication process. However, we realized that under our current disability adjudication process, medical, psychological, and vocational experts are not consistently available to all adjudicators at every level or in all parts of the country.

We are therefore proposing to establish and operate a Federal Expert Unit, which we believe will help to ensure the full development of the record, enable adjudicators to make accurate determinations or decisions as early in the process as possible, and facilitate subsequent review should a case be appealed to a higher level. We propose to create a national network of medical, psychological, and vocational experts who will be available to assist adjudicators throughout the country. This national network may include experts employed by or under contract with the State agencies; however, all experts affiliated with the national network must meet qualifications prescribed by the Commissioner.

The Federal Expert Unit will organize and maintain this network comprised of medical, psychological, and vocational experts who will provide medical, psychological, and vocational expertise to State agencies, reviewing officials, administrative law judges, and the Decision Review Board. We want to ensure that the right set of medical eyes reviews medical records and answers questions about the wide variety of impairments seen in disability claims. We believe that the expert network affiliated with the Federal Expert Unit will help ensure that a medical, psychological, and vocational expert who has the qualifications required by the Commissioner assists in adjudicating disability claims. With the assistance of the Institute of Medicine, we plan to develop standards that define the medical and psychological expertise necessary for experts to qualify for participation in the national network.

We will also establish standards with respect to the qualifications of vocational experts employed by the State agencies and affiliated with the Federal Expert Unit because we are committed to employing consistent, high quality vocational expertise in the disability determination process. To that end, we plan to undertake a study to enhance the expertise needed to make decisions on a claimant's functional limitations and his/her ability to perform jobs available in the national economy. Among other things, the study will help determine (1) how best to provide vocational and occupational medical expertise at all levels of the disability determination process to improve the quality of case adjudication

and (2) what qualifications vocational and occupational medical experts should have.

Several organizations and numerous individuals urged us to allow the State agencies to continue to use State agency medical consultants when making initial disability determinations under the new approach. While we agree that the State agencies should continue to employ medical and psychological consultants, we believe that it is essential that every medical and psychological expert meet our qualification standards in order to participate in the disability adjudication process.

Therefore, experts who are affiliated with the Federal Expert Unit and experts who are under contract with a State agency must meet these qualification standards on the effective date of these regulations or when we publish the qualifications, whichever is later. We expect to publish expert qualification standards on or before issuing a final rule, but will publish them no later than six months after the effective date of this final rule. Experts who are employed by a State agency must meet them no later than one year after the effective date of these regulations or no later than one year after the date we publish the qualifications, whichever is later. Our proposed regulations also provide that we will not reimburse State agencies for the costs associated with work performed on our behalf by experts employed by, or under contract with, the State agencies who do not meet our qualification standards. However, we intend to implement this reimbursement provision on a region-by-region basis as we implement our new approach. Therefore, our reimbursement policy will be applied only to State agencies where we have implemented these proposed regulations.

We further propose that in those instances where an administrative law judge requires medical, psychological, or vocational testimony in order to hear a case or make a decision, the administrative law judge must use a medical or vocational expert from the network. However, in order to ensure the independence of the administrative law judge process, if the State agency or the reviewing official has used an expert from the network and the administrative law judge needs an expert in the case as well, the administrative law judge must use a different expert.

When requested by an administrative law judge or the Decision Review Board, appropriate medical, psychological, and vocational expertise will be made available by the Federal Expert Unit from the national network on a rotational basis, taking into account the decision maker's potential need to have an expert who is physically located nearby. We propose to pay these medical, psychological, and vocational experts at rates that we will establish.

Reviewing Official

Several of the interested organizations and individuals who contacted us expressed the view that, under the current disability determination process, there are inconsistencies in initial determinations made by State agencies which are not being corrected at the State agency reconsideration step. Some of these interested parties also expressed the belief that the reconsideration step was merely a "rubber stamp" of the initial State agency determination. We believe that the remarkably high percentage of claimants who pursue further review of their determinations perceive the reconsideration step as a burdensome step in the process which adds no appreciable value to the process.

Under our proposed rules, if a claimant is dissatisfied with the determination made by the State agency, the claimant may appeal the determination to a Federal reviewing official, who will conduct a review of the claim. The reviewing official will review the administrative record and issue a decision in your case or return your case to the State agency. The reviewing official will not conduct a hearing or meet with you in person.

We received a considerable number of comments from interested parties regarding whether or not the reviewing official should be an attorney. Some interested parties stated that the effective performance of reviewing official duties required certain legal and analytical skills that only licensed attorneys possess. In addition, some argued that the reviewing official's decision would have greater credibility if it were made by an attorney. However, others argued that the responsibilities of the reviewing official could be met by a non-attorney with experience making disability determinations.

We believe that attorneys are ideally suited to perform certain critical reviewing official functions such as garnering the requisite evidence to compile a complete case record and drafting a well-supported, legally-sound decision. We believe that attorneys will be able to effectively adjudicate claims in a manner that ensures that the right decision is made early in the administrative review process. We also believe that using attorneys as reviewing officials will help improve the level of confidence that applicants, members of the pubic, administrative law judges, and other interested parties have regarding the integrity of our first level of administrative review. For these reasons, we plan to hire attorneys to serve as Federal reviewing officials.

Under our proposed rules, the reviewing official may reverse, remand, modify, or affirm your initial determination. The reviewing official's action on your claim will be made only on the basis of a review of the record; you will not have any right to a hearing before the reviewing official. We propose that if additional evidence is necessary, the reviewing official may obtain such evidence from other sources, including ordering a consultative examination with the assistance of the Federal Expert Unit. In addition, if additional evidence is necessary, we propose that a reviewing official may remand a claim back to the State agency so that the State agency can readjudicate the claim. The reviewing official may also, while retaining jurisdiction of the claim, return the claim to the State agency so that it can obtain the additional evidence.

Under our proposed rules, if the reviewing official disagrees with the State agency's determination that you did not meet our definition of disability, the reviewing official must have a qualified medical or psychological expert affiliated with the Federal Expert Unit evaluate the evidence to determine the medical severity of the impairment before the reviewing official can issue his or her decision. In addition, if there is new and material evidence that the State agency did not consider, the reviewing official must make a decision in consultation with a medical or psychological expert affiliated with the Federal Expert Unit.

We propose to require that the reviewing official issue a written decision in every case that he or she adjudicates. The reviewing official will explain in this decision why he or she agrees or disagrees with the State agency's determination that you did not meet our definition of disability. The reviewing official's decision will be sent to the State agency and used by us for quality management purposes.

A major objective of using Federal reviewing officials to review disability claims is to ensure to the maximum extent possible the accuracy and consistency—and thus the fairness—of determinations made at the front end of the process. We intend to provide careful administration of the reviewing official function. We plan to employ highly qualified individuals who will be thoroughly trained in the policies and

procedures of our disability determination process.

Administrative Law Judge Hearings and Decisions

We are proposing some changes to the hearing level process as part of our overall effort to improve disability decision making. Under these proposed rules, administrative law judges will continue to hold de novo hearings and issue decisions based on all the evidence presented. They will not be required to give any legal deference or particular weight to the determinations previously made by the State agency or by the reviewing official.

Under the new process, the administrative law judge's hearing decision will generally become our final decision, and you will no longer be able to request that the Appeals Council review the decision. Recognizing the importance of this change, and consistent with our goal to improve all aspects of the administrative review process, we are proposing to make some changes to the hearing process that we expect will improve the timeliness of the process and the quality of the administrative law judge's decision.

For example, we propose to improve the timeliness of the hearing process by revising the rules that address the time frames for submitting evidence to us. Our current rules state that, if possible, you should submit the evidence, or a summary of the evidence, that you wish to have considered at the hearing to the administrative law judge with the request for a hearing or within 10 days after filing the request for a hearing. In many cases, however, claimants submit evidence to us well after that time frame.

Our program experience, as well as our discussions with interested parties, has convinced us that the late submission of evidence to the administrative law judge significantly impedes our ability to issue hearing decisions in a timelier manner. When new and voluminous medical evidence is presented either at the hearing, or shortly before the hearing, the administrative law judge needs time to review and consider that evidence. The late submission of evidence reduces the efficiency of the hearing process because we often must reschedule hearings to give the administrative law judge an opportunity to perform that review. Rescheduling hearings not only delays decisions on individual claims, but also delays the hearings of other claimants for benefits.

To manage our hearing process more effectively, we propose time limits for submitting evidence to the administrative law judge as well as consequences for failing to abide by the time limits. The lack of any consequences for violating the time limits is a major shortcoming of our current rules. We propose, as described in more detail below, that generally, you must submit evidence 20 days before the hearing. Nevertheless, recognizing that there may be situations where it is impossible to comply with the time limits for submitting evidence, we propose specific exceptions to them.

Another proposed change that we anticipate will improve the timeliness of our hearing process is that within 90 days of the date we receive your hearing request, the administrative law judge will set the time and place for the hearing. Our current rules do not provide any date by which the administrative law judge should schedule a hearing. This proposed 90-day time frame represents a management goal for us and does not provide you with a substantive right to have a hearing scheduled within this period. Given the size and magnitude of our hearing process, it simply would not be administratively feasible for us to hold a hearing within 90 days for every claimant who filed a hearing request. Indeed, it would not be appropriate for us to do so, because some claims will inevitably require more development than others. Nevertheless, by including this provision in the rules, we are stressing to our adjudicators our commitment to providing timely service. We also propose that the administrative law judge must notify you of your hearing date at least 45 days before the date of the scheduled hearing, unless you agree that the administrative law judge may provide you with less notice.

One of our major goals in proposing these rules is to improve the quality and consistency of decision making at all levels of our administrative review process. As noted above, one of the new features of the administrative review process is the use of a Federal reviewing official who (after the filing of a request for review) will review the State agency's initial determination and make a decision on your disability claim. As we noted earlier in the preamble, we expect that the use of Federal reviewing officials will help improve the quality of determinations by State agencies, because the reviewing official will explain why he or she agrees or disagrees with the State agency's determination. We propose to include a similar rule at the administrative law judge hearing level. Under the proposed rules, an administrative law judge will provide in his or her decision an explanation for why he or she agrees or disagrees with the reviewing official's rationale in the written decision. We expect that the administrative law judge's explanation will provide information for the reviewing official and for management and that this type of feedback from administrative law judges to reviewing officials and from reviewing officials to the State agencies will be important to accomplishing our goal of improving the quality of the decision making process.

We propose that the administrative law judge decision in your disability claim will become our final decision, unless we select your disability claim for review by a new administrative body we propose to create called the Decision Review Board. We explain the purpose and functions of the Decision Review Board below. If your claim is not sent to the Decision Review Board for review, the administrative law judge's decision will stand as the final Agency decision, and you may seek review of the administrative law judge's decision in Federal district court.

Closing the Record

We received many comments from interested parties about closing the record. Some interested parties argued that the record should not be closed after the issuance of the administrative law judge decision. These parties believed that claimants should have the right to submit additional evidence at any time. Some stated that if we decided to close the record after the issuance of the administrative law judge decision, we should provide for a good cause exception that would allow the submission of new evidence in certain circumstances. Other interested parties argued that the record should firmly close after the issuance of the administrative law judge decision, believing that this would encourage more efficient collection of evidence and more timely and efficient processing of claims.

Every reasonable effort should be made to submit evidence as early in the adjudicative process as possible. We are proposing to close the record after the administrative law judge issues a decision on your claim. A consistent policy of closing the record after the issuance of the administrative law judge decision will promote administrative efficiency and timely claims processing. However, we agree that there are certain limited circumstances where a claimant may have good reasons for failing to provide evidence in a timely manner to the administrative law judge. Consequently, we propose to close the record after the administrative law judge

issues a decision in a case, but to allow the consideration of new and material evidence under certain limited circumstances.

We propose that you must submit all of the evidence you will rely upon in your case to the administrative law judge no later than 20 days before the hearing. This time limit should be easily met because we also are proposing that the administrative law judge must notify you of your hearing date at least 45 days before the hearing.

The 20-day time limit for submitting evidence is subject to only two exceptions, both of which must be raised at the hearing. If you are aware of any additional evidence that you could not timely obtain and submit or if you are scheduled to undergo additional medical evaluation after the hearing for any impairment that forms the basis of your disability claim, you must inform the administrative law judge of either of these circumstances during your hearing. If you request additional time to submit the evidence, the administrative law judge may exercise his or her discretion and choose to keep the record open for a defined period of time to give you the opportunity to obtain and submit the additional evidence. If the extension is granted, once he or she receives this additional evidence, the administrative law judge will close the record and issue a decision.

After the record is closed, we will not consider additional evidence unless you establish good cause for failing to submit the evidence during the extended time period that the administrative law judge granted to you. In these situations, you must have informed the administrative law judge during the hearing that you were attempting to obtain this evidence or that you anticipated receiving such evidence after the hearing. You must submit your evidence and provide your good cause explanation to the administration law judge within 10 days of receiving the administrative law judge's decision. However, if your case has been selected for review by the Decision Review Board, you will be notified that the administrative law judge's decision is not our final administrative decision, and you must submit your additional evidence and provide your explanation of good cause to the Decision Review Board within 10 days of receiving the administrative law judge's decision.

We will find good cause only when you were prevented from obtaining or presenting your evidence during the extended time period due to unusual and unavoidable circumstances beyond your control. For example, if an administrative law judge grants you an extended time period to submit a doctor's report and you receive the report during the extended period, but could not provide it to the administrative law judge because you were hospitalized, we may find that you had good cause for failing to submit the evidence. However, we will not find good cause in instances where your additional medical evidence is obtained during the extended period but your representative fails to submit it in a timely manner as we hold you accountable for the actions of your representative pertaining to the submission of evidence. Although we will not consider the additional evidence in such cases, you will continue to have the right to file a new application for disability benefits for the time period beginning on the date after the administrative law judge's decision in your case.

Finally, in very limited situations, we may consider evidence after the record is closed and when you *did not* inform the administrative law judge at the hearing that additional evidence may exist. We are aware that there may be instances when a claimant attends a hearing and complies with all of our proposed rules regarding submission of evidence, but then experiences a significant worsening of condition or experiences the onset of a new impairment after the hearing, but before the decision is issued. In such circumstances, material evidence regarding a worsening or an onset of a new impairment may become available that the claimant could not have been expected to identify or discuss during the hearing. Since the period being reviewed by an administrative law judge includes the period of time between the date of the hearing and the date that the administrative law judge issues a decision, we believe that material evidence regarding your condition during this period should be considered.

Therefore, if you obtain new evidence after your hearing that shows your impairment(s) or condition changed materially during the period after the hearing and before the issuance of the administrative law judge's decision, you must submit this evidence to us as soon as possible, but no later than 10 days after the date of you receive the administrative law judge's decision in your case.

If you have not yet received your administrative law judge decision, you should submit this evidence to the administrative law judge, who will review the evidence and, if it is material to your claim, consider it when deciding your claim.

If the administrative law judge has already issued your decision and your case has not been selected for review by the Decision Review Board, you must submit this evidence to the administrative law judge no later than 10 days after the date you receive notice of the decision and request that the administrative law judge reconsider his or her decision. Upon your timely request, the administrative law judge will review and consider the evidence as appropriate. The administrative law judge may reconsider the decision on your claim and revise it based on the new evidence if warranted or vacate your decision and order a new hearing if warranted. However, if you submit this evidence more than 10 days after the date you receive notice of the decision, the administrative law judge will not consider the new evidence.

If the administrative law judge has already issued your decision and your case has been selected for review by the Decision Review Board, you must submit this evidence to the Decision Review Board (not to the administrative law judge) within 10 days after the date you receive notice of the administrative law judge's decision. The Decision Review Board will review and consider the evidence as appropriate.

Decision Review Board

The question of whether or not to eliminate the Appeals Council generated a considerable number of comments from a wide variety of interested parties. Some interested parties argued that the Appeals Council should be retained because it identifies erroneous administrative law judge decisions and provides recourse in a significant number of instances. They argued that, as a result, the elimination of the Appeals Council would result in an unacceptable increase in the number of cases filed in Federal district court, particularly those problematic or erroneous cases that are currently identified and resolved by the Appeals Council. Interested parties also observed that elimination of the Appeals Council would effectively prevent any review of dismissals made by administrative law judges because claimants would have no right to file for Federal district court review.

On the other hand, many other interested parties expressed the belief that the Appeals Council should be eliminated, arguing that the Appeals Council does not effectively identify and address erroneous administrative law judge decisions. These and other interested parties further expressed the

view that the delays associated with Appeals Council review outweighed any benefits provided by this level of review. Others believed that the impact of our eliminating the Appeals Council would be ameliorated to a significant degree because the new approach already contemplated the ability of claimants to receive two separate levels of Federal administrative review after the initial State agency determination—the Federal reviewing official level and the administrative law judge level.

While we agree that the Appeals Council has identified erroneous administrative law judge decisions and provides recourse in some instances, we believe that the current Appeals Council review process adds substantial processing time to the disability adjudication process without intercepting large numbers of claims that do not withstand Federal district court review. The district courts are currently remanding more than 50 percent of the disability cases filed against us.

We believe that the important and critical functions pertaining to the review of disability claims currently performed by the Appeals Council can be performed more effectively by a smaller review body that will focus on promptly identifying decision making errors and identifying policies and procedures that will improve decision making at all levels of the disability determination process. We propose to establish a new Decision Review Board to perform these functions.

The Decision Review Board will be an administrative review body comprised of experienced adjudicators who can advance the objective of ensuring fair, consistent, and efficient decision making. The members of the Decision Review Board will be appointed by the Commissioner and will consist of administrative law judges and administrative appeals judges. Decision Review Board members will have staggered terms and serve on a rotational basis. The Decision Review Board will select and review both favorable and unfavorable administrative law judge decisions that are likely to be error-prone, and it will generally select and review an equal share of each type of case.

Under our proposal, you will no longer have the right to request administrative review of a disability decision issued by an administrative law judge. However, you will have the right to request review by the Decision Review Board of the dismissal of your request for hearing, an action that is not subject to Federal court review. In addition, you will continue to have the right to seek further administrative review of any administrative law judge decision pertaining to your nondisability case. These cases will continue to be reviewed by the Appeals Council while we implement our proposed rules. Once our proposed rules are fully implemented nationwide, this review function will be transferred to the Decision Review Board.

We anticipate that the Decision Review Board will review a wide range of decisions and identify decision-making errors, provide advice regarding the nature and magnitude of these errors, identify policies and procedures that could be used to address such errors, and develop information mechanisms aimed at improving decision making at all levels of the disability determination process. The Decision Review Board will have the authority to affirm, reverse, or remand an administrative law judge's decision. The wide range of decisions that the Decision Review Board will review include:

- Cases that are likely to be the subject of requests for voluntary remand or judicial remand;
- Allowance and denial cases where error is likely, including cases that involve the interpretation of new policy or procedural issuances; and
- A selection of decisions that are issued after remand by the Decision Review Board or a Federal district court.

We intend to screen every administrative law judge decision, using computer-based predictive screening tools and individual case record examination performed by skilled reviewers, to identify cases for Decision Review Board review. The Decision Review Board will select cases for review based, in part, on its identification of problematic policies or on its own experience with processing cases that have been identified as error-prone by our Office of the General Counsel or by the Federal courts.

The Decision Review Board will monitor administrative law judge and district court decisions in order to identify trends or developments relating to the quality and accuracy of administrative law judge decisions throughout the country. We will conduct an ongoing review of administrative law judge decisions that are either the subject of requests for voluntary remand or are remanded to us by the Federal district courts. The results of our review will help us to develop a profile of decisions that have a high likelihood of resulting in errors. The Decision Review Board will focus its review on these decisions. Cases will not be selected for review by the Decision Review Board based on the identity of the administrative law judge who issued the decision or on the particular outcome of the decision.

We propose that once the Decision Review Board has assumed jurisdiction of a case, it may, among other things:

- Affirm the administrative law judge disposition;
- Reverse the administrative law judge disposition and issue a new final decision;
- Modify the administrative law judge disposition and issue a new final decision; or
- When there is insufficient evidence to support a decision or where an improper dismissal has occurred, remand a case to an administrative law judge with instructions to take further action.

The Decision Review Board will have authority to take any of these actions consistent with the instructions of a Federal court when the court has remanded a case for further administrative proceedings.

If your case is selected for Decision Review Board review, we will notify you when you receive your administrative law judge decision that the Decision Review Board is reviewing your case and that the administrative law judge decision you received is not our final administrative decision. The Decision Review Board will review the administrative law judge decision and consider the record that was closed at the time that the administrative law judge issued the decision (subject to the exception described above when there is good cause for failure to submit evidence timely). We propose that the Decision Review Board must complete its review of your case within 90 days from the date that you receive the administrative law judge's decision. If the Decision Review Board issues a decision within the 90-day period, it becomes our final decision, and you will have the right to seek Federal district court review of that final decision. If the Decision Review Board does not issue a decision by the end of the 90-day period, the administrative law judge's decision will become our final decision in your case, and you will have the right to seek Federal district court review of that final decision.

If the administrative law judge's decision becomes the final Agency decision because the Decision Review Board did not act within 90 days, but the Decision Review Board subsequently determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision and revise it as appropriate. If you have already sought

judicial review of the final decision, the Decision Review Board will notify the Office of the General Counsel, which will take appropriate action with the Department of Justice in order to request that the court remand the case for the purpose of issuing the Decision Review Board's favorable decision.

The Decision Review Board will meet on a regular basis as a body to discuss decisional trends and procedural issues and to prepare advisory materials for appropriate Agency officials. It will be headed by a director who will also serve as a member of our Disability Program Policy Council, which we will create to assess and to make improvements in the overall disability determination process by assessing and improving our disability policy.

The Proposed Disability Determination Process

Thus, under these proposed rules, the adjudication of a disability claim will proceed in the following manner:

The State agency will issue an initial determination on your claim. If your claim meets certain criteria, it will be processed by the State agency as a Quick Disability Determination claim. If you are dissatisfied with the initial determination made by the State agency, you may request review by a reviewing official. If you are dissatisfied with the reviewing official's decision, you may request a hearing before an administrative law judge. If the administrative law judge issues our final decision and you are dissatisfied with the final decision, you may file a civil action in Federal district court.

However, if the administrative law judge reaches a decision in your case but your case has been selected for review by the Decision Review Board, the administrative law judge's decision will not be considered our final decision in your case. Instead, the Decision Review Board will have 90 days to review the ALJ's decision in your case. You may not file a civil action in Federal district court until either the Decision Review Board issues our final decision within 90 days of the date you receive the administrative law judge's decision, or the 90-day period lapses without the Decision Review Board taking action on your case. If the 90-day period lapses, the administrative law judge's decision will constitute our final decision in your case. As discussed above, if you have already sought judicial review of the final decision and the Decision Review Board decides it will issue a favorable decision, it will ensure that appropriate action is taken to remand the case for the purpose of issuing that decision.

You will have the right to request administrative review of an administrative law judge's dismissal of your request for hearing.

Unless specified, all other regulations relating to the disability determination process and the administrative review process remain unchanged.

When we make a determination or decision on your claim for benefits, we will apply a preponderance of the evidence standard, except that the Decision Review Board will review findings of fact under the substantial evidence review standard.

In addition to these proposed changes, we intend to take additional steps to improve decisional quality, promote consistency of decision making, and increase accountability for all decision makers. We intend to create standardized decision writing formats to provide a framework for the proper and consistent articulation of determinations and decisions by the adjudicators at the State agency, reviewing official, and administrative law judge levels. We will create standardized decision writing formats that are appropriate for each level of adjudication. We believe that these formats will help decision makers at every adjudicatory level explain to the claimant the basis of the determination or decision being made in each case, and will ensure that our determinations and decisions contain sufficient rationale for those cases that are subsequently reviewed at another administrative level or in the Federal courts. We also intend to establish procedures to enable decision makers at all levels in the process to receive constructive information regarding their decisions or determinations from subsequent administrative adjudicators or reviewers.

How the Proposed Changes Will Be Implemented

We intend to implement our proposed changes gradually, region by region. We expect to begin the implementation process in one of our smaller regions, expanding to additional regions as we gain experience. We believe that this will enable us to carefully monitor the implementation process and to quickly address any potential problems that may arise.

Thus, if our regulations for the new approach as proposed in the new part 405 are adopted as final regulations, they will apply only in a region where this new approach has been implemented and will apply only to claims that are filed in that region. If a claim is filed in a region where we have not yet implemented the new approach, we will use our current rules and regulations to adjudicate that claim.

We are considering alternative rollout procedures for the quick determination process. We therefore invite comments on whether, and under what circumstances, we should use such an alternative procedure, and if so, what such an alternative procedure might be.

We also intend to implement our new qualification standards for medical, psychological, and vocational experts as quickly as possible. We expect to publish expert qualification standards on or before issuing a final rule, but we will publish them no later than six months after the effective date of this final rule. Experts who are affiliated with the Federal Expert Unit and experts who are under contract with a State agency must meet these qualification standards on the effective date of these regulations or when we publish the qualifications, whichever is later. Experts who are employed by a State agency must meet them no later than one year after the effective date of these regulations or no later than one year after the date we publish the qualifications, whichever is later.

Our proposed regulations also provide that we will only reimburse State agencies for the costs associated with work performed on our behalf if the experts employed by, or under contract with, the State agencies meet our qualification standards. However, we intend to implement this reimbursement provision on a region by region basis as we implement our new approach. Therefore, we will only reimburse State agencies for costs associated with work performed by a State agency expert who meets our qualification standards if the work was performed in a region where we have implemented our new approach.

We are aware of the concerns of some of the interested parties about the possible effects of the elimination of the Appeals Council and the right to appeal disability decisions. Under our implementation plan, we propose to eliminate the right of claimants to appeal disability decisions to the Appeals Council only with respect to claims that have been adjudicated in those States where our proposed changes have been implemented. If your claim has not gone through the new process, you will retain the right to appeal according to our current rules. However, if your claim has gone through the new process, including review by a reviewing official, you will not be allowed to seek administrative review of the administrative law judge decision. We will closely monitor the effects that these changes are having as

we implement our new approach. If we determine that our proposed changes adversely affect the disability determination process or the Federal courts over time, we will amend our regulations as necessary.

Responsibilities of the Appeals Council will be shifted to the Decision Review Board on a gradual basis as we implement our new approach region by region so that we can closely monitor the effect that our proposed changes are having on the rate of new disability cases being filed in Federal court. As noted above, we expect to begin implementation in one of our smaller regions, which will allow the Decision Review Board to review a significant percentage of cases. In addition, we will select the region that has had the least number of court cases filed each year in the current process. This should allow us to monitor what effects the elimination of the Appeals Council, combined with reviews by the new Decision Review Board, has on the number of suits filed in the Federal courts in this region. We believe that the Decision Review Board's ability to accurately select for review those administrative law judge decisions most likely to be error-prone will improve as it gains greater experience. The Decision Review Board will monitor administrative law judge and district court decisions in order to identify trends or developments that we need to address. If we determine that our proposed changes are causing a significant increase in Federal disability case filings, we will make changes to the process as necessary.

Throughout the implementation process, we will meet regularly with organizations representing the interests of various perspectives in the disability process, including claimant representatives and advocates, State agency directors and employees, administrative law judges, and members of the judiciary. Through these discussions, we will continue, and further expand, the dialogue begun when the new approach was first introduced. The meetings will provide an opportunity to discuss and better understand the impact of these changes as they are rolled out.

Judicial Review

We propose that when a Federal court remands a disability case to us for further consideration, the Decision Review Board may make a decision based upon the evidence in the record, or it may remand the case to an administrative law judge. If the Decision Review Board remands a case to an administrative law judge, it will send the claimant a notice.

Ensuring Quality

To ensure improved quality and accountability throughout the disability determination process, we intend to create and operate a comprehensive and multidimensional approach to quality assurance that:

- Includes both in-line and end-of-line quality assurance programs at every step of the process;
- Includes all components contributing to the disability decision;
- Continues the mandated pre-effectuation review at the initial claims level and provides that Quick Disability Determination claims and reviewing official decisions will be subject to pre-effectuation review;
- Replaces the current Disability Quality Branch review of State agency claims with a new centrally-managed quality assurance system that will perform independent end-of-line reviews of targeted cases and a random sample of all cases, and provide for an in-line quality process performed by the State agencies;
- Is consistently applied across all States and regions by implementing uniform program and reporting standards for component-administered in-line and end-of-line quality assurance programs, and encourages local flexibility and initiative in supplementing standardized local quality assurance programs;
- Focuses on building quality into the determination process by emphasizing ongoing excellence and prospective improvement, and not just retroactive error detection and correction;
- Institutionalizes continuous improvement principles in order to develop ongoing process and policy enhancements;
- Reemphasizes management responsibilities and accountability for ongoing quality measurement, analysis, improvement, and mentoring;
- Focuses on the human capital element by contributing to the development of formal position competencies and training programs, including continuing education;
- Requires decision rationales to be articulated at all levels of adjudication;
- Requires that the various review levels of the disability determination process address determinations or decisions made at the prior level;
- Collects and aggregates claim and quality information for all levels and all components in a standardized fashion, thus providing comparable quality data for the life of a claim through all adjudicative levels;
- Uses quality information to provide ongoing information for both individual and process improvement purposes; and
- Considers service, timeliness, productivity, and cost as components of quality along with accuracy.

In addition, we envision that the Decision Review Board will be actively involved in the activities of our Disability Program Policy Council. In this capacity, the Decision Review Board will be able to raise issues and concerns that might warrant efforts to improve existing policy.

Adjudicator Training

We also intend to clarify our authority to require all individuals who are part of the adjudicatory process to participate in training programs that we establish. This includes DDS examiners and support staff, reviewing officials and support staff, administrative law judges and hearing office support staff, Decision Review Board members and support staff, and medical, psychological, vocational, and other consultants and experts used at every stage of the disability determination process.

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether to issue them as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

How Long Would These Proposed Rules Be Effective?

If we publish these proposed rules as final rules, they will remain in effect unless we revise and issue them again.

Explanation of Changes

We are creating a new part 405 to explain our new procedures for determining entitlement to benefits based on disability under title II of the Act, and eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. We propose that part 405 will consist of ten subparts.

General Description and Definitions

The rules in subpart A briefly explain the purpose of the proposed rules and provide a short description of our proposed new administrative review process. We make clear in this subpart that our administrative review process

will continue to be conducted in a non-adversarial manner, and that we will continue to consider any evidence presented to us during this process, subject to certain limitations on evidence that is provided after an administrative law judge has issued a decision in your case. We also provide a list of definitions that apply to all of part 405.

Federal Expert Unit

We intend to enhance our medical, psychological, and vocational expert resources by establishing a Federal Expert Unit to support our disability determination procedures at every step of the process. We explain in subpart A that the Federal Expert Unit will manage a national network of medical, psychological, and vocational experts who will assist State agencies, reviewing officials, and administrative law judges in making disability determinations and decisions. We also explain that medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, may affiliate with this national network only if they meet certain qualification standards.

Good Cause for Missing a Deadline

The rules in subpart A also explain how we will determine whether you have shown good cause for missing a deadline to request a hearing or request further administrative review. The proposed rules are similar to the current regulations in that they list the factors we consider when determining whether good cause exists and provide examples of circumstances where we might find that good cause exists. The proposed regulations also provide that the same standard must be used for all such good cause determinations.

Fair and Impartial Administrative Review

We are committed to ensuring the fairness of our adjudicative process. To that end, we explain in subpart A that adjudicators at every level of the administrative review process must consider the merits of your claim in a fair and impartial manner. We explain that an adjudicator who believes that he or she has any personal or financial interest in the matter pending for determination or decision is disqualified as an adjudicator and must withdraw from conducting any proceeding with respect to your disability claim. This provision applies to adjudicators at every level of the process, including State agency examiners, medical, psychological, and vocational experts, reviewing officials, administrative law judges, and officials at the Decision Review Board. Under our proposed rules, the adjudicator must believe that he or she has a personal or financial interest in the matter before he or she is disqualified and must withdraw from the matter. The adjudicator will not withdraw if he or she does not believe that the presence of a personal or financial interest is an issue in the adjudication of your case, even if you believe or assert that the adjudicator should withdraw.

Our current regulations explain procedures you must follow to request that an administrative law judge withdraw from adjudicating your claim. We are proposing to change our regulations so that it is clear that the duty to withdraw when necessary applies to all adjudicators, not just administrative law judges. We expect that this procedure will continue to ensure that our hearing process remains fair.

Discrimination Complaints

Our proposed rules at subpart A also explain that you may file a discrimination complaint against us if you believe that an adjudicator has improperly discriminated against you. Due to the very nature of the disability determination process, adjudicators must sometimes consider factors such as your age or your sex, or the nature of your impairment(s), when adjudicating claims for disability benefits. However, our proposed rules make clear that adjudicators must never give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of impairment(s). For example, it would be proper for an adjudicator to consider the sex of a claimant when adjudicating a claim based on allegations of certain gender-specific genitourinary or neoplastic impairments. However, it would normally be inappropriate for an adjudicator to establish that a claimant was precluded from certain types of work activity due to the claimant's particular sex rather than due to the claimant's particular functional capacity resulting from his or her impairment(s).

Our proposed rules explain that if you believe an adjudicator has improperly considered your race, color, national origin, age, sex, religion, or nature of impairment(s) and has discriminated against you as a result, you may file a discrimination complaint against us. The proposed rules further explain that this complaint must be filed within 60 days of the date upon which you became aware that you may have been discriminated against.

Quick Disability Determinations

The rules in subpart B explain our proposal to establish a Quick Disability Determination process that will provide favorable determinations of disability to disability applicants who are clearly disabled. These rules provide that potential Quick Disability Determination claims will be processed by Quick Disability Determination units created in the State agencies. The rules in subpart B provide that the State agencies must ensure that an appropriate medical or psychological expert verifies the particular diagnosis that is the basis of the claim in each case. The Quick Disability Determination units will not make unfavorable determinations when processing potential Quick Disability Determination claims. The proposed rules provide that if a favorable Quick Disability Determination cannot be made within 20 days after a claim is received by the State agency, the claim must be removed from the unit and processed by the State agency in the normal manner using our existing procedures. If your claim was originally identified as a potential Quick Disability Determination claim but was removed from the unit for normal State agency processing, your claim will be adjudicated based on the date that the claim was originally referred to the Quick Disability Determination unit.

Initial Determinations

The proposed rules in subpart B of part 405 explain how we will inform you that an initial determination has been made in your case. These proposed rules also explain that your initial determination will be binding unless you timely request that a reviewing official review your claim, or unless we revise your initial determination.

Reviewing Official

The rules in subpart C of part 405 explain that, under our new approach, you may request administrative review by a Federal reviewing official if you are dissatisfied with the State agency's initial determination in your case. The rules reflect our objective of providing well-trained, centrally-administered Federal reviewing officials who will be able to adjudicate claims accurately and consistently in a timely manner. The rules provide that you will not have a right to a hearing before the reviewing official, and that the reviewing official's decision will be made solely on the basis of a review of the record.

The rules explain that a reviewing official may obtain additional evidence necessary to adjudicate a claim in some

circumstances. The reviewing official may also remand a claim to the State agency when the State agency fails to carry out a duty that, if followed, would have resulted in a material change to the determination made at the initial level. The rules provide that in cases where the reviewing official disagrees with the State agency determination, the reviewing official must refer the case to a medical or psychological expert affiliated with the national network for evaluation of the evidence to determine the medical severity of your impairment(s). The rules also provide that if there is new and material evidence that the State agency did not consider, the reviewing official will make a decision in consultation with a qualified medical or psychological expert affiliated with the Federal Expert Unit.

The proposed rules also require the reviewing official to provide you with a written notice of his or her decision that explains in clear and understandable language the specific reasons for the decision. The reviewing official must explain why he or she agrees or disagrees with the rationale articulated in the State agency's initial determination. This explanation will be sent to the State agencies and used for quality management purposes.

The rules in subpart C of part 405 also explain that a reviewing official's decision will be binding on you unless you timely request a hearing before an administrative law judge, the reviewing official's decision is revised, or you go directly to Federal district court by properly using our expedited appeals process.

Administrative Law Judge Hearing Process

The rules in subpart D of part 405 explain how we will decide your disability claim when you request a hearing before an administrative law judge. The rules in this subpart are based on our current rules in subpart J of part 404 and subpart N of part 416. For the most part, we have retained in subpart D the same rules that we currently follow. As under the current process, when you request a hearing on your disability claim, a de novo hearing will be held by an administrative law judge. The administrative law judge's role in the hearing process under these proposed rules will remain the same as it is under the current process: the administrative law judge will examine the evidence and make a decision regarding your entitlement to or eligibility for benefits.

We propose that each administrative law judge assist our efforts to effectively manage the functions of the reviewing officials by explaining why he or she agrees or disagrees with the rationale articulated by the reviewing official that serves as the basis for the reviewing official's decision. Administrative law judges will provide this explanation in each of their decisions.

We do not intend that this new responsibility will constrain an administrative law judge's independent decision making authority in any manner. Each administrative law judge will continue to issue written decisions based on his or her independent evaluation and consideration of the evidence offered at the hearing or otherwise included in the record. We believe that the inclusion of an explanation for why the administrative law judge agrees or disagrees with the rationale provided by the reviewing official will greatly assist our ability to provide reviewing officials with information from the hearing level that will help ensure that reviewing official decisions are based upon a fully developed record, are carefully articulated, and are consistent with program rules. We believe that with this assistance from each administrative law judge, we can ensure that the reviewing officials are making the right decision early in the administrative review process. Accordingly, we also propose that a copy of the administrative law judge's decision be sent to the reviewing official at the same time that it is sent to the claimant. This new, systematic process will also create a method for transmitting management information that will enable us to assess problems in decision making and to improve the quality of decisions.

We also propose to make a number of other changes to our current rules. We expect that these changes will improve the hearings process by clarifying language in our current rules, by updating some of our rules to reflect changes in technology, and by making our hearing procedures more efficient. For example, we propose that the administrative law judge may decide, or you may request, that a prehearing conference be held to simplify or amend the issues to be considered by the administrative law judge, or to discuss matters that might expedite your hearing. We also propose that the administrative law judge may hold a post-hearing conference to facilitate the hearing decision.

We propose to require that you submit all evidence available to you when you request your hearing. This rule will require you to submit all available evidence that supports the allegations that form the basis of your claim, as well as all available evidence that might undermine or appear contrary to your allegations. We also propose that you must submit all additional evidence that becomes available after you have filed your request to the administrative law judge no later than 20 days before the hearing, or we will generally not consider such additional evidence.

The Decision Review Board

The rules we propose in subpart E of part 405 explain what the Decision Review Board is and how it will operate. Subject to certain limited exceptions, you will not have the right to request that the Decision Review Board review the action that the administrative law judge takes on your claim for disability benefits. Instead, we envision that the Decision Review Board will help us to promote the consistency and efficiency of the adjudicatory process by promptly identifying and reviewing, and possibly readjudicating, those administrative law judge decisions that are the most likely to be erroneous.

The proposed rules in subpart E explain how the Decision Review Board will review cases. The proposed rules also explain how we notify you that your case will be reviewed by the Decision Review Board, and what effect that review has on your right to seek judicial review of the administrative law judge's decision. We also propose procedures for cases that are before the Decision Review Board.

We propose to address the issue of timeliness of the Decision Review Board's review in two ways. First, the proposed rules in subpart E set out time frames under which the Decision Review Board must act when it reviews a claim. Under our proposed rules, we will consider the administrative law judge's decision to be our final decision, for which you may seek judicial review, if the Decision Review Board does not complete its review within 90 days of the date of the administrative law judge's decision. Second, these proposed rules contain specific provisions governing the record that the Decision Review Board will consider. The rules also contain a specific definition of what constitutes new and material evidence.

The proposed rules in subpart E also enhance our goal of improving the quality of our decision-making process. For example, the rules provide that the Decision Review Board will review the claim and act either by issuing a decision that affirms, reverses, or modifies the administrative law judge's decision, or by issuing an order that remands the case to the administrative

law judge for further proceedings. As is true for the other levels of the administrative review process, the Decision Review Board's action on cases that it reviews will provide valuable feedback to administrative law judges regarding the quality of their decisions.

The rules that we are proposing will also help us to improve the quality of our decision-making process by providing you with the opportunity to request that the Decision Review Board vacate the administrative law judge's dismissal of your request for a hearing. The dismissal of a request for a hearing is not a final decision for which judicial review is available under section 205(g) of the Act. Accordingly, in order to ensure that disability claims are not dismissed improperly, we have decided to provide you with the opportunity to ask the Decision Review Board to vacate the dismissal of your hearing request.

Judicial Review

As we noted earlier in the preamble, if these rules are issued as final rules, we will closely monitor the impact of these rules on the Federal courts. The rules in subpart F address three issues related to judicial review. First, we provide rules that govern how to request an extension of time in which to file a civil action. Second, we propose to provide procedures for cases that are remanded by a Federal court. Third, we propose to apply the same rules on acquiescence in circuit court case law that we currently apply under subpart I of part 404 and subpart N of part 416.

Reopening and Revising Determinations and Decisions

Our current rules allow us to reopen and revise a determination or decision that has become final under certain specified circumstances. In subpart G of the proposed rules, we propose changes that are intended to improve the timeliness of our administrative review process. We propose to remove the current reopening criteria that allows us to reopen a determination or decision within one year of the date of the notice of the initial determination "for any reason." In order to foster the finality of our decision making process, we propose to require that a determination or decision may be reopened in limited situations as defined in part 405, subpart G. We also propose to delete new and material evidence as a basis for finding good cause to reopen. Consistent with this change, we also propose that we will not find good cause to reopen a determination or decision if the only reason for requesting reopening is the existence of new evidence that was not considered in making the determination or decision.

Under our proposed rules, for example, we would reopen your decision if you established within the requisite time limits that the evidence the administrative law judge considered when issuing your decision clearly showed on its face that an error was made. However, we would not reopen your decision if you presented new and material evidence after the issuance of your administrative law judge decision but had failed to earlier inform the administrative law judge during your hearing that you were attempting to obtain this evidence.

Expedited Appeals Process

The proposed rules at Subpart H describe our expedited appeals process, which is essentially unchanged from the current expedited appeals process found in Subpart J of part 404 and Subpart N of part 416. The proposed rules explain that you may use the expedited appeals process if you have no dispute with our findings of fact or our application and interpretation of the controlling law, but you believe that part of that law is unconstitutional. The proposed rules explain how you may seek our agreement to allow you to go directly to Federal district court so that the constitutional issue may be resolved.

State Agency Quick Disability Determination Units

The proposed rules in subpart I describe the procedure State agencies must follow in order to be authorized to process Quick Disability Determination claims. First, we outline new responsibilities for the State agencies and for us. Second, we propose rules to measure whether the State agencies are processing Quick Disability Determination claims as required. Third, we explain what action we will take if the State agencies do not meet our Quick Disability Determination processing standards.

Payment of Certain Travel Expenses

The proposed rules in subpart J explain that we use current regulations in 20 CFR Parts 404 and 416 for determining reimbursable expenses and for explaining how and where you may request reimbursement of certain travel expenses you incur when you file your disability claim.

Other Changes

We propose to make several conforming changes to subparts J and P of part 404 and subparts I and N of part 416, and to add subpart I of part 422 of this chapter.

Clarity of These Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

Have we organized the material to suit your needs?

Are the requirements in the rules clearly stated?

Do the rules contain technical language or jargon that is not clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?

Would more (but shorter) sections be better?

Could we improve clarity by adding tables, lists, or diagrams?

What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and have determined that these proposed rules meet the criteria for an economically significant regulatory action under Executive Order 12866. The Office of the Chief Actuary estimates that these proposed rules, if finalized, will result in increased program outlays resulting in the following costs (in millions of dollars) over the next 10 years:

Fiscal year	Title II	Title XVI	Total
2006	$5	$1	$5
2007	40	7	46
2008	94	11	105
2009	209	43	253
2010	307	43	350
2011	277	39	316
2012	156	8	164

Fiscal year	Title II	Title XVI	Total
2013	31	2	32
2014	2	2	4
2015	−9	(1)	−9
Total:			
2006–2010	654	104	758
2006–2015	1,110	155	1,265

Note: The totals may not equal the sum of the rounded components.
[1] Decrease of less than $500,000.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities as they affect only individuals or States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required for these proposed rules.

Federalism Impact and Unfunded Mandates Impact

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local or tribal governments. These proposed rules do not affect the roles of the State, local or tribal governments. However, the proposed rules take administrative notice of existing statute governing the role and relationship of the State agencies and SSA with respect to disability determinations under the Act.

Paperwork Reduction Act

We are submitting an Information Collection Request to OMB for clearance. We have displayed a 1-hour placeholder burden for those sections covered by OMB-approved forms that the public already uses to report information. In addition, some sections show no annual reporting burden, because we are not required to seek OMB approval of these reporting requirements if they affect less than 10 respondents.

Finally, as stated in the preamble, we can only implement our proposed changes to the disability determination process in States that have fully implemented, and are successfully operating under the electronic disability process (eDib). Based on our current progress with eDib implementation, we expect to implement the changes in the disability determination process in two regions during the first 12 months after the final rule is published. The burden estimates reflect a gradual implementation by region, the number of claims and length of processing time we expect to occur at each level of appeal. Therefore, the annual burden estimates reflect the reporting burden associated with only those claims we expect to be processed using eDib and the new disability determination process.

We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to the Office of Management and Budget at the following number: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Part 404, Subpart P, Determining Disability and Blindness				
404.1512(c)				1
404.1513(c)				1
404.1519m	12	137	5	137
404.1520a(d)(2), 404.1520a(e)				1
404.1529(b)				1
Part 405, Subpart A, Introduction, General Description and Definitions				
405.1(a)(2)	See 405.201			
405.1(a)(3)	See 495.301			
405.1(b)	See 404.215 & 405.301			
405.20(a)	1,524	1	10	254
405.30	71	1	30	35.5
Part 405, Subpart B, Initial Determinations				
405.101(b)				1
Part 405, Subpart C, How to Request Review of an Initial Determination				
405.20	405.210(a)(b)(c)(d)			1
405.215, 405.220(b)				1
405.230(a)	See 450.305 & .310			

Section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Part 405, Subpart D, Administrative Law Judge Hearing				
405.301				1
405.305, 405.310				1
405.310(d)	206	1	10	34.3
405.316(b)				1
405.316(c)				1
405.317(a)	415	1	10	69.2
405.317(b)	22	1	30	11
405.330	2	1	20	.7
405.331				1
405.332	43	1	30	21.5
405.333				1
405.334	3,317	[1] 1	13,317	
405.340(b)				1
405.350(a)(b)	4,147	1	20	1,382.3
404.366	2	1	20	.7
405.370(b)				1
405.373(a)	151	1	30	75.5
405.373(b)				1
405.380(a)	219	1	10	36.5
405.381, 405.382	149	1	30	74.5
Part 405, Subpart E, Decision Review Board				
405.405	See 405.381 & .382			
405.425(b)	47	1	[1] 1	47
405.425(c)	See 405.381			
405.425(d)				1
405.430(b)	See 405.381			
Part 405, Subpart F, Judicial Review				
405.505	1	1	30	.5
Part 405, Subpart G, Reopening and Revising Determinations and Decisions				
405.601(b)	158	1	30	79
405.620(a), 405.625				1
Part 405, Subpart H, Expedited Appeals Process for Constitutional Issues				
405.705(b), 405.710, 405.715				
Part 405, Subpart I, Quick Disability Determination Unit and Other State Agency Responsibilities				
405.815	See 405.101(b)			
405.835				
Part 416, Subpart I, Determining Disability and Blindness				
416.912(c)				1
416.913(c)				1
416.919m	See 404.1519m			
416.920a(d)(2), 416.920a(e)(1)(2)				1
416.924(g)				1
416.929(b)				1
Part 422, Subpart B, General Procedures				
422.130(b)				1
422.140	See 405.20			

[1] Hour.

Total Number of Respondents: 10,486.

Total Estimated Annual Burden Hours: 5,600.2.

List of Organizations

The following is a list of organizations that have met with SSA regarding our New Approach to Improve the Disability Determination Process:

American Association on Mental Retardation

American Association of People with Disabilities
American Bar Association
AARP (American Association of Retired Persons)
American Council of the Blind
American Federation of Government Employees
American Federation of State, County, and Municipal Employees
American Psychological Association
ARC of the United States
Association of Administrative Law Judges (AALJ)
Association of OHA Analysts
Association of Persons in Supported Employment
Association of University Centers on Disability
Center for Budget and Policy Priorities
Congressional Staff—House Subcommittee on Ways & Means
Consortium for Citizens with Disabilities
Department of Justice
Family Policy Associates
Federal Bar Association
Government Accountability Office (GAO)
Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America (UAW)
Judicial Conference of the United States
National Association of Councils on Developmental Disabilities (NACDD)
National Association of Disability Examiners (NADE)
National Association of Disability Representatives (NADR)
National Assoc. of Protection and Advocacy Systems, Inc.
National Association of State Directors of Developmental Disabilities Services
National Council on Disabilities
National Council of Disability Determination Directors (NCDDD)
National Council of Social Security Management Associations (NCSSMA)
National Organization of Social Security Claimants' Representatives (NOSSCR)
National Treasurers Employee Union (NTEU)
NISH (National Industries for the Severely Handicapped)
Office of the General Counsel Employees
Office of Hearings and Appeals Employees
Office of Quality Assurance Employees
Office of Disability and Income Security Programs (ODISP) Employees
Office of Management and Budget
Office of Operations
Paralyzed Veterans of America
Public Employees Federation (New York)
Public Policy Collaboration
Service Employees International Union
Social Security Advisory Board
SSA's Ticket To Work and Work Incentives Advisory Panel

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs, Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend part 404, add part 405, and amend parts 416 and 422 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Amend § 404.903 by removing "and" at the end of paragraph (u), by removing the "." at the end of paragraph (v) and replacing it with ";", and by adding paragraphs (w) and (x) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(w) Determining whether to select your claim for the quick disability determination process under § 405.101 of this chapter; and

(x) The removal of your claim from the quick disability determination process under § 405.101 of this chapter.

Subpart P—[Amended]

3. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

4. Amend § 404.1502 by revising the definition of nonexamining source to read as follows:

§ 404.1502 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, and at the reviewing official, administrative law judge and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 404.1527.

* * * * *

5. Amend § 404.1503 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

(a) * * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

6. Amend § 404.1512 by revising paragraph (b)(6), and the second sentence of paragraph (c) to read as follows:

§ 404.1512 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 404.1527(f)(2) and (f)(3).

(c) * * * You must provide evidence showing how your impairment(s) affect(s) your functioning during the time you say that you are disabled, and any other information that we need to decide your claim, including evidence that you consider to be unfavorable to your claim. * * *

* * * * *

7. Amend § 404.1513 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record.* * *

* * * * *

8. Amend § 404.1519k by revising paragraph (a) to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) Subject to the provisions of § 405.15 in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 404.1624 and 404.1626.

* * * * *

9. Amend § 404.1519m by revising the third sentence to read as follows:

§ 404.1519m Diagnostic tests or procedures.

* * * A State agency medical consultant, or a medical expert (as defined in § 405.5 of this chapter) in claims adjudicated under the proced res in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

10. Amend § 404.1519s by revising paragraph (c) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(c) Subject to the provisions of § 405.15 in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

11. Amend § 404.1520a by revising the third sentence of paragraph (d)(2), adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 404.1520a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter.

* * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 404.941, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency

or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

12. Amend § 404.1526 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(c) * * * A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. * * *

13. Amend § 404.1527 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

* * * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

14. Amend § 404.1529 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

15. Amend § 404.1546 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

* * * * *

(d) *Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter.* In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, the reviewing official, the administrative law judge or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart Q—[Amended]

16. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

17. Amend § 404.1601 by adding a new third sentence to the introductory text to read as follows:

§ 404.1601 Purpose and scope.

* * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

18. Amend § 404.1616 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§ 404.1616 Medical or psychological consultants.

* * * * *

(b) * * * In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

(e) * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

19. Amend § 404.1624 by revising the first sentence to read as follows:

§ 404.1624 Medical and other purchased services.

Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. * * *

20. A new part 405 is added to read as follows:

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

Subpart A—Introduction, General Description, and Definitions

Sec.

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383(b).

Subpart A—Introduction, General Description, and Definitions

§ 405.1 Introduction.

(a) *Explanation of the administrative review process.* This part explains our procedures for adjudicating disability claims under titles II and XVI of the Social Security Act. Generally, the administrative review process consists of several steps, which must be requested within certain time periods. (Some of these time frames are for purposes of managing the process, such as the 90-day time frame within which a hearing date should be scheduled; they do not confer on claimants any individual substantive or procedural rights that claimants can appeal.) The administrative review process steps are:

(1) *Initial determination.* We make an initial determination about your entitlement to benefits based on disability under title II of the Act or your eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. We also determine the period of disability.

(2) *Review of initial determination.* If you are dissatisfied with an initial determination, you may request review by a Federal reviewing official.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with a decision made by the reviewing official, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless we refer your claim to the Decision Review Board.

(4) *Decision Review Board.* When the Decision Review Board reviews your claim and issues a decision, that decision is our final decision.

(5) *Federal court review.* If you are dissatisfied with our final decision as described in paragraphs (a)(3) and (4) of this section, you may request judicial review by filing an action in the Federal district court in the district where you reside.

(b) *Nature of the administrative review process.* In making a determination or decision in your claim, we conduct the administrative review process in a non-adversarial manner. Subject to the provisions of §§ 405.331 and 405.430, at each step of the administrative review process, you may present, and we will consider, any information in support of your claim. We also will consider any relevant information that we have in our records. You may have someone represent you, including an attorney. When we make a determination or decision on your claim for benefits, we will apply a preponderance of the evidence standard, except that the Decision Review Board will review findings of fact under the substantial evidence review standard. When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language our specific reasons for allowing or denying your claim. If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(c) *Expedited appeals process.* You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

§ 405.5 Definitions.

As used in this part:

Act means the Social Security Act, as amended.

Administrative appeals judge means an official, other than an administrative law judge, appointed by the Commissioner to serve on the Decision Review Board.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Articulate means to explain in clear and understandable language the specific basis for the determination or decision, including an analysis of the relevant evidence in the record supporting the determination or decision.

Board means Decision Review Board.

Commissioner means the Commissioner of Social Security, or his or her designee.

Date you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.

Day means calendar day, unless otherwise indicated.

Decision means the decision made by a Federal reviewing official, an administrative law judge, or the Decision Review Board.

Decision Review Board means the body comprised of administrative law judges and administrative appeals judges that reviews decisions and dismissal orders by administrative law judges.

Disability claim or *claim* means:

(1) A claim filed for benefits based on disability under title II of the Act,

(2) A claim for supplemental security income payments based on disability or blindness under title XVI of the Act, or

(3) A claim based on disability or blindness under both titles II and XVI of the Act.

Federal Expert Unit means the body composed of medical, psychological, and vocational experts, selected under criteria established by the Commissioner, that provides expertise to disability adjudicators at all levels of the administrative review process.

Initial determination means the determination by the State agency.

Material means that there would be a high likelihood that the outcome in your claim would change.

Medical expert means a State agency or Federal medical professional who has the qualifications required by the Commissioner. It also means an acceptable medical source under §§ 404.1513(a) or 416.913(a) of this chapter who is affiliated with the national network.

National network means those medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, who have the qualifications required by the Commissioner and who, under agreement with the Federal Expert Unit, provide advice within their areas of expertise to adjudicators at all levels of the administrative review process.

Preponderance of the evidence means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

Psychological expert means a State agency or Federal psychological professional who has the qualifications required by the Commissioner. It also means an acceptable medical source under §§ 404.1513(a)(2) or 416.913(a)(2) of this chapter who is affiliated with the national network.

Quick disability determination means an initial determination on a claim where we have identified your diagnosis as one that reflects a high degree of probability that you will be found disabled.

Quick Disability Determination Unit means the component of the State agency that is authorized to make quick disability determinations.

Remand means to return a claim for further action by the component that made the determination or decision under review.

Reviewing official means a Federal official who performs the review of the initial determination.

State agency means the agency of a State that has been designated by the State to carry out the disability determination function.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Vacate means to set aside a previous action.

Vocational expert means a State agency or Federal vocational specialist who has the qualifications required by the Commissioner. It also means a vocational specialist who is affiliated with the national network.

Waive means to give up a right knowingly and voluntarily.

We, us, or *our* refers to the Social Security Administration.

You or *your* refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

§ 405.10 Federal Expert Unit.

The Federal Expert Unit provides medical, psychological, and vocational expertise to State agencies, reviewing officials, administrative law judges, and the Decision Review Board. It oversees the national network of medical and vocational experts established under

§ 405.15. If a State agency refers a claim to the Federal Expert Unit, a medical or psychological expert affiliated with the national network evaluates the evidence to determine the medical severity of your impairment(s).

§ 405.15 National network of medical and vocational experts.

The national network of medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, provides expert advice to disability adjudicators. Experts affiliated with the national network must meet the qualifications prescribed by the Commissioner and may be used by the State agencies and other adjudicators at all levels of the administrative review process, in accordance with procedures established by the Commissioner. At hearings, medical, psychological, and vocational experts whom administrative law judges may call to provide impartial testimony on disability issues must be affiliated with the national network; experts whom you call, and that the administrative law judge approves, for hearing are not required to be so affiliated. We pay experts affiliated with the national network at rates established by the Commissioner for services provided to all adjudicators, including for services provided to State agencies.

§ 405.20 Good cause for missing deadlines.

(a) If you wish us to extend the deadline to request a review under § 405.210, a hearing under § 405.310, action by the Decision Review Board under § 405.382(b), or judicial review under §§ 405.501 and 405.505, you must establish that you had good cause for missing the deadline. To establish good cause, you must document that—

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that would prevent a reasonable person from filing a timely request, or

(3) Some other unusual and unavoidable circumstance beyond your control prevented you from filing a timely request.

(b) Examples of circumstances that, if documented, may establish good cause include, but are not limited to, the following:

(1) You were seriously ill, and your illness prevented you from contacting us in person, in writing, or through a friend, relative, or other person;

(2) There was a death or serious illness in your immediate family;

(3) Important records were destroyed or damaged by fire or other accidental cause;

(4) Within the time limit for requesting further review, you asked us for additional information explaining our action, and within 60 days of receiving the explanation you requested a review;

(5) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;

(6) You did not receive notice of the determination or decision, or

(7) You sent the request to another Government agency in good faith within the time limit, and the request did not reach us until after the time period had expired.

§ 405.25 Disqualification of disability adjudicators.

Adjudicators at all levels of the administrative review process recognize the need for fair and impartial consideration of the merits of your claim. Any adjudicator who has any personal or financial interest in the matter pending for determination or decision will withdraw from conducting any proceeding with respect to your disability claim. If the adjudicator so withdraws, we will assign your claim to another adjudicator for a determination or decision.

§ 405.30 Discrimination complaints.

At all levels of the administrative review process, we do not give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of your impairment(s). If you believe that an adjudicator has improperly discriminated against you, you may file a discrimination complaint with us. You must file any such complaint within 60 days of the date upon which you became aware that you may have been discriminated against.

Subpart B—Initial Determinations

§ 405.101 Quick disability determination process.

(a) If we identify your claim as one involving a high degree of probability that you are disabled, and we expect that your allegations will be easily and quickly verified, we will refer your claim to a Quick Disability Determination Unit.

(b) If we send your claim to a Quick Disability Determination Unit, within 20 days of the date your claim is received by the unit, that unit must:

(1) Have a medical or psychological expert verify your diagnosis, and

(2) Subject to the provisions of paragraph (c) of this section, make the quick disability determination as described in § 405.105.

(c) If the Quick Disability Determination Unit cannot make a determination that is favorable to you, or if it cannot process your claim within 20 days of receiving it, the State agency will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both, and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§ 405.105 Making quick disability determinations.

(a) Subject to the provisions of § 405.101 and paragraph (b) of this section, when making a quick disability determination, the State agency will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

(b) Quick disability determinations in the State agency will be made by the Quick Disability Determination Unit only after a medical or psychological expert has verified your diagnosis.

§ 405.110 Disability determinations.

If we do not refer your claim for a quick disability determination, the State agency will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§ 405.115 Notice of the initial determination.

We will mail a written notice of the initial determination to you at your last known address. The written notice will articulate, in clear and understandable language, the specific reasons for and the effect of the initial determination. We also will inform you of the right to review by a reviewing official.

§ 405.120 Effect of an initial determination.

An initial determination is binding unless—

(a) You request review by a reviewing official within the time period stated in § 405.210, or

(b) We revise the initial determination under subpart G of this part.

Subpart C—Review of Initial Determinations by a Reviewing Official

§ 405.201 Reviewing an initial determination—general.

If you are dissatisfied with the initial determination on your disability claim, you may request review by a reviewing official.

§ 405.210 How to request review of an initial determination.

(a) *Written request.* You must request review by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act, the name and social security number of the wage earner under whose account you are filing if different from yours,

(3) The specific reasons you disagree with the initial determination on your disability claim,

(4) Additional evidence that you have available to you, and

(5) The name and address of your representative, if any.

(b) *Time limit for filing request.* We will review an initial determination if you request review in writing no later than 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (d) of this section).

(c) *Place for filing request.* You should submit a written request for review at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request review.* If you want us to review the initial determination on your disability claim, but you do not request review timely, you may ask us for more time to request review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed in time. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we will use the standards explained in § 405.20.

§ 405.215 Procedures before a reviewing official.

After you request review, the reviewing official will consider the evidence used in making the initial determination, any additional evidence that you submit along with your request for review, and any other evidence that the reviewing official obtains. If additional evidence is necessary, the reviewing official may obtain such evidence from other sources, or he or she may retain jurisdiction and send the claim to the State agency for it to obtain the additional evidence. The reviewing official also may remand a claim back to the State agency for it to readjudicate the claim.

§ 405.220 Decision by the reviewing official.

(a) The reviewing official will make a decision based on all of the relevant evidence. The written decision will articulate, in clear and understandable language, the specific reasons for the decision, including an explanation as to why the reviewing official agrees or disagrees with the rationale articulated in the initial determination.

(b) If the reviewing official disagrees with the initial determination, the reviewing official may issue a decision only after a medical or psychological expert affiliated with the national network has evaluated the evidence to determine the medical severity of your impairment(s). If you submit new and material medical evidence for consideration by the reviewing official, the reviewing official will make a decision in consultation with a medical or psychological expert affiliated with the national network.

(c) The reviewing official may remand your claim to the State agency to revise the initial determination if the reviewing official determines that the State agency did not make a material finding that might have changed the outcome of the determination made at the initial level.

§ 405.225 Notice of the reviewing official's decision.

We will mail a written notice of the reviewing official's decision to you at your last known address. We will also inform you of your right to a hearing before an administrative law judge.

§ 405.230 Effect of the reviewing official's decision.

The reviewing official's decision is binding unless—

(a) You request a hearing before an administrative law judge within 60 days of the date you receive notice of the reviewing official's decision and a decision is made by the administrative law judge,

(b) The expedited appeals process is used, or

(c) We revise the reviewing official's decision under subpart G of this part.

Subpart D—Administrative Law Judge Hearing

§ 405.301 Hearing before an administrative law judge—general.

This subpart explains what to do if you are dissatisfied with a decision (including a revised decision) by a reviewing official. In it, we describe how you may ask for a hearing before an administrative law judge. The Commissioner will appoint an administrative law judge to conduct the hearing. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), the Commissioner may assign your claim to another administrative law judge. You may appear at the hearing, submit new evidence, examine the evidence used in making the reviewing official's decision, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, any new evidence timely submitted, and any evidence that the administrative law judge obtains.

§ 405.302 Authority of administrative law judges.

The administrative law judge derives his or her authority from the Commissioner and has the authority to find facts and to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

§ 405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if a reviewing official has made a decision, including a revised decision, on your disability claim.

§ 405.310 How to request a hearing before an administrative law judge.

(a) *Written request.* You must request a hearing by filing a written request. You must include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act, the name and social security number of the wage earner under whose account you are filing if different from yours,

(3) The specific reasons you disagree with the decision made by the reviewing official,

(4) Additional evidence that you have available to you, and

(5) The name and address of your representative, if any.

(b) *Time limit for filing request.* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (d) of this section).

(c) *Place for filing request.* You should submit a written request for a hearing at one of our offices. If you have a disability claim under title II of the Act,

you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request review.* If you want a hearing before an administrative law judge, but you do not request it timely, you may ask us for more time to request review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed in time. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 405.20.

(e) *Waiver of the right to appear.* After you submit your request for a hearing, you may ask the administrative law judge to decide your claim without a hearing, as described in § 405.340(b). The administrative law judge may grant the request unless he or she believes that a hearing is necessary to decide your claim. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

§ 405.315 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. Within 90 days of the date we receive the hearing request, the administrative law judge will set the time and place for the hearing. The administrative law judge will notify you of the hearing date at least 45 days before the hearing, unless you agree to a shorter notice period. The administrative law judge may change the time and place of the hearing, if it is necessary. If the administrative law judge changes the time and place of the hearing, he or she will send you reasonable notice of the change.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(c) *Determination regarding in-person or video teleconference appearance of witnesses at the hearing.* In setting the time and place of the hearing, the administrative law judge will determine whether you or any other person will appear at the hearing in person or by video teleconferencing. Video teleconferencing will be used when it is available and when it would be more efficient than conducting an examination of a witness in person. Section 405.350 explains how you and witnesses appear and present evidence at hearings.

§ 405.316 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service. We will mail or serve the notice at least 45 days before the hearing.

(b) *Notice information.* The notice of hearing will tell you:

(1) The specific issues to be decided,

(2) That you may designate a person to represent you during the proceedings,

(3) How to request that we change the time or place of your hearing,

(4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good cause, and

(5) Whether your or a witness's appearance will be by video teleconferencing.

(c) *Acknowledging the notice of hearing.* In the notice of hearing, we will ask you to return a form to let us know that you received the notice. If you or your representative do(es) not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you tell us that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

§ 405.317 Objections.

(a) *Time and place.* (1) If you object to the time or place of your hearing, you must notify the administrative law judge in writing within 10 days of the date you receive the notice of hearing. You must state the reason(s) for your objection and propose a time and place you want the hearing to be held.

(2) The administrative law judge will consider your reason(s) for requesting the change and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether we previously granted to you any changes in the time or place of your hearing.

(3) If you object to appearing by videoconferencing, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge.

(b) *Issues.* If you object to the issues to be decided at the hearing, you must notify the administrative law judge in writing within 10 days of the date you receive the notice of hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the hearing or in writing before the hearing.

§ 405.320 Administrative law judge hearing procedures—general.

A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. Proceedings will be conducted in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into the issues, will question you and the other witnesses, and will accept any evidence that is material to the issues and that is submitted in accordance with § 405.331. The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the administrative law judge mails a notice of the decision, he or she may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described below. If an administrative law judge requires medical or vocational testimony in your claim, the Federal Expert Unit will provide an appropriate expert who has not had any prior involvement in your claim.

§ 405.325 Issues before an administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues raised by your claim regardless of whether or not the issues may have already been decided in your favor.

(b) *New issues.* Any time after receiving the hearing request and before mailing notice of the hearing decision, the administrative law judge may consider a new issue if he or she, before deciding the issue, provides you an opportunity to address it.

(c) *Collateral estoppel*—issues previously decided. In one of our previous and final determinations or decisions involving you, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act, we already may have decided a fact that is an issue before the administrative law judge. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in

the previous determination or decision, unless he or she reopens the previous determination or decision under subpart G of this part.

§ 405.330 Prehearing conferences.

(a) (1) The administrative law judge, on his or her own or at your request, may decide to conduct a prehearing conference if he or she finds that such a conference would expedite the hearing or the decision on your claim. A prehearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient. We will give you reasonable notice of the time, place, and manner of the conference.

(2) At the conference, the administrative law judge may consider matters such as simplifying or amending the issues, obtaining and submitting evidence, and any other matters that may expedite the hearing.

(b) The administrative law judge may have a record of the prehearing conference made.

(c) We will summarize in writing the actions taken as a result of the conference, unless the administrative law judge makes a statement on the record at the hearing summarizing them.

(d) If neither you nor the person you designate to act as your representative appears at the prehearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

§ 405.331 Submitting evidence to an administrative law judge.

You must submit with your request for hearing any evidence that you have available to you. You must submit all evidence that you wish to have considered at the hearing no later than 20 days before the date of the scheduled hearing, unless you show that you have good cause under § 405.20(a) for submitting the evidence after this 20-day period, or you show that the late submitted evidence relates to a material change in your condition between the date set for submitting all evidence and the date of the hearing. Your failure to comply with this requirement may result in the evidence not being considered by the administrative law judge.

§ 405.332 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, an administrative law judge may, on his or her own initiative or at your request, issue subpoenas for the appearance and testimony of witnesses and for the production of any documents that are material to an issue at the hearing.

(b) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 20 days before the hearing date. The written request must:

(1) Give the names of the witnesses or documents to be produced;

(2) Describe the address or location of the witnesses or documents with sufficient detail to find them;

(3) State the important facts that the witness or document is expected to show; and

(4) Indicate why these facts could not be shown without that witness or document.

(c) We will pay the cost of issuing the subpoena and pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(d) Within 10 days of receipt of a subpoena, but no later than the date of the hearing, the person against whom the subpoena is directed may ask the administrative law judge to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

§ 405.333 Submitting documents other than evidence.

All documents should clearly designate the name of the claimant and the last four digits of the claimant's social security number. All documents must be delivered or mailed to the administrative law judge within the time frames that he or she prescribes. Each document must be clear and legible to the fullest extent practicable. Documents must use type face no smaller than 12 point font.

§ 405.334 Prehearing statements.

(a) At any time before the hearing begins, you may submit, or the administrative law judge may order you to submit, a prehearing statement as to why you are disabled.

(b) A prehearing statement, unless otherwise ordered by the administrative law judge, must discuss briefly the following matters:

(1) Issues involved in the proceeding,

(2) Facts,

(3) Witnesses,

(4) The evidentiary and legal basis upon which your disability claim can be approved, and

(5) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

§ 405.340 Deciding a claim without a hearing before an administrative law judge.

(a) *Decision wholly favorable.* If the evidence in the record supports a decision wholly in your favor, the administrative law judge may issue a decision without holding a hearing.

(b) *You do not wish to appear.* The administrative law judge may decide a claim on the record and not conduct a hearing if—

(1) You state in writing that you do not wish to appear at a hearing, or

(2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the material evidence, which, except for the transcript of the hearing, will contain the material described in § 405.360. The decision of the administrative law judge must be based on this record.

§ 405.350 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the conditions in § 405.315(c) exist, by video teleconferencing, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* Subject to § 405.331, the administrative law judge may receive any evidence at the hearing that he or she believes is relevant to your claim.

(c) *Witnesses at a hearing.* Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask the witnesses any questions material to the issues.

§ 405.351 Closing statements.

You or your representative may present a closing statement to the administrative law judge. The administrative law judge may limit the time you may have to make a closing statement. The administrative law judge may also allow you to submit a brief within a time frame that he or she establishes.

§ 405.360 Official record.

All hearings shall be recorded. All evidence upon which the administrative law judge relies for decision must be

contained in the record, either directly or by appropriate reference. The official record will include the applications, written statements, certificates, reports, affidavits, and other documents that were used in making the decision under review and any additional evidence or written statements that you submit. All exhibits introduced as evidence must be marked for identification and incorporated into the record. The official record of your claim will contain all of the marked exhibits and a verbatim recording of all testimony offered at the hearing; it also will include any prior initial determinations or decisions on your claim. The official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

§ 405.365 Consolidated hearing before an administrative law judge.

(a) *General.* (1) We may hold a consolidated hearing if—

(i) You have requested a hearing to decide your disability claim, and

(ii) One or more of the issues to be considered at your hearing is the same as an issue involved in another claim you have pending before us.

(2) If the administrative law judge consolidates the claims, he or she decides both claims, even if we have not yet made an initial determination or a reviewing official decision on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced at the hearing becomes the evidence of record in each claim adjudicated. The administrative law judge may issue either a consolidated decision or separate decisions for each claim.

§ 405.366 Posthearing conferences.

(a) The administrative law judge may decide on his or her own, or at your request, to hold a posthearing conference to facilitate the hearing decision. A posthearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient. We will give you reasonable notice of the time, place, and manner of the conference. A record of the conference will be made and placed in the hearing record.

(b) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

§ 405.370 Decision by the administrative law judge.

(a) The administrative law judge will make a decision based on all of the relevant evidence. The written decision will articulate, in clear and understandable language, the specific reasons for the decision, including an explanation as to why the administrative law judge agrees or disagrees with the rationale articulated in the reviewing official's decision.

(b) During the hearing, in certain categories of claims that we identify in advance, the administrative law judge may orally articulate and enter into the record a wholly favorable decision. Within 5 days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that explains why the administrative law judge agrees or disagrees with the rationale articulated in the reviewing official's decision and that incorporates such oral decision by reference. The administrative law judge will also include in the record a document that sets forth the key data, findings of fact, and narrative rationale for the decision. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a transcription of the oral decision.

§ 405.371 Notice of the decision of an administrative law judge.

We will send a notice and the administrative law judge's decision to you at your last known address. The notice accompanying the decision will inform you whether or not the decision is our final decision. If it is our final decision, the notice will so state. If it is not our final decision, the notice will explain that the Decision Review Board has taken review of your claim.

§ 405.372 Finality of an administrative law judge's decision.

The decision of the administrative law judge becomes our final decision and is binding on you unless—

(a) The Decision Review Board reviews your claim,

(b) An administrative law judge or the Decision Review Board revises the decision under subpart G of this part,

(c) A Federal court reverses the decision or remands it for further administrative action, or

(d) The administrative law judge considers new evidence under § 405.373.

§ 405.373 Requesting consideration of new and material evidence.

(a) If the administrative law judge's decision is our final decision, he or she may consider new evidence submitted after the issuance of his or her decision if we have not referred your claim to the Decision Review Board. To obtain such consideration, you must request consideration by the administrative law judge within 10 days of the date you receive notice of the decision, and you must show that either:

(1) There was an unforeseen and material change in your condition that occurred after the hearing and before the date of the administrative law judge's decision, or

(2)(i) At the hearing, the administrative law judge agreed to allow you to submit the evidence within a certain time period after the hearing, and

(ii) You had good cause within the meaning of § 405.20(a)(3) for missing the administrative law judge's deadline for submitting the evidence.

(b) If the administrative law judge's decision is not our final decision, you must submit your evidence to the Decision Review Board, and the Board will consider it if you make the showings required in paragraph (a) of this section.

§ 405.380 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing.

(b)(1) When neither you nor the person you designate to act as your representative appears at the hearing or at the pre- or post-hearing conferences, we previously notified you that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear, or

(2) When neither you nor the person you designate to act as your representative appears at the hearing or at the pre- or post-hearing conferences, we had not previously notified you that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph (b), we will consider the factors described in § 405.20(a).

(c) When we have made a previous determination or decision on your disability claim on the same facts and

on the same issue or issues, and this previous determination or decision has become final,

(d) When you have no right to a hearing under § 405.305,

(e) When you did not request a hearing in time and we have not extended the time for requesting a hearing, or

(4) When you die and your estate has not pursued your claim.

§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.

We will mail a written notice of the dismissal of the hearing request to you at your last known address. The notice will tell you that you may ask the administrative law judge to vacate the dismissal (see § 405.382). The notice will also tell you that you may ask the Decision Review Board to review the dismissal if the administrative law judge does not vacate it.

§ 405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.

(a) If you ask in writing within 10 days after the date you receive the notice of dismissal, an administrative law judge may vacate a dismissal of a hearing request. The administrative law judge will vacate the dismissal if he or she finds that it was erroneous. We will notify you of whether the administrative law judge granted or denied your request.

(b) If you are dissatisfied with the administrative law judge's action on your request to vacate the dismissal, you may request that the Decision Review Board vacate it. The Decision Review Board will not consider your request to vacate until the administrative law judge has ruled on your request. Your request to the Decision Review Board must be in writing and must be filed within 60 days after the date you receive the notice of the administrative law judge's action under paragraph (a) of this section.

§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

The dismissal of a request for a hearing is binding and not subject to further review unless it is vacated by an administrative law judge or the Decision Review Board.

Subpart E—Decision Review Board

§ 405.401 Procedures before the Decision Review Board-general.

This subpart describes the Decision Review Board and explains the procedures that we use when we refer certain decisions made by administrative law judges to the Board. It explains which claims the Board will review and the effects of that review on your claim. This subpart also describes how the Board may review the administrative law judge's dismissal of your hearing request and sets out the procedures that we use when you request that the Board vacate the administrative law judge's dismissal order.

§ 405.405 Decision Review Board.

(a) The Board is comprised of administrative law judges and administrative appeals judges and is responsible for evaluating and reviewing certain decisions made by administrative law judges under this part before the decisions are effectuated.

(b) As described in § 405.410, the Board will review administrative law judge decisions. You may not appeal an administrative law judge's decision to the Board. The Board may affirm, modify, or reverse the administrative law judge's decision. It also may remand your claim to the administrative law judge for further action and decision.

(c) The Board is also the final step in the administrative review process if the administrative law judge dismissed your request for a hearing under § 405.380. As explained in § 405.382, you must ask the administrative law judge to vacate his or her dismissal order before you may ask the Board to vacate the order.

(d) The Board also may review your claim after the administrative law judge's decision has been effectuated to study our disability determination process. If the Board reviews your claim under this paragraph, it will not change the administrative law judge's decision in your claim, unless the Board determines that the rules in subpart G of this part apply. If the Board determines that subpart G applies, it may reopen and revise the administrative law judge's decision.

(e) The Board also may perform other studies of the disability determination process, and it may make recommendations to the Commissioner regarding ways to improve the process.

§ 405.410 Selecting claims for Board review.

(a) The Board may review your claim if the administrative law judge made a decision under §§ 405.340 or 405.370, regardless of whether the administrative law judge's decision was unfavorable, partially favorable, or wholly favorable to you.

(b)(1) The Board may use random sampling, the use of specific claim characteristics, a combination of these two methods, or other methods to select claims for review. For example, it may review claims that involve problematic issues or fact patterns that increase the likelihood of error or claims that involve the application of new policies, rules, or procedures. The Board will review both allowances and denials of benefits and will not review claims based on the identity of the administrative law judge who decided the claim.

(2) If your claim is selected for review under paragraph (b)(1) of this section, the Board will notify you of that selection and include with the notice, the administrative law judge's decision.

(c)(1) We also will refer your claim to the Board, for action under subpart G of this part without regard to the time limits therein, if, in the view of our effectuating component, the administrative law judge's decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim, the decision is clearly inconsistent with the Act or our regulations, or the decision is unclear regarding a matter that affects the outcome of the claim.

(2) Claims selected under paragraph (c)(1) of this section will be referred to the Board no later than 60 days from the date of the administrative law judge's decision.

§ 405.415 Notification by the Decision Review Board.

When the Board reviews your claim, we will notify you. The notice will explain that the Board will review the decision and will complete its action on your claim within 90 days of the date you receive notice. The notice also will explain that if the Board does not complete its action on your claim within the 90 days, the administrative law judge's decision will become our final decision.

§ 405.420 Effect of Board review on the right to seek judicial review.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, if the Board reviews your case, the administrative law judge's decision will not be our final decision.

(2) If the Board does not complete its review within 90 days of the date you receive notice that the Board will review your claim, the administrative law judge's decision will become our final decision. If you are dissatisfied with this final decision, you may seek judicial review of the decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period. The Board will take no further action with respect to your claim, unless it determines that it can make a decision

that is fully favorable to you under the provisions of paragraph (a)(3) of this section.

(3) If the administrative law judge's decision becomes our final decision under the provisions of paragraph (a)(2) of this section, but the Board determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision in accordance with subpart G of this part without regard to the time limits therein, and revise it as appropriate. If you have already sought judicial review of the final decision under section 205(g) of the Act, the Board will notify the Office of the General Counsel, which will then take appropriate action to request that the court remand the claim for the purpose of issuing the Board's decision.

(b)(1) When the Board reviews your claim, it will either make our final decision or remand the claim to an administrative law judge for further proceedings consistent with the Board's remand order.

(2) If the Board makes our final decision in your claim, it will send you notice of the decision, as explained in § 405.445. If you are dissatisfied with the final decision, you may seek judicial review of the decision under section 205(g) of the Act.

(3) If the Board remands your claim to an administrative law judge, the Board's remand order is not our final decision and you may not seek judicial review of the remand order under section 205(g) of the Act. The administrative law judge's decision after remand will become our final decision, unless the Board reviews the decision under § 405.410.

(c) The Board's action under § 405.382 on your request to vacate the administrative law judge's dismissal of your request for review is not subject to further review.

§ 405.425 Procedures before the Decision Review Board.

(a) The Board may limit the issues that it considers. If the Board limits the issues that it considers, we will notify you of the issues that the Board will consider.

(b)(1) The Board may ask you to submit a written statement, or you may ask, within 10 days of the date you receive notice of the Board's review, the Board's permission to submit a written statement. The written statement may not be longer than 3 pages, and the typeface must be no smaller than 12 point font. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision, citing to specific facts in the record and relevant law.

(2) The Board will not consider any written statements that you submit, unless the Board asked or allowed you to submit a statement under paragraph (b)(1) of this section. If you file a written statement in a claim and the Board has not asked or allowed you to submit one, the Board will not consider the written statement and will return it to you without making it a part of the record.

(c)(1) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, you may submit a written statement with the Board at the time that you ask the Board to vacate the dismissal order. The written statement may not be longer than 3 pages, and the typeface must be no smaller than 12 point font. The written statement should briefly explain why the request for a hearing should not have been dismissed. The written statement should cite to specific facts in the record and relevant law.

(2) If you file a written statement with the Board after you request it to vacate the dismissal, the Board will not consider your written statement and will return it to you without making it part of the record.

(d) In conducting its review of your claim, the Board may obtain advice from a medical, psychological, or vocational expert affiliated with the national network. If the Board obtains such advice, we will provide you with a copy of it and place the advice into the record.

§ 405.430 Record before the Decision Review Board.

(a) Subject to the provisions of §§ 405.373(b) and 405.425(d), in claims reviewed by the Board, the record is closed as of the date of the administrative law judge's decision. That means that the Board will base its action on your claim on the same evidence that was before the administrative law judge. When it reviews a claim, the Board will consider only that evidence that was in the record before the administrative law judge.

(b) When you request the Board to review the administrative law judge's dismissal of your claim, you may submit additional evidence, but the Board will accept only evidence that is relevant to the dismissal issue. All other evidence will be returned to you.

§ 405.440 Actions that the Decision Review Board may take.

The Board may review the administrative law judge's findings of fact and application of the law. It will apply the substantial evidence standard in reviewing the findings of fact, but review de novo the application of the law. The Board will take one of the following actions:

(a) Where there is an error of law, issue its own decision which affirms, reverses, or modifies the administrative law judge's decision;

(b) Where the factual findings are unsupported by substantial evidence, remand your claim to the administrative law judge for further proceedings consistent with the Board's order. If the Board remands your claim to the administrative law judge for further proceedings, the administrative law judge must take any action that is specified by the Board in its remand order and may take any additional action that is not inconsistent with the Board's remand order;

(c) Vacate the administrative law judge's dismissal order. If the Board issues an order vacating the administrative law judge's dismissal order, it will remand the claim to the administrative law judge for further proceedings consistent with the Board's order, or

(d) Decline to vacate the dismissal order.

§ 405.445 Notification of the Decision Review Board's action.

We will send notice of the Board's action to you at your last known address. The notice will articulate, in clear and understandable language, the reasons for the Board's action. If the Board issues a decision, it will articulate its rationale for its decision and, the notice will also explain how to seek judicial review. If the Board issues a remand order, the notice will explain that the remand order is not our final decision.

§ 405.450 Effect of the Decision Review Board's action.

(a) The Board's decision is binding unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(b) The administrative law judge's decision is binding if the Board does not complete its action within 90 days of the date your receive notice that the Board will review your claim, unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(c) The Board's action to remand your claim to an administrative law judge is binding and not subject to judicial review.

(d) The Board's action on a request to vacate an administrative law judge's dismissal order is binding and not subject to further review.

Subpart F—Judicial Review

§ 405.501 Judicial review.

You may file an action in a Federal district court within 60 days of the date our decision becomes final and judicially reviewable.

§ 405.505 Extension of time to file a civil action.

If you have received our final decision, you may request that we extend the time for seeking judicial review in a Federal district court. Your request must be in writing and explain why the action was not filed, or cannot be filed, on time. The request must be filed with the Board. If you show that you had good cause for missing the deadline, we will extend the time period. We will use the standards in § 405.20 to determine if you have good cause for an extension of time.

§ 405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part to us for further consideration, the Board may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Board remands a claim to an administrative law judge, it will send you a notice.

§ 405.515 Application of circuit court law.

We will follow the procedures in §§ 404.985 and 416.1485 of this chapter for claims decided under this part.

Subpart G—Reopening and Revising Determinations and Decisions

§ 405.601 Reopening and revising determinations and decisions.

(a) *General.* If you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review, and that determination or decision becomes final. However, we may reopen and revise a determination or a decision made in your claim which is otherwise final and binding.

(b) *Procedure for reopening and revision.* We may, or you make ask us to, reopen a final determination or decision on your claim. If we reopen a determination or decision, we may revise it.

§ 405.605 Conditions for reopening.

We may reopen a determination, revised determination, decision, or revised decision:

(a) Within 6 months of our final action on your claim if we find:

(1) A clerical error in the computation or recomputation of benefits was made, or

(2) The evidence that was considered in making the determination or decision clearly shows on its face that an error was made.

(b) At any time if—

(1) It was obtained by fraud or similar fault (see § 416.1488(c) of this chapter for factors which we take into account in determining fraud or similar fault),

(2) Another person files a claim on the same earnings record and allowance of the claim adversely affects your claim,

(3) A person previously determined to be dead, and on whose earnings record your entitlement is based, is later found to be alive,

(4) It is wholly or partially unfavorable to you, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made,

(5) It finds that you are entitled to monthly benefits based on the earnings of a deceased person, and it is later established that:

(i) You were convicted of a felony or an act in the nature of a felony for intentionally causing that person's death, or

(ii) If you were subject to the juvenile justice system, you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony, or

(6) It is incorrect because—

(i) You were convicted of a crime that affected your right to receive benefits or your entitlement to a period of disability, or

(ii) Your conviction of a crime that affected your right to receive benefits or your entitlement to a period of disability is overturned.

(c) We will not find good cause to reopen the determination or decision if the only reason for requesting the reopening is:

(1) A change of legal interpretation or administrative ruling upon which the determination or decision was made, or

(2) The existence of new evidence that was not considered in making the determination or decision.

§ 405.610 Late completion of timely investigation.

We may reopen and revise a determination or decision after the applicable time period in § 405.605(a) expires if we begin an investigation into whether to revise the determination or decision before the applicable time period expires. We may begin the investigation either on our own or at your request. The investigation is a process of gathering facts after a determination or decision has been reopened to determine if we should revise it.

(a) If we have diligently pursued the investigation to its conclusion, we may revise the determination or decision. The revision may be favorable or unfavorable to you. "Diligently pursued" means that in light of the facts and circumstances of a particular claim, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if we conclude the investigation and if necessary, revise the determination or decision within 6 months from the date we began the investigation.

(b) If we have not diligently pursued the investigation to its conclusion, we will revise the determination or decision if a revision is applicable and if it will be favorable to you. We will not revise the determination or decision if it will be unfavorable to you.

§ 405.615 Notice of revised determination or decision.

(a) When we revise a determination or decision, we will mail notice of the revision to you at your last known address. The notice will state the basis for the revision and the effect of the revision. The notice will also inform you of your right to further review.

(b) If an administrative law judge or the Decision Review Board proposes to revise a decision, and the revision would be based on evidence not included in the record on which the prior decision was based, you will be notified, in writing, of the proposed action and of your right to request that a hearing be held before any further action is taken.

(c) If an administrative law judge or the Decision Review Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, you will be notified, in writing, of the proposed action.

§ 405.620 Effect of revised determination or decision.

A revised determination or decision is binding unless—

(a) You file a written request for review by a reviewing official or a hearing before an administrative law judge, as appropriate,

(b) The Decision Review Board reviews the revised decision, or

(c) The revised determination or decision is further revised.

§ 405.625 Time and place to request a hearing on a revised determination or decision.

You may request, as appropriate, further review or a hearing on the revision by filing a request in writing at one of our offices within 60 days after the date you receive notice of the revision. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board. Further review or a hearing will be held on the revision according to the rules of this subpart.

§ 405.630 Finality of findings when later claim is filed on same earnings record.

If two claims for benefits filed under title II of the Social Security Act are filed on the same earnings records, findings of fact made in a determination on the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the first claim has passed.

Subpart H—Expedited Appeals Process for Constitutional Issues

§ 405.701 Expedited appeals process—general.

By using the expedited appeals process you may go directly to a Federal district court without first completing the administrative review process that is generally required before the court will hear your claim.

§ 405.705 When the expedited appeals process may be used.

If you have filed a disability claim, you may use the expedited appeals process if all of the following requirements are met:

(a) You have received an initial determination and a decision by a reviewing official, but an administrative law judge has not made a decision;

(b) You have submitted a written request for the expedited appeals process, and

(c) You have our written agreement to use the expedited appeals process as required in § 405.715.

§ 405.710 How to request an expedited appeal.

(a) *Time limit for filing request.* If you wish to use the expedited appeals process, you must request it—

(1) No later than 60 days after the date you receive notice of the reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (c) of this section), or

(2) At any time after you have filed a timely request for a hearing but before you receive notice of the administrative law judge's decision.

(b) *Place for filing request.* You should file a written request for an expedited appeal at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board.

(c) *Extension of time to request expedited appeals process.* If you want to use the expedited appeals process but do not request it in time, you may ask for more time to submit your request. Your request for an extension of time must be in writing and must give the reasons why the request for the expedited appeals process was not filed in time. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 405.20.

§ 405.715 Agreement in expedited appeals process.

If you meet all the requirements necessary for using the expedited appeals process, our authorized representative shall prepare an agreement. The agreement must be signed by you and by our authorized representative. The agreement must provide that—

(a) The facts in your claim are not in dispute;

(b) The sole issue in dispute is whether a provision of the Act that applies to your claim is unconstitutional;

(c) Except for your belief that a provision of the Act is unconstitutional, you agree with our interpretation of the law;

(d) If the provision of the Act that you believe is unconstitutional were not applied to your claim, your claim would be allowed, and

(e) Our decision is final for the purpose of seeking judicial review.

§ 405.720 Notice of agreement to expedite your appeal.

If we agree that you can use the expedited appeals process, a signed copy of the agreement will be mailed to you and will constitute notice. If you do not meet all of the requirements necessary to use the expedited appeals process, we will advise you that your request to use this process is denied and that your request will be considered as a request for a hearing, if you have not already requested a hearing.

§ 405.725 Effect of expedited appeals process agreement.

After an expedited appeals process agreement is signed, you will not need to complete the remaining steps of the administrative review process. Instead, you may file an action in the Federal district court in the district where you reside. You must file within 60 days after the date you receive notice that the agreement has been signed by our authorized representative.

Subpart I—Quick Disability Determination Unit and Other State Agency Responsibilities

§ 405.801 Purpose and scope.

This subpart describes the procedures the State agency must follow in order to make quick disability determinations. It outlines our responsibilities and those of the State agency and describes the processing standard the State agency's Quick Disability Determination Unit must meet. This subpart describes what action we will take if the State agency does not meet the quick disability determination processing standard. It supplements, and does not replace, the standards of Subpart Q of part 404 or Subpart J of part 416 of this chapter.

§ 405.805 Our and the State agency's basic responsibilities.

(a) *General.* We will work with the State to provide and maintain an effective system for processing quick disability determinations. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of Quick Disability Determination Units, except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) *Our responsibilities.* In addition to the responsibilities we have under §§ 404.1603 and 416.1003 of this chapter, we will:

(1) As described in § 405.15, provide medical, psychological, and vocational expertise needed for adjudication of a claim if such expertise is not otherwise available to the State, and

(2) Pay the established Federal rate for the State agency's use of any medical, psychological, or vocational expert affiliated with the national network.

(c) *Responsibilities of the State.* (1) In addition to the responsibilities the State has under subpart Q of part 404 or subpart J of part 416 of this chapter, any

State that performs the quick disability determination function will organize a separate Quick Disability Determination Unit that will comply with the requirements set out in this subpart.

(2) In all States to which this part applies, the medical, psychological, and vocational experts employed by or under contract with the State agency must meet the Commissioner's qualification standards prescribed under § 405.15 in order for the State agency to receive reimbursement for the experts' salaries or the cost of their services.

§ 405.810 Deemed notice that the State wishes to perform the quick disability determination function.

Any State that currently performs the disability determination function under subpart Q of part 404 or subpart J of part 416 of this chapter will be deemed to have given us notice that it wishes to perform the quick disability determination function.

§ 405.815 Making quick disability determinations.

The quick disability determination will be made as described in subpart B of this part.

§ 405.820 Notifying claimants of the quick disability determination.

The State agency will prepare a notice to the claimant using clear and understandable language when it makes a quick disability determination.

§ 405.825 Processing standard.

The processing performance standard for quick disability determinations is processing 98 percent of the claims that we refer to the Quick Disability Determination Unit within 20 days. This standard applies to all disability claims identified for quick determination.

§ 405.830 How and when we determine whether the processing standard is met.

(a) *How we determine processing time.* For all quick disability determinations, we calculate the number of days, from the day the claim is received in the State agency until the day the claim is released to us by the State agency.

(b) *Frequency of review.* We will monitor the processing time for quick disability determinations on a quarterly basis separately from the other State disability determinations. We will determine whether or not the processing standard has been met at the end of each quarter of each year.

§ 405.835 Action we will take if a State agency does not meet the quick disability determination processing time standard.

If for two or more consecutive calendar quarters a State agency falls below the quick disability determination processing standard described in § 405.825, we will notify the State agency that we propose to find it has substantially failed to comply with our standards regarding quick disability determinations. We also will advise the State agency that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make quick disability determinations consistent with the Act, our regulations, and other written guidelines, we will assume responsibility for performing the quick disability determination function. We will not provide performance support for State agency Quick Disability Determination Units prior to proposing to find that the State agency has failed to comply with our standards regarding quick disability determinations.

§ 405.840 Good cause for not following the Act, our regulations, and other written guidelines.

We will follow the procedures in §§ 404.1671 and 416.1071 of this chapter to determine if the State has good cause for not following the Act, our regulations, or other written guidelines.

§ 405.845 Hearings and appeals.

We will follow the provisions of §§ 404.1675 through 404.1683, and §§ 416.1075 through 416.1083 of this chapter when we propose to find that the State agency has substantially failed to comply with our standards regarding quick disability determinations.

§ 405.850 Assumption of the quick disability determination function when we make a finding of substantial failure.

(a) *Notice to State.* When we find that substantial failure exists, we will notify the State in writing that we will assume responsibility for making quick disability determinations, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of assumption of the disability determination function from a State agency will not be earlier than 180 days after our finding of substantial failure, and not before we have complied with the requirements of §§ 404.1692 and 416.1092 of this chapter.

(c) *Other regulations.* The provisions of §§ 404.1691, 404.1693, 404.1694, 416.1091, 416.1093 and 416.1094 of this chapter apply under this subpart to the same extent that they apply under subpart Q of part 404 and subpart J of part 416 of this chapter.

Subpart J—Payment of Certain Travel Expenses

§ 405.901 Reimbursement of certain travel expenses.

When you file a disability claim, you may incur certain travel expenses that may be reimbursable. We use §§ 404.999a through 404.999d of this chapter for title II claims and §§ 416.1495 through 416.1499 of this chapter for title XVI claims in determining reimbursable expenses and for explaining how and where you may request reimbursement.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

21. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

Subpart I—[Amended]

22. Amend § 416.902 by revising the definition of nonexamining source to read as follows:

§ 416.902 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, and at the reviewing official, administrative law judge and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 416.927.

* * * * *

23. Amend § 416.903 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§ 416.903 Who makes disability and blindness determinations.

(a) * * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

24. Amend § 416.912 by revising paragraph (b)(6) and the second sentence of paragraph (c) to read as follows:

§ 416.912 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2) and (f)(3).

(c) * * * You must provide evidence showing how your impairment(s) affect(s) your functioning during the time you say that you are disabled, and any other information that we need to decide your claim, including evidence that you consider to be unfavorable to your claim. * * *

* * * * *

25. Amend § 416.913 by revising the first sentence of paragraph (c) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record.

* * *

* * * * *

26. Amend § 416.919k by revising paragraph (a) to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 416.1024 and 416.1026.

* * * * *

27. Amend § 416.919m by revising the third sentence to read as follows:

§ 416.919m Diagnostic tests or procedures.

* * * A State agency medical consultant, or a medical expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

28. Amend § 416.919s by revising paragraph (c) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(c) Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

29. Amend § 416.920a by revising the third sentence of paragraph (d)(2), adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter.

* * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The

decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 416.1441, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

30. Amend § 416.924 by revising the text of paragraph (g) to read as follows:

§ 416.924 How we determine disability for children.

* * * * *

(g) * * * When we make an initial or reconsidered determination whether you are disabled under this section or whether your disability continues under § 416.994a (except when a disability hearing officer makes the reconsideration determination), we will complete a standard form, Form SSA–538, Childhood Disability Evaluation Form. We will also complete the standard form when we make an initial determination in claims adjudicated under the procedures in part 405 of this chapter. The form outlines the steps of the sequential evaluation process for individuals who have not attained age 18. The State agency medical or psychological consultant (see § 416.1016) or other designee of the Commissioner, or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, has overall responsibility for the content of the form and must sign the form to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges, and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step of the sequential evaluation process in their determinations or decisions. In addition, in claims adjudicated under the procedures in part 405 of this chapter, reviewing officials, administrative law judge and the Decision Review Board will not complete the form but will indicate their findings at each step of the sequential evaluation process in their decisions.

31. Amend § 416.926 by revising the first sentence of paragraph (c) and paragraph (d) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(c) * * * A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. * * *

(d) *Responsibility for determining medical equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016) has the overall responsibility for determining medical equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in § 405.5 of this chapter) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the Administrative Law Judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the Administrative Law Judge or Appeals Council. In claims adjudicated at the reviewing official, administrative law judge and the Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding medical equivalence rests with the reviewing official, administrative law judge, or Decision Review Board.

32. Amend § 416.926a by revising paragraph (n) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(n) *Responsibility for determining functional equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016) has the overall responsibility for determining functional equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in § 405.5 of this chapter) has the overall responsibility for determining functional equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining functional equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the Administrative Law Judge or Appeals Council level, the responsibility for deciding functional equivalence rests with the Administrative Law Judge or Appeals Council. In claims adjudicated at the reviewing official, administrative law judge and the Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding functional equivalence rests with the reviewing official, administrative law judge, or Decision Review Board.

33. Amend § 416.927 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the

existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404 of this chapter, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

* * * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

34. Amend § 416.929 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

35. Amend § 416.946 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

* * * * *

(d) *Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter.* In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, the reviewing official, the administrative law judge or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart J—[Amended]

36. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5)1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

37. Amend § 416.1001 by adding a new third sentence to the introductory text to read as follows:

§ 416.1001 Purpose and scope.

* * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

38. Amend § 416.1016 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§ 416.1016 Medical or psychological consultants.

* * * * *

(b) * * * In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

(e) * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

39. Amend § 416.1024 by revising the first sentence to read as follows:

§ 416.1024 Medical and other purchased services.

Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. * * *

Subpart N—[Amended]

40. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

41. Amend § 416.1403 by removing "and" from the end of paragraph (a)(19), removing the "." at the end of paragraph (a)(20) and replacing it with ";" and by adding paragraphs (a)(21) and (22) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(21) Determining whether to select your claim for the quick disability determination process under § 405.101 of this chapter; and

(22) The removal of your claim from the quick disability determination process under § 405.101 of this chapter.

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

42. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

43. Amend § 422.130 by revising the first sentence of paragraph (b) and the first and second sentences of paragraph (c) to read as follows:

§ 422.130 Claim procedure.

* * * * *

(b) * * * An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration's records

(see subpart H of part 404 of this chapter for evidence requirements in nondisability cases and subpart P of part 404 of this chapter and part 405 of this chapter for evidence requirements in disability cases). * * *

(c) * * * In the case of an application for benefits, the establishment of a period of disability, a lump-sum death payment, a recomputation of a primary insurance amount, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, the Social Security Administration, after obtaining the necessary evidence, will make a determination as to the entitlement of the individual claiming or for whom is claimed such benefits, and will notify the applicant of the determination and of his right to appeal. Section 404.1520 and subpart I of part 405 of this chapter has a discussion of the respective roles of State agencies and the Administration in the making of disability determinations and § 404.1521 and subparts B and I of part 405 of this chapter has information regarding initial determinations as to entitlement or termination of entitlement in disability cases. * * *

* * * * *

44. Revise § 422.140 to read as follows:

§ 422.140 Reconsideration or review of initial determination.

Subject to the provisions of subpart C of part 405 of this chapter, if you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. In claims adjudicated under the procedures in part 405 of this chapter, if you are dissatisfied with an initial determination, you may request review by a reviewing official. The information in § 404.1503 and part 405 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration (or review by reviewing officials) of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered (or reviewed by a reviewing official in claims adjudicated under the procedures in part 405 of this chapter), we will mail you written notice and inform you of your right to a hearing before an administrative law judge (see § 422.201 and subpart D of part 405, and 42 CFR 405.904(a)).

Subpart C—[Amended]

45. The authority citation for subpart C of part 422 continues to read as follows:

Authority: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

46. Amend § 422.201 by revising the first and second sentences in the introductory text and by adding a new third sentence to read as follows:

§ 422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Hearings and Appeals, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 408, 410 and 416 of this chapter. It also describes the procedures for requesting such hearing or Appeals Council review, and for instituting a civil action for court review for cases decided under these parts. Procedures related to hearings before an administrative law judge, review by the Decision Review Board or court review in claims adjudicated under the procedures in part 405 of this chapter are explained in subparts D, E, and F of part 405 of this chapter. * * *

* * * * *

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Federal Register

Vol. 70, No. 143

Wednesday, July 27, 2005

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
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FEDERAL REGISTER PAGES AND DATE, JULY

37985–38570 1
38571–38750 5
38751–39172 6
39173–39410 7
39411–39638 8
39639–39904 11
39905–40184 12
40185–40634 13
40635–40878 14
40879–41128 15
41129–41340 18
41341–41604 19
41605–41934 20
41935–42250 21
42251–42484 22
42485–43016 25
43017–43256 26
43257–43624 27

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7913 41931
7914 45253
Executive Orders:
12139 (Amended by EO 13383) 41933
12735 (See EO 13382) 38567
12938 (Amended by EO 13382) 38567
12949 (Amended by EO 13383) 41933
13094 (See EO 13382) 38567
13348 (See Notice of July 19, 2005) 41935
13382 38567
13383 41933
Administrative Orders:
Memorandums:
Memorandum of April 21, 2005 (Amended by Memorandum of July 1, 2005) 41341
Memorandum of June 29, 2005 39173
Memorandum of July 1, 2005 41341
Memorandum of July 21, 2005 (Assignment of Reporting Functions) 43249
Memorandum of July 21, 2005 (Assignment of Certain Functions Under Section 337 of the Tariff Act of 1930) 43251
Notices:
Notice of July 19, 2005 41935
Presidential Determinations:
No. 2005-26 of July 4, 2005 40181
No. 2005-27 of July 4, 2005 40183
No. 2005-28 of July 12, 2005 41929
No. 2005-29 of July 14, 2005 42251
No. 2005-30 of July 14, 2005 43257

5 CFR

Ch. XIV 41605
831 42253
842 42253

7 CFR

56 42254
70 42254
226 43259
305 41092
318 40879
319 ..... 40879, 41092
400 41822
780 43262
946 41129
955 41605
981 43270
983 ..... 39905, 40185, 42256
1469 41608
4274 38571
4280 41264
Proposed Rules:
97 40921
246 43332
319 39194
868 39199
925 42513
944 42513
1033 43335
2902 38612

9 CFR

77 42259
93 41608
94 41608
95 41608
Proposed Rules:
391 41635
590 41635
592 41635

10 CFR

72 ..... 40879, 42485
110 ..... 37985, 41937
625 39364
Proposed Rules:
72 ..... 40924, 42513

11 CFR

114 41939
Proposed Rules:
100 42282
106 42282
300 42282

12 CFR

201 39411
620 40635
621 40635
650 40635
651 40635
652 40635
653 40635
654 40635
655 40635
Proposed Rules:
Ch. VII 39202, 40924

13 CFR

Proposed Rules:
106.....39667

14 CFR

11.....40156
21.....40166
23.....37994, 43273
25.....39908, 39910
36.....38742, 41610
39 .....38573, 38575, 38578, 38580, 38751, 38753, 38755, 39412, 39559, 39639, 39642, 39644, 39647, 39651, 39912, 40187, 40651, 40656, 41944, 41946, 41948, 42148, 42262, 42267, 42269, 43017, 43020, 43022, 43024, 43025, 43029, 43032, 43036
43.....40872
71 .....37997, 38740, 39175, 39914, 39915, 39916, 39917, 41610, 41611, 41613, 41948, 41949, 41950
73.....38740
91 .....38742, 40168, 41610
93.....39610
97.....39652, 43039
121 .....40156, 40168, 41134
125.....40168
129.....40168
382.....41482

Proposed Rules:
39 .....38625, 38627, 38630, 38632, 38636, 38817, 38819, 38821, 38823, 39204, 39433, 39435, 41350, 41352, 41354, 42003, 42005, 42008, 42282, 42515, 43343
71 .....38053, 38055, 38056, 38826, 39973

15 CFR

740.....41094, 43041
742.....41094, 43041
743.....41094, 43041
772.....41094, 43041
774 .....41094, 41952, 43041

Proposed Rules:
303.....38828
710.....42010
711.....42010
712.....42010
713.....42010
714.....42010
715.....42010
716.....42010
717.....42010
718.....42010
719.....42010
720.....42010
721.....42010
722.....42010
723.....42010
724.....42010
725.....42010
726.....42010
727.....42010
728.....42010
729.....42010

16 CFR

310.....43273

Proposed Rules:
23.....38834

17 CFR

230.....42150
232.....42456, 43558
239.....42150, 43558
240 .....40614, 42150, 42456
249 .....42150, 42456, 43558
259.....43558
269.....43558
270.....39390, 43558
274.....43558

Proposed Rules:
36.....39672
37.....39672
38.....39672
39.....39672
40.....39672

18 CFR

35.....38757

Proposed Rules:
35.....40941
131.....40941
154.....40941
157.....40941
250.....40941
281.....40941
284.....40941
300.....40941
341.....40941
342.....40943
344.....40941
346.....40941
347.....40941
348.....40941
375.....40941
385.....40941

19 CFR

Proposed Rules:
101.....38637
122.....38637

20 CFR

1.....41340
30.....41340
345.....42488
404.....38582, 41954
416.....41135
646.....40870
701.....43224
703.....43224

Proposed Rules:
320.....42517
404.....43590
405.....43590
416.....39689, 43590
422.....43590
604.....42474

21 CFR

Ch. I.....40880
20.....41956
73.....42271, 43043
101.....41958
520 .....40880, 41139, 43045
522.....39918
524.....43046
529.....41139
556.....39918
558.....41958

Proposed Rules:
Ch. I.....41356
310.....40232
341.....40232, 40237

22 CFR

126.....39919

23 CFR

Proposed Rules:
630.....39692

24 CFR

200.....43242

25 CFR

124.....40660, 41963

26 CFR

1 .....39653, 39920, 40189, 40661, 40663, 41343
26.....41140
301.....40669, 41144
602 .....39920, 40189, 40663

Proposed Rules:
1 .....38057, 39695, 40675
31.....38057
35.....40675
54.....40675
301.....40675, 41165

27 CFR

9 .....37998, 38002, 38004

Proposed Rules:
4.....38058

28 CFR

549.....43047

Proposed Rules:
16.....39696
32.....43078
45.....39206
541.....43093

29 CFR

4022.....40881
4044.....40881

Proposed Rules:
1404.....39209, 42011
1610.....38060

30 CFR

250.....41556

Proposed Rules:
934.....38639

31 CFR

Ch. V.....38256

32 CFR

321 38009

Proposed Rules:
285.....40249
504.....42012
631.....41641

33 CFR

100 .....38010, 39654, 39656, 40882, 43050
110.....40885
117 .....38593, 38594, 40887
155.....41614
156.....41614
165 .....38013, 38015, 39176, 39923, 40885, 40888, 41343, 41345, 42489, 42491, 42493, 43281

Proposed Rules:
100 .....39697, 43345, 43347
117.....41648, 42017
165.....40944
167.....38061

34 CFR

230.....38017

36 CFR

7.....38759

Proposed Rules:
228.....43349

37 CFR

2.....38768
7.....38768
201.....38022
251.....38022
252.....38022
257.....38022
258.....39178
259.....38022

Proposed Rules:
201.....41650
202.....42286
270.....43364
2563.....41650

38 CFR

Proposed Rules:
3.....39213

40 CFR

51.....39104, 39413
52 .....38023, 38025, 38028, 38029, 38774, 38776, 39658, 39926, 40193, 40195, 41146, 41963, 42495
62.....39927
63 .....38554, 38780, 39426, 39662, 40672
80.....40889
81.....38029
85.....40420
86.....40420
89.....40420
90.....40420
91.....40420
92.....40420
94.....40420
180 .....38780, 38785, 38786, 40196, 40199, 40202, 40899, 41618, 41619, 43283, 43284, 43292, 43298, 43309, 43313
261.....42499
271.....42273
300 .....38789, 39180, 41625, 43052
372.....39931
799.....39624, 39630
1039.....40420
1048.....40420
1051.....40420
1065.....40420
1068.....40420
1506.....41148

Proposed Rules:
52 .....38064, 38068, 38071, 38073, 38837, 38839, 38840, 39974, 40946, 41166, 41652, 42019, 42021, 42519
55.....38840
60.....39870
62.....39974
63 .....38554, 39441, 39457
80.....40949

81.....38073, 39215
85.....39870
89.....39870
94.....39870
155.....40251, 42292
180.....43368
194.....38642
228.....41167
239.....43105
258.....43105
261.....41358
300.....38845, 39217, 41653, 43106
1039.....39870
1065.....39870
1068.....39870

41 CFR

Proposed Rules:
51-2.....38080
51-3.....38080
51-4.....38080

42 CFR

414.....39022

Proposed Rules:
52.....40946
80.....40949
419.....42674
484.....40788
485.....42674
1001.....38081

43 CFR

Proposed Rules:
3000.....41532
3100.....41532
3120.....41532
3130.....41532
3150.....41532
3160.....41532, 43349
3200.....41532
3470.....41532
3500.....41532
3600.....41532
3800.....41532
3830.....41532
3833.....41532
3835.....41532
3836.....41532
3860.....41532
3870.....41532

44 CFR

64.....38038, 41347
65.....40909, 40913, 43055
67.....40915, 43056, 43067
153.....43214

Proposed Rules:
67.....39457, 40951, 40953, 40955, 40956

45 CFR

146.....42276
613.....43068
650.....43070
2510.....39562
2520.....39562
2521.....39562
2522.....39562
2540.....39562
2550.....39562

46 CFR

Proposed Rules:
Ch. I.....39699, 41261

47 CFR

1.....38794, 38795, 41967, 43322
9.....43323
15.....38800
20.....38794, 43323
43.....38794
63.....38795
64.....38795
73.....39182; 40212, 40213, 40214, 40215, 41629, 41630
76.....40216
90.....41631

Proposed Rules:
Ch. I.....41654
1.....43372
15.....38845
20.....43386
22.....40276
52.....41655
54.....41658
73.....39217, 40277, 40278, 43372
74.....43372
76.....38848

48 CFR

Ch. 1.....43576, 43586
2.....43577
4.....43586
8.....43578
14.....43580
19.....43581
32.....43580
45.....43583
52.....43580, 43581, 43583
219.....43072
225.....43073
231.....43074
2101.....41149
2102.....41149
2103.....41149
2104.....41149
2105.....41149
2106.....41149
2109.....41149
2110.....41149
2114.....41149
2115.....41149
2116.....41149
2131.....41149
2132.....41149
2137.....41149
2144.....41149
2146.....41149
2149.....41149
2152.....41149

Proposed Rules:
Ch. II.....39975
2.....43107
5.....43107
7.....43107
14.....43107
37.....43107
52.....40279, 43107
204.....39976
222.....39978
225.....39980
235.....39976
247.....43109
249.....39980
252.....39976, 43109
9904.....42293

49 CFR

209.....38804
213.....38804
214.....38804, 43325
215.....38804
216.....38804
217.....38804
218.....38804
219.....38804
220.....38804
221.....38804
222.....38804
223.....38804
225.....38804
228.....38804
229.....38804
230.....38804, 41995
231.....38804
232.....38804
233.....38804
234.....38804
235.....38804
236.....38804
238.....38804
239.....38804
240.....38804
241.....38804
244.....38804
375.....39949
544.....42405
571.....38040, 39959, 40917, 41631
573.....38805
575.....39970
577.....38805
1520.....41586
1540.....41586
1562.....41586

Proposed Rules:
23.....40973
192.....41174
193.....41174
195.....41174
571.....40280, 40974
572.....40281

50 CFR

222.....42508
229.....43075
300.....41159
600.....40225
622.....39187, 41161, 42279, 42510
648.....39190, 39192, 39970, 41348
660.....38596, 41163
679.....38052, 38815, 39664, 40231, 41163, 41164, 42279, 42280, 42281, 42512, 43327, 43328

Proposed Rules:
17.....38849, 39227, 39981, 41183, 41520
32.....40108
216.....41187, 42520
223.....38861, 39231
224.....39231
229.....40301
600.....39700
648.....41189, 43111
660.....40302, 40305

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 27, 2005

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Information technology; definition; published 7-27-05
- Limited sources under Federal supply schedules; documentation requirement; published 7-27-05
- Subzone certification; confirmation; published 7-27-05
- Technical amendment; published 7-27-05

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Ohio; published 6-27-05

Pesticide, food, and feed additive petitions:
- Spiromesifen; correction; published 7-27-05

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 2,4-D; published 7-27-05
- Lignosulonates; published 7-27-05
- Pinoxaden; published 7-27-05
- Propiconazole; published 7-27-05
- Pymetrozine; published 7-27-05

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Information technology; definition; published 7-27-05
- Limited sources under Federal supply schedules; documentation requirement; published 7-27-05
- Subzone certification; confirmation; published 7-27-05
- Technical amendment; published 7-27-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Regattas and marine parades:
- Chincoteague Pony Swim; published 6-9-05

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Information technology; definition; published 7-27-05
- Limited sources under Federal supply schedules; documentation requirement; published 7-27-05
- Subzone certification; confirmation; published 7-27-05
- Technical amendment; published 7-27-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- BAE Systems (Operations) Ltd.; published 6-22-05
- Boeing; published 6-22-05
- Bombardier; published 6-22-05
- Honeywell; published 6-22-05

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad workplace safety:
- Working over or adjacent to water; life vest or buoyant work vest use, clarification; published 7-27-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Onions grown in—
- Idaho and Oregon; comments due by 8-2-05; published 6-3-05 [FR 05-11023]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Pine shoot beetle; comments due by 8-5-05; published 6-6-05 [FR 05-11150]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:
- National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Intermediary Relending Program; comments due by 8-4-05; published 7-5-05 [FR 05-13144]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Intermediary Relending Program; comments due by 8-4-05; published 7-5-05 [FR 05-13144]

COMMERCE DEPARTMENT

International Trade Administration

Watches, watch movements, and jewelry:
- Duty exemption allocations—
  - Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 8-5-05; published 7-6-05 [FR 05-13284]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands groundfish; comments due by 8-1-05; published 6-2-05 [FR 05-10990]
  - Groundfish; comments due by 8-1-05; published 6-16-05 [FR 05-11918]
- West Coast States and Western Pacific fisheries—
  - Pacific coast groundfish; comments due by 8-4-05; published 7-5-05 [FR 05-13178]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- Competition requirements for Federal supply schedules and multiple award contracts; comments due by 8-1-05; published 6-2-05 [FR 05-10911]
- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Federal Acquisition Regulation (FAR):
- Alaskan Native Corporations and Indian tribes; small business credit; comments due by 8-2-05; published 6-3-05 [FR 05-10935]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:
- Vocational and adult education—
  - Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:
- Environmental Management Site-Specific Advisory Board—
  - Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:
- Test procedures and efficiency standards—
  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Electronic tariff filings; software availability and testing; comment deadline, electronic format manual

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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H.R. 3377/P.L. 109–37

Surface Transportation Extension Act of 2005, Part IV (July 22, 2005; 119 Stat. 394)

Last List July 25, 2005

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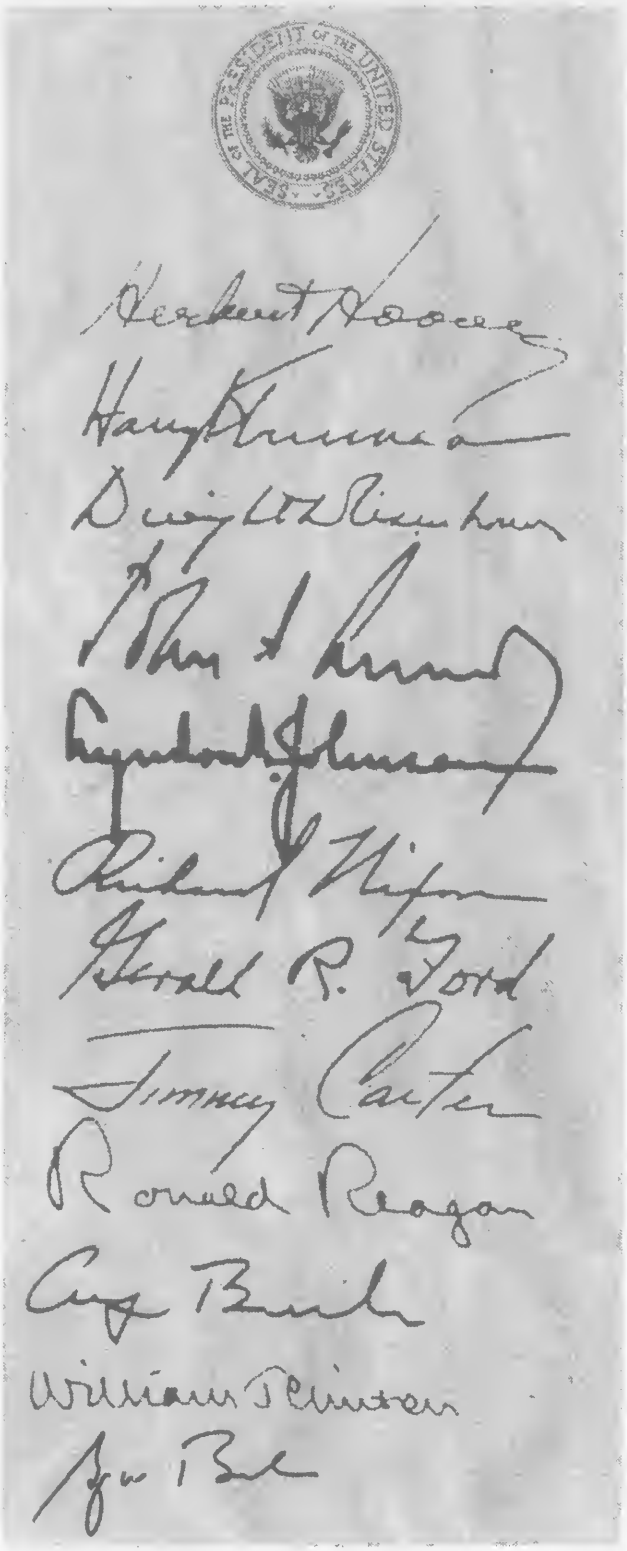

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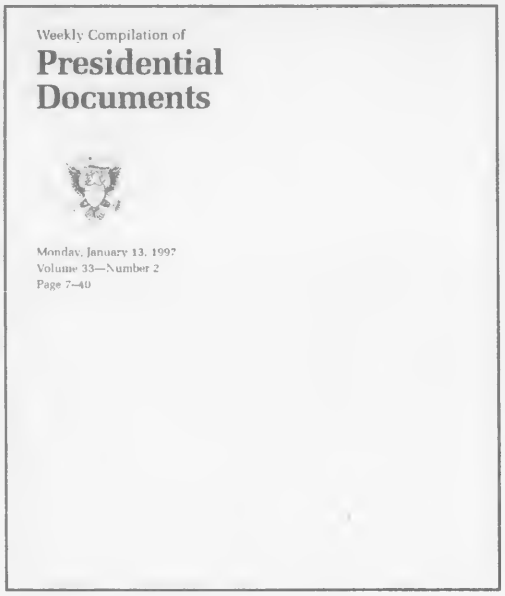

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