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Presidential Documents

Title 3—

The President

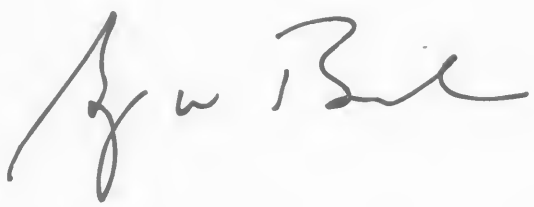
Presidential Determination No. 2004–49 of September 20, 2004

Determination and Waiver of Application of Section 908(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 with Respect to Libya

Memorandum for the Secretary of State[,] the Secretary of Agriculture[, and] the Secretary of Commerce

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 908(a)(3) of the Trade Sanctions Reform and Export Enhancement Act of 2000, title IX, Public Law 106–387 (TSRA), I hereby determine that waiver of the application of section 908(a)(1) of TSRA with respect to Libya is in the national security interest of the United States and hereby waive the application of that section with respect to Libya.

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



THE WHITE HOUSE,
Washington, September 20, 2004.

[FR Doc. 04–21954
Filed 9–28–04; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH21

Sugar Program Definitions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on September 13, 2004 that amended the sugar marketing allotment regulations with respect to the definitions of "ability to market," "market," and "sugar." Also, the rule modified procedures used to reassign allocation deficits. A correction is needed as a result of a typographical error.

DATES: Effective September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Analysis, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250–0516. Phone: (202) 720–4146. E-mail: *barbara.fecso@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Need for Correction

This rule corrects the final rule published in the **Federal Register** on September 13, 2004 (69 FR 55061–55063) that amended the sugar marketing allotment regulations at 7 CFR 1435 with respect to definitions that have had an unintended affect on program administration. In the final rule section 1435.309(c) contained the erroneous word "fall." This word is corrected to read "full.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Reporting and record keeping requirements, and Sugar.

■ *Accordingly, 7 CFR part 1435 is corrected as follows:*

■ 1. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa'1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

2. Correct § 1435.309(c), introductory text, to read as follows:

§ 1435.309 Reassignment of deficits.

* * * * *

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned by June 1:

* * * * *

Signed in Washington, DC, on September 23, 2004.

James R. Little,

Executive Vice President, , Commodity Credit Corporation.

[FR Doc. 04–21770 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 215 and 235

[DHS–2004–0002]

RIN 1650–AA00

United States Visitor and Immigrant Status Indicator Technology Program ("US–VISIT"); Authority To Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry; Correction

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Interim rule; correction.

SUMMARY: The Department of Homeland Security (DHS) is correcting an interim rule that was published in the **Federal Register** on August 31, 2004 at 69 FR 53318. The interim rule becomes effective on September 30, 2004. The interim rule extends the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) to the 50 most highly trafficked land border ports of entry in the United States and includes nonimmigrant aliens traveling without visas under the Visa Waiver Program. This interim rule also exempts certain officials of the Taipei Economic and Cultural Representative Office (TECRO) and their dependants from the collection of biometric information under US–VISIT.

DATES: This correction is effective September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Senior Policy Advisor, US–VISIT, Border and Transportation Security; Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209; (202) 298–5200.

SUPPLEMENTARY INFORMATION: The following corrections are made to the DHS interim rule, FR Doc. 04–19906, published in the **Federal Register** at 69 FR 53318, which becomes effective on September 30, 2004:

PART 215—[CORRECTED]

■ 1. On page 53333, in the second column, paragraph (a)(2)(ii) is correctly revised to read as follows:

§ 215.8 [Corrected]

(a) * * *

(2) * * *

(ii) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants, or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 visas, and certain Taiwan officials who hold E–1 visas and members of their immediate families who hold E–1 visas who are maintaining such status at time of departure, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the requirements of paragraph (a)(1);

PART 235—[CORRECTED]

§ 235.1 [CORRECTED]

■ 2. On page 53333, in the third column, paragraph (d)(iv)(B) is correctly revised to read as follows:

(d) * * *

(iv) * * *

(B) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants, or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–

1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 visas, and certain Taiwan officials who hold E–1 visas and members of their immediate families who hold E–1 visas unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the requirements of paragraph (d)(1)(ii);

Elizabeth L. Branch,

Associate General Counsel for Rules and Legislation, Office of the General Counsel, Department of Homeland Security.

[FR Doc. 04–21935 Filed 9–28–04; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150–AG71

Compatibility With IAEA Transportation Safety Standards (TS–R–1) and Other Transportation Safety Amendments; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on January 26, 2004 (69 FR 3698) amending the regulations governing the packaging and transportation of radioactive materials. This action is necessary to add unintentionally omitted text and to correct editorial errors, references, and numerical values as printed in the final rule.

EFFECTIVE DATE: October 1, 2004. The effective date for §§ 71.19(a) and 71.20 ends on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7249, e-mail *mta@nrc.gov.*

SUPPLEMENTARY INFORMATION: This action adds unintentionally omitted text and corrects editorial errors, references, and numerical values as printed in the final rule amending part 71 (January 26, 2004; 69 FR 3698). Because of the numerous corrections in § 71.5(a), the complete text of § 71.5(a) is being reprinted for the convenience of interested members of the public.

PART 71—[Corrected]

■ 1. On page 3787, first column, in § 71.1 paragraph (a) is corrected to read as follows:

§ 71.1 Communications and records.

(a) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the submission date falls on a Saturday, Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

* * * * *

§ 71.4 [Corrected]

■ 2. On page 3789, in § 71.4, the definition for Surface Contaminated Object (SCO), in the first column, in paragraph (1)(ii), fourth line, "4×10^{-4}" is corrected to read "4×10^{4}"; in the second column, in paragraph (1)(iii), eighth line, "4×103" is corrected to read "4×10^{3}"; in paragraph (2)(i), fourth line, "300^{2}" is corrected to read "300 cm^{2}"; and in paragraph (2)(iii), fifth line, "300^{2}" is corrected to read "300 cm^{2}".

■ 3. On page 3789, third column, in § 71.5 paragraph (a) is corrected to read as follows:

§ 71.5 Transportation of licensed material.

(a) Each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

(1) The licensee shall particularly note DOT regulations in the following areas:

(i) Packaging—49 CFR part 173: subparts A, B, and I.

(ii) Marking and labeling—49 CFR part 172: subpart D; and §§ 172.400 through 172.407 and §§ 172.436 through 172.441 of subpart E.

(iii) Placarding—49 CFR part 172: subpart F, especially §§ 172.500 through 172.519 and 172.556; and appendices B and C.

(iv) Accident reporting—49 CFR part 171: §§ 171.15 and 171.16.

(v) Shipping papers and emergency information—49 CFR part 172: subparts C and G.

(vi) Hazardous material employee training—49 CFR part 172: subpart H.

(vii) Security plans—49 CFR part 172: subpart I.

(viii) Hazardous material shipper/carrier registration—49 CFR part 107: subpart G.

(2) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(i) Rail—49 CFR part 174: subparts A through D and K.

(ii) Air—49 CFR part 175.

(iii) Vessel—49 CFR part 176: subparts A through F and M.

(iv) Public Highway—49 CFR part 177 and parts 390 through 397.

* * * * *

■ 4. In § 71.22, on page 3793, paragraph (c)(1) and the heading of Table 71–1 and on page 3794 the heading of Table 71–2 are corrected to read as follows:

§ 71.22 General license: Fissile material.

* * * * *

(c) * * *

(1) Contain no more than a Type A quantity of radioactive material; and

* * * * *

Table 71–1.—Mass Limits for General License Packages Containing Mixed Quantities of Fissile Material or Uranium-235 of Unknown Enrichment per § 71.22(e)

* * * * *

Table 71–2.—Mass Limits for General License Packages Containing Uranium-235 of Known Enrichment per § 71.22(e)

* * * * *

■ 5. On page 3794, third column, in § 71.23, paragraph (c)(1) is corrected to read as follows:

§ 71.23 General license: Plutonium-beryllium special form material.

* * * * *

(c) * * *

(1) Contain no more than a Type A quantity of radioactive material; and

* * * * *

§ 71.41 [Corrected]

■ 6. On page 3794, first column, in § 71.41, paragraph (a), seventh line, "105" is corrected to read "10^5."

§ 71.51 [Corrected]

■ 7. On page 3794, third column, in § 71.51, paragraph (d), third line, "105" is corrected to read "10^5."

■ 8. On page 3800, in Appendix A to part 71, Paragraphs I and IV(b), and in Tables A–1, A–3 and A–4, beginning on page 3801, are corrected to read as follows:

Appendix A to Part 71—Determination of A_1 and A_2

I. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these regulations, are given in Table A–1. The curie (Ci) values specified are obtained by converting from the Terabecquerel (TBq) value. The Terabecquerel values are the regulatory standard. The curie values are for information only and are not intended to be the regulatory standard. Where values of A_1 and A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

* * * * *

IV. * * *

b. For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:

$\Sigma B(i)/A_2(i) \leq 1$

where B(i) is the activity of radionuclide i, and $A_2(i)$ is the A_2 value for radionuclide i.

* * * * *

Table A–1.—A_1 and A_2 Values for Radionuclides

A new footnote reference "b" is added to the headings of the fourth and sixth columns, titled A_1(Ci)[b] and A_2(Ci)[b], and new footnote "b" text is added to the end of Table A–1 to read as follows:

[b] The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (see Appendix A to part 71—Determination of A_1 and A_2, Section I.).

For radionuclide Bi-205, the specific activity is corrected to 1.5×10^3 TBq/g.

For radionuclide Cm-248, the specific activity is corrected to 1.6×10^{-4} TBq/g.

For radionuclide Eu-150 (long lived), the A_1 value is corrected to 7.0×10^{-1} TBq.

For radionuclide Te-132(a), the specific activity is corrected to 3.0×10^5 Ci/g.

* * * * *

Table A–3.—General Values for A_1 and A_2 [Amended]

The value under the sixth column "Activity concentration for exempt material (Bq/g)" for the first row "Only beta or gamma emitting radionuclides are known to be present" is corrected to read 1×10^1.

The value under the seventh column "Activity limits for exempt consignments (Bq)" for the first row "Only beta or gamma emitting radionuclides are known to be present." is corrected to read 1×10^4.

Table A–4.—Activity-Mass Relationships for Uranium

The value under the third column "Specific Activity | Ci/g" for the "90" row "Uranium Enrichment wt% U-235 present" is corrected to read 5.8×10^{-5}.

Dated at Rockville, Maryland, this 24th day of September, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 04–21763 Filed 9–28–04; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 742

Federal Credit Union Ownership of Fixed Assets

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) Board is issuing final revisions to its fixed asset rule. The fixed asset rule governs Federal credit union (FCU) ownership of fixed assets and, among other things, limits investment in fixed assets to five percent of an FCU's shares and retained earnings. This final rule clarifies and reorganizes the requirements of the current rule to make it easier to understand. The only substantive changes in the final rule are to: Eliminate the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU; and establish a time frame for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion.

DATES: This rule is effective October 29, 2004.

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

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, an FCU may only invest in property it intends to use to transact credit union business, that is, to support its internal operations or serve its members. 12 CFR 721.3(d). NCUA's fixed asset rule limits an FCU's investment in fixed assets and imposes requirements on the planning for, use of, and disposal of real property acquired for future expansion. 12 CFR 701.36.

The NCUA Board has a policy of continually reviewing NCUA regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. As a result of the NCUA's 2003 review, the Board determined that the fixed asset rule should be updated. In April, 2004, the Board published its proposed updates for public comment. 69 FR 21439 (April 21, 2004).

B. Section-by-Section Analysis of the Final Rule

This final rule does not vary significantly from the proposed rule. Like the proposed rule, the only substantive revisions in the final rule from the current rule are to (1) eliminate the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU, and (2) establish a time frame for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion. The final rule also reorganizes the paragraph structure and clarifies the provisions governing an FCU's plans for future expansion into fixed assets. A section-by-section analysis of these revisions follows.

Section 701.36(a)

The final rule renumbers § 701.36(c), Investment in Fixed Assets, as § 701.36(a). The final rule retains the requirement that FCUs with $1,000,000 or more in assets cannot invest in fixed assets if the investment would cause the aggregate of all the FCU's fixed assets to exceed five percent of the FCU's shares and retained earnings. The final rule retains the waiver process that allows FCUs to apply for a waiver of the five percent limitation and reorganizes the waiver provisions to simplify them and make them easier to follow.

Section 701.36(b)

The final rule renumbers § 701.36(d), Premises, to § 701.36(b). This paragraph contains provisions on real property owned by an FCU that is not currently used to transact credit union business.

The final rule changes the title of this paragraph to "Premises Not Currently Used to Transact Credit Union Business" to better indicate its scope.

The final rule clarifies that requests for waiver of the partial occupation requirement must be in writing and submitted to NCUA within 30 months of acquisition of the premises. The final rule also clarifies that partial use occurs when FCU staff occupy some part of the space on a full-time basis.

The final clarifies that, after real property acquired for future expansion has been held for one year, a board resolution with definitive plans for full utilization must be available for inspection by an NCUA examiner. The final rule also clarifies that full use occurs when the premises are completely occupied by the FCU, or by some combination of the FCU, credit union service corporations (CUSOs), and credit union vendors, on a full-time basis. CUSO and vendor activities must be primarily to support the operations of the FCU or serve its members.

The final rule clarifies and simplifies the provisions on abandoned premises. The final rule revises the provision that an FCU "shall endeavor to dispose of "abandoned premises" at a price sufficient to reimburse the FCU for its investment and costs of acquisition" to state that an FCU must seek fair market value for the property.

Section 701.36(c)

The final rule renumbers § 701.36(e), Prohibited Transactions, to § 701.36(c). The rule retains the prohibition on an FCU acquiring or leasing property (without the prior approval of NCUA) from the FCU's insiders, their family members, or corporations and partnerships in which the insider has a significant ownership interest. To ensure that all business forms are covered, the rule adds limited liability companies and "other entities" to this list.

Section 701.36(d)

FCUs that qualify for the Regulatory Flexibility (RegFlex) Program are exempt from the five percent limitation on investment in fixed assets. 12 CFR part 742. Accordingly, the final rule adds a new paragraph (d) to § 701.36 with a cross-reference to the RegFlex Program. The rule also reiterates that FCUs that once qualified for the RegFlex Program and its associated exemptions but no longer qualify for RegFlex must comply with all the provisions of the fixed asset rule.

Section 701.36(e)

The final rule renumbers § 701.36(b), Definitions, to § 701.36(e). The rule retains the definition of "investment in fixed assets" found in subparagraph (4), but deletes the subparagraph (4)(iv) portion of the definition that includes any investments in, and loans to, a partnership or corporation, including a CUSO, that holds any fixed assets used by the FCU. This portion of the definition is unnecessary and, in some cases, may cause investment in fixed assets to be overstated.

The final rule revises the definition of "retained earnings" in subparagraph (7) to mean "undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by management or the Administration." The revision recognizes that reserve accounts may be created out of undivided earnings consistent with generally accepted accounting principles. The rule also separates the definitions of "shares" and "retained earnings" and alphabetizes all the definitions to make them easier to locate.

Section 742.4(a)

The final rule includes a technical amendment to the RegFlex Program rule reflecting the restructuring of the fixed asset rule.

C. Public Comments

NCUA received 12 comment letters regarding the proposed rule. Almost all the commenters expressed general agreement with the proposed rule, and, in particular, the clarifications and simplifications. Most of the commenters expressed appreciation for NCUA's policy of reviewing its regulations at least once every three years. Summaries of the comments and the Board's reaction follow.

Amendment to Definition of Fixed Asset

Almost all the commenters agree with the change in the definition of fixed asset to exclude investments in entities that hold fixed assets used by the FCU.

One commenter believes that lease payments for fixed assets should also be excluded from the calculation of the fixed asset limit. The Board does not want to exclude lease payments. The Board's longstanding position is that an FCU can over-invest in fixed assets through binding lease arrangements just as it can over-invest through outright ownership. See, for example, the preamble to the 1989 final fixed asset rule. 54 FR 18466 (May 1, 1989).

Clarification of "Partially Occupy" and "Fully Occupy" and Associated Time Frames

The proposed rule sought to clarify that premises were considered partially occupied when the credit union is using some part of the space on a full-time basis and fully occupied when the credit union, or a combination of the credit union, CUSOs, or vendors, use the entire space on a full-time basis. Almost all the commenters agreed that the clarifications were helpful.

Most commenters believe it is reasonable that credit unions intending to seek a waiver of the requirement for partial occupation of premises within three years should file the request for waiver within 30 months. One commenter asks that, instead of 30 months, the request for waiver be filed within 35 months, one month before the expiration of the three-year period. One commenter objects to the waiver provision and believes it should be eliminated. This commenter is particularly concerned that a credit union that loses its eligibility for the RegFlex Program should not be granted a waiver.

The final rule retains the 30-month notice requirement. Thirty months seems a reasonable amount of time to prepare a waiver request. The Board also believes that the Regional Director should have flexibility to grant waivers in appropriate cases, and the final rule retains this waiver authority.

Several commenters believe NCUA should reduce or eliminate the rule's requirements for both partial and full occupation, but particularly for full occupation. These commenters contend it is difficult for a credit union to obtain a building or lease space that is a perfect fit for the credit union's current and near term plans and the rule's occupation requirements restrict credit union growth and may be anticompetitive. One commenter cites the perceived difficulty rural and low-income credit unions have in finding appropriate office space, and another cites the perceived difficulty a continuing credit union in a merger has in balancing reduced staffing needs with the buildings it inherits in a merger. Another commenter stated that office construction projects take more than three years from first planning to building occupation and that it is "impractical to write a regulation that will inevitably require a waiver." A few commenters also believe credit unions

eligible for the RegFlex program should be exempt from any requirements to fully occupy a building because of the lack of safety and soundness concerns for these credit unions. Two commenters cite with approval the Office of the Comptroller of the Currency's (OCC's) approach to real estate owned by national banks. The OCC requires partial occupation of bank-owned real estate but not always full occupation.

The Board recognizes the difficulties associated with the management of real estate and other fixed assets but believes that the fixed asset rule, as revised by this rulemaking, provides maximum flexibility to FCUs within the bounds of the law and safety and soundness. Federal credit unions are chartered for the purpose of providing financial services to their members and it is not permissible for them to engage in real estate activities that do not support that purpose.

While it may sometimes be difficult for credit unions to find real estate to fit their needs or to downsize real estate holdings following a merger, the Board believes the rule provides enough flexibility to meet various circumstances. The rule allows an FCU to own or lease premises it will not occupy immediately but needs for future expansion and gives FCUs significant leeway on how to achieve both partial and full occupation. For example, there is no set time period within which an FCU must achieve full occupation. While the rule requires an FCU to develop a definitive plan for full occupation, it has an entire year after it acquires property to develop the plan. Further, with regard to partial occupation, the rule permits FCUs to hold real estate for significant periods of time—up to three years—before the FCU has to occupy *any* of the space. If an FCU needs additional time beyond three years to achieve partial occupation, it may request approval for additional time from its Regional Director. The Board believes that it would be unusual, even when an FCU is constructing its own premises, for the FCU not to achieve partial occupation within three years. Still, if the construction process will take more than three years, a waiver is appropriate and the credit union should obtain it before binding itself contractually to the project.

The Board is aware that the Office of the Comptroller of the Currency has a different view of the powers of national banks under the National Bank Act, but the Board has concluded, for both legal and safety and soundness reasons, that FCUs may not lease real estate to unrelated third parties indefinitely. As noted above, the acquisition of real estate and other fixed assets must support the provision of financial services to credit union members and the Board believes the rule provides significant and sufficient flexibility for FCUs in how they address any excess capacity they may have in fixed assets they acquire.

Fixed Asset Limitation

The current rule limits an FCU's fixed assets to five percent of shares and retained earnings. Credit unions eligible for the RegFlex Program are exempt from this limitation and there is a waiver process that other credit unions may use to avoid the five percent limitation.

A few commenters are concerned with the proposed rule's clarification that credit unions that lose their eligibility for the regulatory flexibility program must again comply with the fixed asset rule's five percent limitation. One commenter suggests that a credit union that loses its status have up to five years to dispose of fixed assets, citing a similar time frame in the rule for disposition of abandoned premises. Another commenter suggests that credit unions with less than 9% net worth should have their RegFlex Program status extended for purposes of compliance with the fixed asset limitation even if they lose their RegFlex status for other purposes. One commenter suggests that NCUA apply the 5% limit on fixed assets to credit unions that have a 7% or less net worth ratio, and that NCUA modify its rule to increase the limit in direct proportion to the amount that the net worth ratio exceeds 7%. Another commenter believes the ratio of fixed assets to a combination of deposits and capital is not a meaningful test of prudent management.

In addressing these comments, the Board first wishes to clarify a statement made in the preamble of the proposed rule. The preamble stated that an FCU eligible for the RegFlex Program with fixed assets exceeding five percent of shares and retained earnings and that subsequently loses its RegFlex eligibility must either reduce its fixed asset holdings below the five percent level or obtain a waiver. The RegFlex Program regulation, however, has a grandfather provision that states:

> Any action by the credit union under the RegFlex authority will be grandfathered. Any actions subsequent to losing the RegFlex authority must meet NCUA's regulatory requirements. This does not diminish NCUA's authority to require a credit union to divest its investments or assets for substantive safety and soundness reasons.

12 CFR 742.8. Accordingly, an FCU that loses its RegFlex eligibility and finds itself with fixed assets exceeding five percent of shares and retained earnings does not have to divest itself of any fixed assets unless NCUA affirmatively orders it to do so for safety and soundness reasons. If the FCU wants to acquire additional fixed assets, the FCU will need a waiver from the Regional Director before the acquisition if, after acquisition, the FCU would exceed the five percent limit. The Board has amended the final rule text to reflect this more clearly.

As stated above, a few commenters request modification of the five percent limit for FCUs that lose their RegFlex eligibility. The Board does not believe these credit unions need any special variance from the five percent limit. A Regional Director has authority to grant waivers and set conditions on those waivers. For FCUs that lose RegFlex eligibility and have or want fixed assets that would put them over the five percent limit, a Regional Director has authority to establish appropriate fixed asset levels on a case-by-case basis.

D. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (those credit unions under ten million dollars in assets). NCUA believes that, under the current rule, the only burden imposed on small credit unions is the requirement to submit a waiver request if investment in fixed assets exceeds 5% of retained shares and earnings. There are presently about 4,500 small, federally-insured credit unions. Each year, only about ten of these credit unions submit a waiver request, and NCUA estimates each waiver request takes about ten hours to prepare. Accordingly, and as stated in the preamble to the proposed rule, NCUA does not believe the rule imposes a significant economic impact on a substantial number of small entities and no flexibility analysis is required. NCUA received no comments about this conclusion.

Paperwork Reduction Act

The proposed rule requested comment on the information collection requirements contained in the fixed asset rule and advised that NCUA was seeking the reinstatement of Collection of Information, FCU Ownership of Fixed Assets, Control Number 3133–0040. No comments were received. On July 7,

2004, the Office of Management and Budget (OMB) approved the reinstatement of Control Number 3133–0040, with revisions as proposed and an expiration date of July 31, 2007.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 701

Credit unions.

12 CFR Part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 23, 2004.

Mary Rupp,

Secretary of the Board.

■ Accordingly, the NCUA amends 12 CFR parts 701 and 742 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Revise § 701.36 to read as follows:

§ 701.36 FCU ownership of fixed assets.

(a) *Investment in Fixed Assets.* (1) No Federal credit union with $1,000,000 or more in assets may invest in any fixed assets if the investment would cause the aggregate of all such investments to exceed five percent of the credit union's shares and retained earnings.

(2) The NCUA may waive the prohibition in paragraph (a)(1) of this section.

(i) A Federal credit union desiring a waiver must submit a written request to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The request must describe in detail the contemplated investment and the need for the investment. The request must also indicate the approximate aggregate amount of fixed assets, as a percentage of shares and retained earnings, that the credit union would hold after the investment.

(ii) The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director might require in support of the waiver request.

(iii) The regional director will approve or disapprove the waiver request in writing within 45 days after receipt of the request and all necessary supporting documentation. If the regional director approves the waiver, the regional director will establish an alternative limit on aggregate investments in fixed assets, either as a dollar limit or as a percentage of the credit union's shares and retained earnings. Unless otherwise specified by the regional director, the credit union may make future acquisition of fixed assets only if the aggregate all of such future investments in fixed assets does not exceed an additional one percent of the shares and retained earnings of the credit union over the amount approved by the regional director.

(iv) If the regional director does not notify the credit union of the action taken on its request within 45 calendar days of the receipt of the waiver request or the receipt of additional requested supporting information, whichever occurs later, the credit union may proceed with its proposed investment in fixed assets. The investment, and any future investments in fixed assets, must not cause the credit union to exceed the aggregate investment limit described in its waiver request.

(b) *Premises Not Currently Used To Transact Credit Union Business.* (1) When a Federal credit union acquires premises for future expansion and does not fully occupy the space within one year, the credit union must have a board resolution in place by the end of that year with definitive plans for full occupation. Premises are fully occupied when the credit union, or a combination of the credit union, CUSOs, or vendors, use the entire space on a full-time basis. CUSOs and vendors must be using the space primarily to support the credit union or to serve the credit union's members. The credit union must make any plans for full occupation available to an NCUA examiner upon request.

(2) When a Federal credit union acquires premises for future expansion, the credit union must partially occupy the premises within a reasonable period, not to exceed three years. Premises are partially occupied when the credit union is using some part of the space on a full-time basis. The NCUA may waive this partial occupation requirement in writing upon written request. The request must be made within 30 months after the property is acquired.

(3) A Federal credit union must make diligent efforts to dispose of abandoned premises and any other real property not intended for use in the conduct of credit union business. The credit union must seek fair market value for the property, and record its efforts to dispose of abandoned premises. After premises have been abandoned for four years, the credit union must publicly advertise the property for sale. Unless otherwise approved in writing by the NCUA, the credit union must complete the sale within five years of abandonment.

(c) *Prohibited Transactions.* (1) Without the prior written approval of the NCUA, no federal credit union may invest in premises through an acquisition or a lease of one year or longer from any of the following:

(i) A director, member of the credit committee or supervisory committee, or senior management employee of the federal credit union, or immediate family member of any such individual.

(ii) A corporation in which any director, member of the credit committee or supervisory committee,

official, or senior management employee, or immediate family members of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(iii) A partnership, limited liability company, or other entity in which any director, member of the credit committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is a general partner, or a limited partner or entity member with an interest of 10 percent or more.

(2) The prohibition contained in paragraph (c)(1) of this section also applies to a lease from any other employee if the employee is directly involved in investments in fixed assets unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this paragraph (c) must be conducted at arm's length and in the interest of the credit union.

(d) *Regulatory Flexibility Program.* Federal credit unions that qualify for the Regulatory Flexibility Program provided for in part 742 of this chapter are exempt from the five percent limitation described in paragraph (a) of this section. For Federal credit unions eligible for the Regulatory Flexibility Program that subsequently lose eligibility:

(1) Section 742.8 of this chapter provides that NCUA may require the credit union to divest any existing fixed assets for substantive safety and soundness reasons; and

(2) The credit union may not make any new investments in fixed assets if, after the investment, the credit union's total investments in fixed assets would exceed the five percent limitation described in paragraph (a) of this section. The regional director may waive this prohibition to allow for new investments.

(e) *Definitions*—As used in this section:

(1) *Abandoned premises* means real property previously used to transact credit union business but no longer used for that purpose and real property originally acquired for future expansion for which the credit union no longer contemplates such use.

(2) *Fixed assets* means premises, furniture, fixtures and equipment.

(3) *Furniture, fixtures, and equipment* means all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

(4) *Investments in fixed assets* means:

(i) Any investment in improved or unimproved real property which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of all capital and operating lease payments on fixed assets, without discounting commitments for future payments to present value; and

(iv) Any investment in furniture, fixtures and equipment.

(5) *Immediate family* member means a spouse or other family members living in the same household.

(6) *Premises* means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(7) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (*e.g.*, Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(8) *Shares* means regular shares, share drafts, share certificates, other savings.

(9) *Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by management or the Administration.

PART 742—REGULATORY FLEXIBILITY PROGAM

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C 1756 and 1766.

■ 4. Revise § 742.4(a) to read as follows:

§ 742.4 From what NCUA regulations will I be exempt?

(a) RegFlex credit unions are exempt from the provisions of the following NCUA regulations without restrictions or limitations: § 701.25, § 701.32(b) and (c), § 701.36(a), § 703.5(b)(1)(ii) and (2), § 703.12(c), § 703.16(b), and § 723.7(b) of this chapter.

* * * * *

[FR Doc. 04–21757 Filed 9–28–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–126–AD; Amendment 39–13808; AD 2004–20–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This amendment requires a detailed inspection of the wing leading edge de-icer boots to determine if they comply with certain patch limits in the critical zone; and corrective action, if necessary. This action is necessary to prevent reduced aerodynamic smoothness of the wing leading edge de-icer boots and possible reduced stall margin, which could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning. This action is intended to address the identified unsafe condition.

DATES: Effective November 3, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York, 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes was published in the **Federal Register** on December 18, 2003 (68 FR

70469). That action proposed to require a detailed inspection of the wing leading edge de-icer boots to determine if they comply with the patch size and/or patch number limits in the critical zone as defined in the aircraft maintenance manual; and corrective action, if necessary.

Comments

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

Request To Reference New Temporary Revisions

One commenter, an airplane operator, states that the proposed rule requires inspections using limits that were published in the aircraft maintenance manual (AMM) in October 2001. The commenter notes that these limits have all been revised, and now all have revision dates in 2003. In addition, the commenter states that if the new limits are not included in the proposed rule, then operators would be required to find and re-insert the older data into the AMM, which would negate two years of progress in maintaining the leading edge de-icer boots.

We infer that the commenter is requesting that we use the revisions that were published in 2003. We partially agree with the commenter's request. We have not revised paragraph (a) of the final rule to include the new AMM revisions because another suggestion by the same commenter (*see* "Request to Insert Limits Directly Into Final Rule") makes including a reference to these revisions in that paragraph unnecessary. However, we have listed these revisions in new Table 3 of new paragraph (c)(3) of the final rule (*see* "Explanation of New Paragraph (c)(3) of the Final Rule"). In addition, because the requirements in the new revisions are less restrictive, those operators who have complied with the limits published in the 2001 revisions are still compliant with the intent of the final rule. Therefore, we have added new Table 4 and new paragraph (e) to the final rule that gives credit to operators who have accomplished the required actions in accordance with the 2001 revisions of the AMM.

Request To Insert Limits Directly Into Final Rule

The same commenter suggests that, rather than referencing the AMMs for the necessary limits in paragraph (a) of the proposed rule, the FAA insert the necessary limits directly into paragraph (a). The commenter states that the chapters of the AMM referenced in paragraph (a) of the proposed rule contain significantly more information than apply to the patch limits that affect the stall margin. The commenter further states that the limits can be addressed concisely and, therefore, proposes that we specify the actual acceptance criteria in the proposed rule. The commenter states that this would allow operators to revise the AMMs as necessary to provide current information, yet would still mandate the limits that are required. The commenter also suggests that if paragraph (a) is changed as suggested, all references to the AMM in the proposed rule be changed to refer to paragraph (a).

We agree with the commenter's request to change paragraph (a) of the final rule and all references to it in the final rule for the stated reasons. Paragraph (a) has been revised to more clearly define the term, "patch limits" and to specify those specific limits. Additionally, all references to the AMM have been changed to refer to paragraph (a). We also have revised the Summary of the final rule to remove the reference to the limits in the critical zone "as defined in the AMM."

Request To Allow Ferry Flights

The same commenter requests that we add a new paragraph to the final rule regarding ferry flights. The proposed paragraph would allow operators of any airplane that has de-icer boots that do not meet the AMM limits to ferry the airplane to a location where repairs can be made, provided the airplane is operated under the limits in Table 2 of the proposed rule. We infer that the operator would like the flexibility to move airplanes to convenient locations for repair without the need to request a special flight permit.

We partially agree with the commenter's request to add a paragraph regarding ferry flights to the final rule. On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to special flight permits for ferry flights. As stated in 14 CFR 39.23: "[T]he operations specifications giving some operators authority to operate include a provision that allow(s) them to fly their aircraft to a repair facility to do the work required by an airworthiness directive. If you do not have this authority, the local Flight Standards District Office of FAA may issue you a special flight permit unless the airworthiness directive states otherwise. To ensure aviation safety, FAA may add special requirements for operating your aircraft to a place where the repairs or modifications can be accomplished. FAA may also decline to issue a special flight permit in particular cases if we determine you cannot move the aircraft safely." If an operator does not have the specified authority and requires a special flight permit, we will evaluate any request for a special flight permits on a case by case basis at the time of the request. We do not find it necessary to change the final rule in this regard.

Request To Address Varying Levels of Degradation

Another commenter is concerned about varying levels of degradation of the de-icer boots in the affected fleet of airplanes. The commenter states that there may be airplanes in operation that do not exceed the limits in the proposed rule, but still have leading edge de-icer boots that are in a state of repair that may degrade the aerodynamic performance of the wing more than other airplanes with less damage.

We infer that the commenter is requesting that we revise the proposed rule to address airplanes that carry varying levels of degradation. We do not agree. The limits in the final rule address the worst-case patch size and patch limits in the wing critical zone. In devising these limits, we assessed the amount of damage that is acceptable for safe flight without the performance penalties cited in Table 2 of this AD. These limits take into account the airplane aerodynamic characteristics and the smoothness of the boots. We have not changed the final rule in this regard.

Request To Clarify Applicability of Performance Penalties

The same commenter states that it is unclear if the performance penalties cited in Table 2 of the proposed rule are to be included only in the airplane flight manuals (AFM) of airplanes that have boot patches that exceed the patch-number limits, or if the penalties will be applicable to all Model DHC–8 airplanes in a given operator's fleet until all of the proposed inspections and replacements are completed.

From these statements, we infer that the commenter is requesting that we clarify the applicability of the performance penalties listed in Table 2 of the proposed rule. We do not agree that is necessary to change the applicability of the final rule to make this clarification. As stated in paragraph (c) of the final rule, the performance penalties apply only to airplanes that require corrective actions. Airplanes that require corrective actions are those

that have boot patches that exceed the limits specified in the AMM. We have not changed the final rule in this regard. However, we have clarified paragraphs (c) and (c)(1) of the final rule based on the addition of a new paragraph (c)(3) to the final rule. These changes are described below in "Explanation of New Paragraph (c)(3) of the Final Rule" and "Explanation of Clarifications Made in Paragraphs (c) and (c)(1) of the Final Rule."

Request To Reduce Compliance Time for Replacements

The same commenter requests that we reduce the 24-month compliance time replacing the wing de-icer boots, which is specified in paragraph (c)(2) of the proposed rule. The commenter states that a 24-month compliance time could allow some airplanes to be exposed to icing conditions for up to three icing seasons.

We do not agree with the request for a shorter compliance time in paragraph (c)(2) of the final rule. In developing the proposed compliance time, we considered the fact that there have been no occurrences of stall problems in the past, and that an airplane that requires corrective action is bound to the performance penalties in Table 2 of the final rule during this 24-month period. We determined that the compliance is appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet, and the availability of required modification parts. We have not changed the final rule in this regard.

Request for Ongoing Monitoring Program

The same commenter requests that there be a clearly delineated ongoing program included in the proposed rule to monitor the number and size of patches on the new boots in order to stay in compliance with AMM limits. The commenter is concerned that the proposed rule is not clear about how operators should monitor the number and size of boot patches on the new boots after replacement, and still stay in compliance with the AMM limits.

We do not agree that it is necessary to delineate a monitoring program. Paragraph (d) of the final rule states that "as of the effective date of this AD, no person may install—on any airplane—a de-icer boot patch in the critical zone of the wing de-icer boots that exceeds the patch limits specified in paragraph (b) of this AD." Paragraph (d) of this AD is intended to prevent the installation of any patches beyond the specified limits. Therefore, after the boot replacements have been made, it is unnecessary to institute an ongoing monitoring program. We have not changed the final rule in this regard.

Conclusion

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

Explanation of New Paragraph (c)(3) of the Final Rule

Paragraph (c)(3) of the final rule gives operators two methods to choose from for replacing the de-icer boots:

- In accordance with a method approved by either the Manager, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office; or
- In accordance with a method approved by Transport Canada Civil Aviation (or its delegated agent).

The paragraph further states that the applicable chapter of the AMM referenced in Table 3 of paragraph (c)(3) of the final rule is "one approved method."

We find that allowing operators to accomplish the actions according to one of the cited methods will not impose additional burden for operators to comply with the actions in the AD.

Explanation of Clarifications Made in Paragraphs (c) and (c)(1) of the Final Rule

Adding paragraph (c)(3) to this final rule made it necessary to clarify the statements in paragraphs (c) and (c)(1) of the final rule. Paragraph (c) of the final rule now specifically requires operators of airplanes that require corrective actions to do the actions in paragraphs (c)(1) and (c)(2). Paragraph (c)(1) of the final rule now also refers to airplanes that have findings that exceed the patch limits in accordance with paragraph (b)(2) of the final rule.

Cost Impact

We estimate that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $26,000, or $130 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–20–03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13808. Docket 2002–NM–126–AD.

Applicability: All Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced aerodynamic smoothness of the wing leading edge de-icer boots and possible reduced stall margin, which could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning; accomplish the following:

Critical Zone Limits and Patch Limits

(a) For the purposes of this AD, the "critical zone" and "patch limits" are defined in accordance with paragraphs (a)(1) and (a)(2) of this AD.

(1) The wing "critical zone" is the area of the leading edge assemblies that represents 3% of the chord. The critical zone may be found by measuring from the aft edge of a leading edge assembly, going forward on the upper surface and lower surface. The measurements identify the aft limits of the critical zone, as shown in Table 1 of this AD.

TABLE 1.—LIMITS OF CRITICAL ZONE

[In inches]

Spanwise region	Measured along lower surface	Measured along upper surface
YW63.00–YW139.00	13.0	13¼
YW202.00–YW288.00	10¼	10½
YW288.00–YW326.00	9½	9¾
YW326.00–YW405.00	8.0	8¼
YW405.00–YW790.00	61/2	6¾
YW490.00–YW520.00 (series 300 only)	6¼	6½

(2) "Patch limits" regarding the number and size of patches are defined as follows:

(i) Three small 1¼ × 2½ inch (3.17 × 6.35 centimeters (cm)) patches for each 12-inch square (929.0 square cm).

(ii) Two medium 2½ × 5 inch (6.35 × 12.70 cm) patches for each 12-inch square.

(iii) One large 5 × 10 inches (12.70 × 25.40 cm) patch for each 12-inch square.

(3) "Patch limits" regarding the number or total percentage of patches that may be concentrated together in one area of the wing de-icer boot are defined as follows: The spanwise length of each patch in the critical zone, added together, may be no greater than 62.5% of the total length of the boot. A patch is considered to be in the critical zone if any part of the patch is in the critical zone. Patches may be concentrated together in one area of the boot as long as one patch is not applied over part of another patch; patches may not overlap.

Detailed Inspection

(b) Within 60 days after the effective date of this AD: Perform a detailed inspection of the wing leading edge de-icer boots to determine if the de-icer boots comply with the patch limits in the wing critical zone as defined in paragraph (a) of this AD.

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

(1) If all de-icer boots are within the patch limits in the critical zone, no further action is required by this paragraph.

(2) If any de-icer boot exceeds the patch limits in the critical zone, accomplish the corrective actions required by paragraph (c) of this AD.

Corrective Actions

(c) For airplanes that require corrective actions, as described in paragraph (b)(2) of this AD, do the actions in paragraphs (c)(1) and (c)(2) of this AD.

(1) Before further flight after the finding of any de-icer boot that exceeds the patch limits per paragraph (b)(2) of this AD: Insert the contents of Table 2 of this AD in the Limitations Section of the aircraft flight manual (AFM) and advise flightcrews to comply with the performance penalties in Table 2 of this AD.

(2) Within 24 months after the effective date of this AD, replace all wing de-icer boots that exceed the patch limits in the critical zone as defined in paragraph (a) of this AD, with new de-icer boots, per paragraph (c)(3) of this AD. Remove the contents of Table 2 of this AD from the AFM, and terminate the requirements to comply with the performance penalties after all replacements are accomplished.

TABLE 2.—PERFORMANCE PENALTIES

AFM sections	AFM limits with de-ice boot patch limits exceeded (**Note:** Flap settings as applicable to aircraft model)
T/O Speed: Sub-Section 5–2:	
V_1, V_r & V_2	Add: 5 kt (flap 0°); 5 kt (flap 5°); 5 kt (flap 10°); 5 kt (flap 15°).
Final T/O Climb Speed	Add: 5 kt (flap 0°).
T/O WAT Limit: Sub-Section 5–3:	
Note: Weight reduction not required when limited by maximum structural weight.	Subtract: 18 kg, 400 lb. (flap 0°); 90 kg, 200 lb. (flap 5°); No change (flap 10°); No change (flap 15°).
T/O Climb: Sub-Section 5–4:	
1st Seg. Gradient	Subtract: 0.008 (flap 0°); 0.004 (flap 5°); 0.004 (flap 10°); 0.004 (flap 15°).
2nd Seg. Gradient	Subtract: 0.005 (flap 0°); 0.002 (flap 5°); 0.002 (flap 10°); 0.002 (flap 15°).
Final Seg. Gradient	Subtract: 0.009 (flap 0°).
T/O Field Length: Sub-Section 5–5:	
TOR, TOD & ASD	Add: 16% (flap 0°); 16% (flap 5°); 16% (flap 10°); 16% (flap 15°).
Net T/O Flight Path: Sub-Section 5–6:	
Ref Gradient	Subtract: 0.005 (flap 0°); 0.002 (flap 5°); 0.002 (flap 10°); 0.002 (flap 15°).

TABLE 2.—PERFORMANCE PENALTIES—Continued

AFM sections	AFM limits with de-ice boot patch limits exceeded (**Note:** Flap settings as applicable to aircraft model)
4th Seg. Net Gradient	Subtract: 0.012 (flap 0°).
Flap Retraction Initiation Speed	Add: 5 kt (flap 5°); 5 kt (flap 10°); 5 kt (flap 15°).
Enroute Climb Data: Sub-Section 5–7:	
Enroute Climb Speed	Add: 5 kt.
Net Climb Gradient	Subtract: 0.004.
OEI-Climb Ceiling	Subtract: 1,200 ft.
Landing Speed. Sub-Section 5–8:	
Approach, Go-around & Vref	Add: 5 kt (flap 5°); 5 kt (flap 10°); 5 kt (flap 15°); 5 kt (flap 35°).
Landing WAT Limit: Sub-Section 5–9:	
Note: Weight reduction not required when limited by maximum structural weight.	Subtract: 860 kg, 1,900 lb.(flap 10°): 225 kg, 500 lb. (flap 15°); 180 kg, 400 lb. (flap 35°).
Landing Climb Data: Sub-Section 5–10:	
Approach Gross Climb Gradient	Subtract: 0.010 (flap 5°); 0.003 (flap 10°); 0.002 (flap 15°).
Balked Landing Gross Climb Gradient	Subtract: 0.035 (flap 10°); 0.017 (flap 15°); 0.016 (flap 35°).
Landing Field Length: Sub-Section 5–11:	Add: 23% (flap 10°); 16% (flap 15°); 10% (flap 35°).
Brake Energy: Sub-Section 5–12:	
Accel/Stop B.E	Add: 7% (flap 0°); 7% (flap 5°); 7% (flap 10°); (flap 15°).
Landing B.E	Add: 30% (flap 10°); 20% (flap 15°); 8% (flap 35°).

(3) Do the replacements described in paragraph (c)(2) of this AD per a method approved by either the Manager, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), or Transport Canada Civil Aviation (TCCA) (or its delegated agent). The applicable chapter of the applicable Bombardier Aircraft Maintenance Manual (AMM) or in the temporary revision listed in Table 3 of this AD is one approved method.

TABLE 3.—AMM REFERENCE

Model	AMM	Product support manual (PSM)	Chapter	Temporary revision (TR)	Date
DHC–8–101, –102, –103, and –106	Series 100	1–8–2	30–10–48	TR 30–35	October 28, 2003.
DHC–8–201, and –202	Series 200	1–82–2	30–12–00	TR 30–025	August 28, 2003.
DHC–8–301, –311, and –315	Series 300	1–83–2	30–10–48	TR 30–25	October 21, 2003.

Parts Installation

(d) As of the effective date of this AD, no person may install—on any airplane—a de-icer boot patch in the critical zone of the wing de-icer boots that exceeds the patch limits specified in paragraph (a) of this AD.

Actions Accomplished Previously

(e) Actions that were accomplished before the effective date of this AD per the applicable chapters of the following AMMs is acceptable for compliance with the corresponding action in this AD: DHC–8–101, –102, and –106 Series 100 AMM, PSM 1–8–2, Chapter 30–10–48, Revision 49, dated October 3, 2001; DHC–8–201, and –202 Series 200 AMM, PSM 1–82–2, Chapter 30–12–00, Revision 11, dated October 19, 2001; and Temporary Revision 30–21 to the DHC–8–301, –311, and –315 Series 300 AMM, PSM 1–83–2, Chapter 30–10–48, dated October 30, 2001.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–43, dated November 23, 2001.

Effective Date

(g) This amendment becomes effective on November 3, 2004.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21646 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18824; Airspace Docket No. 04–ACE–50]

Modification of Class D Airspace; and Modification of Class E Airspace; Joplin, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class D and Class E airspace areas at Joplin, MO. A review of the controlled airspace areas at Joplin, MO revealed noncompliance with criteria for diverse departures from Joplin Regional Airport. The review also identified other discrepancies in the legal descriptions for the Joplin, MO Class E airspace areas. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Joplin Regional Airport. It also corrects discrepancies in the legal descriptions of Joplin, MO Class D and Class E airspace areas and brings the airspace areas and legal descriptions into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 8, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the

docket number FAA–2004–18824/ Airspace Docket No. 04–ACE–50, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comment received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class D airspace area, the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Joplin, MO. An examination of controlled airspace for Joplin, MO revealed that the Class D airspace area and the Class E airspace area designated as a surface area do not comply with airspace requirements for diverse departures from Joplin Regional Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also revealed that the dimensions and descriptions of extensions to the Class E airspace area extending upward from 700 feet above the surface do not comply with FAA Order 8260.19C, Flight Procedures and Airspace.

This action expands the Joplin, MO Class D and Class E airspace area designated as a surface area from a 4.2-mile to a 4.3-mile radius of Joplin Regional Airport. It also defines the centerline of the northwest extension to the Class E airspace area extending upward from 700 feet above the surface in relation to the 318° bearing from LUNNS LOM, decreases the width of this extension from 2.6 to 1.9 miles each side of centerline and decreases the length from 7.4 to 7 miles from LUNNS LOM. Additionally, the southeast extension to the Class E airspace area extending upward from 700 feet above the surface is no longer required and is deleted from the legal description.

These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from the executing SIAPs to Joplin Regional Airport and bring the legal descriptions of the Joplin, MO Class D and Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as surface areas and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6002 and 6005 respectively of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submiting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited to the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–18824/Airspace Docket No. 04–ACE–50." The postcard will be date/time stamped and returned to commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D Joplin, MO

Joplin Regional Airport, MO
(Lat. 37°09′07″ N., long. 94°29′54″ W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.3-mile radius of Joplin Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Joplin, MO

Joplin Regional Airport, MO
(Lat. 37°09'07" N., long. 94°29'54" W.)

Within a 4.3-mile radius of Joplin Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE MO E5 Joplin, MO

Joplin regional Airport, MO
(Lat. 37°09'07" N., long. 94°29'54" W.)
LUNNS LOM
(Lat. 37°12'11" N., long 94°33'31" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Joplin Regional Airport and within 1.9 miles each side of the 318° bearing from the LUNNS LOM extending from the 6.8-mile radius of the airport to 7 miles northwest of the LOM.

* * * * *

Issued in Kansas City, MO, on September 17, 2004.

Paul J. Sheridan,

Manager, Air Traffic Division, Central Region.

[FR Doc. 04–21862 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 040713207–4207–01]

RIN 0694–AD13

India: Removal of Indian Entity and Revision in License Review Policy for Certain Indian Entities; and a Clarification; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On September 22, 2004, the Bureau of Industry and Security published a **Federal Register** document that, *inter alia,* removed an Indian entity from the Entity List and revised licensing policies for other Indian entities in the Export Administration Regulations. That notice was misprinted, containing typographical errors in the statement of licensing policy with respect to two Indian Department of Atomic Energy entities that are subject to International Atomic Energy Agency safeguards and in statements of **Federal Register** citations amending the Entity List. Additionally, the preamble in that notice should have stated that the licensing policy for the "balance of plant" portion of Indian nuclear facilities subject to International Atomic Energy Agency safeguards (Rajasthan 1 & 2 and Tarapur 1 & 2) is a presumption of approval for items not multilaterally controlled for nuclear proliferation reasons. This document corrects those errors.

DATES: This rule is effective September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Office of Exporter Services, Bureau of Industry and Security, telephone: (202) 482–0436.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, for the reasons set forth in the preamble, 15 CFR part 744 is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208, E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

§ 744.1 [Corrected]

■ 2. In Supplement No. 4 to part 744, under the country of "India", the entities "Indian Space Research Organization (ISRO) headquarters in Bangalore" and "Department of Atomic Energy Agency entities" are revised to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country/Entity	License requirement	License review policy	Federal Register citation
* * *	*	*	*
INDIA			
The following Indian Space Research Organization (ISRO) subordinate entities: —ISRO Telemetry, Tracking and Command Network (ISTRAC);. —ISRO Inertial Systems Unit (IISU), Thiruvananthapuram;. —Liquid Propulsion Systems Center; —Solid Propellant Space Booster Plant (SPROB); —Space Applications Center (SAC), Ahmadabad; —Sriharikota Space Center (SHAR); —Vikram Sarabhai Space Center (VSSC), Thiruvananthapuram.	For all items subject to the EAR having a classification other than (1) EAR99 or (2) a classification where the third through fifth digits of the ECCN are "999", *e.g.* XX999.	Case-by-case review for all items on the CCL.	63 FR 64322, 11/19/98; 65 FR 14444, 03/17/00; 66 FR 50090, 10/01/01; 69 FR 56694, 09/22/04.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country/Entity	License requirement	License review policy	Federal Register citation
The following Dpeartment of Atomic Energy entities: —Bhabha Atomic Research Center (BARC); ..... —Indira Gandhi Atomic Research Center (IGCAR); —Indian Rare Earths; ..... —Nuclear reactors (including power plants) not under International Atomic Energy Agency (IAEA) safeguards, fuel reprocessing and enrichment facilities, heavy water production facilities and their collocated ammonia plants.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98; 65 FR 14444, 03/17/00; 66 FR 50090, 10/01/01; 69 FR 56694, 09/22/04.
The following Department of Atomic Energy entities: —Nuclear reactors (including power plants) subjet to International Atomic Energy Agency (IAEA) safeguards: Tarapur (TAPS 1 & 2), Rajasthan (RAPS 1 & 2).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items. Presumption of approval for all items not multilaterally controlled for Nuclear Proliferation (NPI) reasons for use in the "balance of plant" (non-reactor-related end uses) [1] activities at nuclear facilities subject to International Atomic Energy Agency safeguards (Rajasthan 1 & 2 and Tarapur 1 & 2).	63 FR 64322, 11/19/98; 65 FR 14444, 03/17/00; 66 FR 50090, 10/01/01; 69 FR 56694, 09/22/04.

[1] "Balance of Plant" refers to the part of a nuclear power plant used for power generation (*e.g.*, turbines, controllers, or power distribution) to distinguish it from the nuclear reactor.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 04–21837 Filed 9–27–04; 11:43 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–252F]

Schedules of Controlled Substances: Placement of Alpha-Methyltryptamine and 5-Methoxy-N,N-Diisopropyltryptamine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: This final rulemaking is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) into Schedule I of the Controlled Substances Act (CSA). This action by the DEA Deputy Administrator is based on a scheduling recommendation by the Department of Health and Human Services (DHHS) and a DEA review indicating that AMT and 5-MeO-DIPT meet the criteria for placement in Schedule I of the CSA. This final rule will continue to impose the regulatory controls and criminal sanctions of Schedule I substances on the manufacture, distribution, and possession of AMT and 5-MeO-DIPT.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Christine Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: On April 4, 2003, the Deputy Administrator of the DEA published a final rule in the **Federal Register** (68 FR 16427) amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place AMT and 5-MeO-DIPT into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Deputy Administrator that the temporary scheduling of AMT and 5-MeO-DIPT was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. On March 31, 2004, the Acting Deputy Administrator published a notice of proposed rulemaking in the **Federal Register** (69 FR 16838) to place AMT and 5-MeO-DIPT into Schedule I of the CSA on a permanent basis. The temporary scheduling of AMT and 5-MeO-DIPT, which would have expired April 3, 2004, was extended to October 3, 2004 (69 FR 17034, April 1, 2004). One comment was received regarding the proposed placement of these substances into Schedule I of the CSA.

The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for AMT and 5-MeO-DIPT. The Acting Deputy Administrator submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services (DHHS). In accordance with 21 U.S.C. 811(b), the Acting Deputy Administrator also requested a scientific and medical evaluation and a

scheduling recommendation for AMT and 5-MeO-DIPT from the Acting Assistant Secretary of DHHS. On September 17, 2004, the Acting Assistant Secretary for Health recommended that AMT and 5-MeO-DIPT be permanently controlled in Schedule I of the CSA.

Alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) are tryptamine (indoleethylamine) derivatives and share several similarities with the Schedule I tryptamine hallucinogens such as alpha-ethyltryptamine (AET) and N,N-dimethyltryptamine (DMT). Several other tryptamines also produce hallucinogenic/stimulant effects and are controlled as Schedule I substances under the CSA (bufotenine, diethyltryptamine, psilocybin and psilocyn). Although tryptamine itself appears to lack consistent hallucinogenic/stimulant effects, substitutions on the indole ring and the ethylamine side-chain of this molecule result in pharmacologically active substances (McKenna and Towers, J. Psychoactive Drugs, 16: 347–358, 1984). The chemical structures of AMT and 5-MeO-DIPT possess the critical features necessary for hallucinogenic/stimulant activity. In drug discrimination studies, both AMT and 5-MeO-DIPT substitute for 1-(2,5-dimethoxy-4-methylphenyl)-aminopropane (DOM), a phenethylamine-based hallucinogen in Schedule I of the CSA. The potencies of DOM-like discriminative stimulus effects of these and several other similar tryptamine derivatives correlate well with their hallucinogenic potencies in humans (Glennon *et al.*, Eur. J. Pharmacol. 86: 453–459, 1983).

AMT, besides its full generalization to DOM, also partially mimics amphetamine and 3,4-methylenedioxymethamphetamine (MDMA) in drug discrimination tests in experimental animals. AMT increases systolic and diastolic arterial blood pressures, dilates pupils and produces strong motor stimulant effects. The behavioral effects of orally administered AMT (20 mg) in humans are slow in onset, occurring after 3 to 4 hours, and gradually subsiding after 12 to 24 hours, but may last up to 2 days in some subjects. The majority of the subjects report euphoria, stimulation, muscle tension, muscle ache, nervous tension, irritability, restlessness, dizziness, impaired motor coordination, unsettled feeling in stomach, inability to relax and sleep, and visual effects such as blurry vision, apparent movement of objects, sharper outlines, brighter colors, longer after images, and visual hallucinations. The majority of the subjects equate the effects of a 20 mg dose of AMT to those of 50 micrograms of lysergic acid diethylamide (LSD). AMT also produces dextroamphetamine-like mood elevating effects in humans (Hollister *et al.*, J. Nervous Ment. Dis., 131: 428–434, 1960; Murphree *et al.*, Clin. Pharmacol. Ther. 2: 722–726, 1961).

Similar to other classical hallucinogens, AMT binds to serotonin receptors. It also inhibits 5-HT uptake, induces catecholamine release and inhibits monoamine oxidase activity. The available experimental evidence suggests that both serotonergic and dopaminergic systems mediate behavioral effects of AMT.

5-MeO-DIPT produces pharmacological effects similar to those of several Schedule I hallucinogens. The synthesis and preliminary human psychopharmacology study on 5-MeO-DIPT was first published in 1981 (Shulgin and Carter, Comm. Psychopharmacol. 4: 363–369, 1981). According to this report, subjective effects of 5-MeO-DIPT are substantially similar to those of MDMA, 3,4-methylenedioxyamphetamine (MDA) and 4-Bromo-2,5-dimethoxyphenethylamine (2C-B). 5-MeO-DIPT is an orally active hallucinogen. Following oral administration of 6–10 mg, 5-MeO-DIPT produces subjective effects with an onset of about 20–30 minutes, a peak at about 1–1.5 hours and duration of about 3–6 hours. Subjects who have been administered 5-MeO-DIPT are talkative and disinhibited. 5-MeO-DIPT dilates pupils. High doses of 5-MeO-DIPT produce nausea, jaw clenching, muscle tension and overt hallucinations with both auditory and visual distortions. As mentioned above, 5-MeO-DIPT fully mimics the discriminative stimulus effects of DOM, a Schedule I hallucinogen. According to the discriminative stimulus studies conducted by the Drug Evaluation Committee of the College on Problems of Drug Dependence, 5-MeO-DIPT dose-dependently (0.1–3 mg/kg, IP) generalizes to LSD with a maximal response of about 70% at doses (3 mg/kg) that severely disrupted responding.

The abuse of stimulant/hallucinogenic substances in popular all night dance parties ("raves") and in other venues has been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance MDMA and its analogues, collectively known as Ecstasy, are the most popular drugs abused at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. These raves have also become venues for the trafficking and abuse of other substances in place of or in addition to "Ecstasy." AMT and 5-MeO-DIPT belong to such a group of substances.

The abuse of AMT and 5-MeO-DIPT began to spread in 1999. Since that time, these tryptamines have been encountered by law enforcement agencies in several states. These substances have been commonly encountered in tablet, capsule or powder forms. The tablet form often bears imprints commonly seen on MDMA tablets such as spider, alien head and "?" logos. These tablets also vary in colors such as pink, purple, red, and orange. The powder in capsule was also found to vary in colors such as white, off-white, gray, and burnt orange. Data from law enforcement officials indicate that 5-MeO-DIPT is often sold as "Foxy" or "Foxy Methoxy", while AMT has been sold as "Spirals" at least in one case. Data gathered from published studies indicate that these are administered orally at doses ranging from 15–40 mg for AMT and 6–20 mg for 5-MeO-DIPT.

According to the Florida Department of Law Enforcement (FDLE) report issued in 2002, the abuse by teens and young adults of AMT and 5-MeO-DIPT is an emerging problem. There have been reports of abuse of AMT and 5-MeO-DIPT at clubs and raves in Arizona, California, Florida and New York. Many tryptamine-based substances are illicitly available from United States and foreign chemical companies and from individuals through the Internet. There is also evidence of attempted clandestine production of AMT and 5-MeO-DIPT in Nevada, Virginia and Washington, DC.

According to data from the System to Retrieve Information on Drug Evidence (STRIDE), since 1999 Federal law enforcement authorities seized 34 drug exhibits and filed 14 cases pertaining to the trafficking, distribution and abuse of AMT during 1999 to 2003. The corresponding STRIDE data for 5-MeO-DIPT included 63 drug exhibits pertaining to 32 cases. AMT drug seizures included 21 capsules and 1,011.8 grams of powder, while 5-MeO-DIPT drug seizures included 12,070 tablets, 560 capsules, and 6,532.3 grams of powder. Since 2001, the National Forensic Laboratory Information System (NFLIS) registered 10 and 12 cases of AMT and 5-MeO-DIPT, respectively. AMT drug exhibits included 17 dosage units and 7.53 grams of powder, while 5-MeO-DIPT drug exhibits included 24 capsules, 3 tablets and 14.42 grams of powder.

AMT and 5-MeO-DIPT share substantial chemical and pharmacological similarities with other Schedule I tryptamine-based hallucinogens in Schedule I of the CSA. AMT shares pharmacological effects of amphetamine, a stimulant, and DOM and LSD, the Schedule I hallucinogens. AMT acts as a stimulant, produces euphoria and increases heart rate and blood pressure. The evidence suggests that 5-MeO-DIPT mimics pharmacological effects of MDMA, MDA, and 2C–B, the Schedule I hallucinogens. It also partially mimics amphetamine effects. The risks to the public health associated with the above mentioned controlled substances are well known and documented. AMT and 5-MeO-DIPT, similar to other tryptamine-or phenethylamine-based hallucinogens, through the alteration of sensory perception and judgment can pose serious health risks to the user and the general public. Tryptamine, the parent molecule of AMT and 5-MeO-DIPT, is known to produce convulsions and death in animals (Tedeschi *et al.*, J. Pharmacol. Exp. Ther. 126: 223–232, 1959). Following extensive studies on AMT as a possible antidepressant drug in 1960s, The Upjohn Company concluded that AMT is a highly toxic substance and discontinued the clinical studies on this substance. In fact, there were two recent published case reports describing the instances of emergency department admissions resulting from abuse of AMT and 5-MeO-DIPT in 2003 (Long *et al.*, Vet. Human Toxicol., 45: 149, 2003; Meatherall and Sharma, J. Anal. Toxicol., 27: 313–317, 2003). There has been at least one confirmed death caused by the abuse of AMT in Florida in 2003. The above data show that the continued, uncontrolled tablet or capsule production, distribution and abuse of AMT and 5-MeO-DIPT pose hazards to the public health and safety. There are no recognized therapeutic uses of these substances in the United States.

The DEA received one comment from an organization in response to the proposed placement of AMT and 5-MeO-DIPT into Schedule I of the CSA. This organization did not support the proposed placement of these drugs into Schedule I on the following basis: (1) They believed insufficient data exists to support placement into Schedule I as the mere use of these substances was not abuse and (2) Prohibiting the possession of these substances is a substantial infringement of the fundamental right of adults to freedom of thought. Both the DEA and the DHHS have found that sufficient scientific, trafficking and abuse data, as summarized herein, does exist to place AMT and 5-MeO-DIPT in Schedule I of the CSA on a permanent basis. As these substances have no legitimate medical use in the United States, the trafficking in, and use by individuals for the psychoactive effects they produce, is considered abuse. In addition, the control of these substances in Schedule I of the CSA does not violate any legally protected right.

Based on all the available information gathered and reviewed by the DEA and in consideration of the scientific and medical evaluation and scheduling recommendation by the Assistant Secretary of the DHHS, the Deputy Administrator has determined that sufficient data exist to support the placement of AMT and 5-MeO-DIPT into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The Deputy Administrator finds:

(1) AMT and 5-MeO-DIPT have a high potential for abuse.

(2) AMT and 5-MeO-DIPT have no currently accepted medical use in treatment in the United States.

(3) AMT and 5-MeO-DIPT lack accepted medical safety for use under medical supervision.

In accordance with 21 U.S.C. 811(h)(5), the Deputy Administrator hereby vacates the order temporarily placing AMT and 5-MeO-DIPT into Schedule I of the CSA published in the **Federal Register** on April 4, 2003.

Regulatory Requirements

With the issuance of this final order, AMT and 5-MeO-DIPT continue to be subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance, including the following:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports AMT and 5-MeO-DIPT or who engages in research or conducts instructional activities with respect to AMT and 5-MeO-DIPT or who proposes to engage in such activities must submit an application for Schedule I registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* AMT and 5-MeO-DIPT are subject to Schedule I security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75 (a) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of AMT and 5-MeO-DIPT which are distributed on or after October 29, 2004 shall comply with requirements of §§ 1302.03 –1302.07 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for AMT and 5-MeO-DIPT are established pursuant to Part 1303 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of AMT and 5-MeO-DIPT is required to keep an inventory of all stocks of the substances on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule I for AMT and 5-MeO-DIPT shall conduct an inventory of all stocks of AMT and 5-MeO-DIPT.

6. *Records.* All registrants are required to keep records pursuant to §§ 1304.03, 1304.04 and §§ 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants required to submit reports in accordance with § 1304.33 of Title 21 of the Code of Federal Regulations shall do so regarding AMT and 5-MeO-DIPT.

8. *Order Forms.* All registrants involved in the distribution of AMT and 5-MeO-DIPT must comply with the order form requirements of part 1305 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of AMT and 5-MeO-DIPT must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with AMT and 5-MeO-DIPT not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after September 29, 2004 will continue to be unlawful.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator of the DEA hereby certifies that the placement of AMT and 5-MeO-DIPT into Schedule I of the CSA will not have a significant economic impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the control of two substances with no currently accepted medical use in the United States.

Executive Order 12866

This final rule is not a significant regulatory action for the purposes of Executive Order 12866. Drug

Scheduling matters are not subject to review by the Office of Management and Budget pursuant to provisions of Executive Order 12866, section 3(d)(1).

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $114,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

■ Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and re-delegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator amends 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

■ 2. Section 1308.11 is amended by:
■ A. Redesignating existing paragraphs (d)(15) through (d)(32) as paragraphs (d)(16) through (d)(33),
■ B. Adding a new paragraph (d)(15),
■ C. Further redesignating paragraphs (d)(19) through (d)(33) as paragraphs (d)(20) through (d)(34),
■ D. Adding a new paragraph (d)(19),
■ E. Removing paragraphs (g)(3) and (g)(4) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(15) Alpha-methyltryptamine (other name: AMT)—7432.

* * * * *

(19) 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT) —7439.

* * * * *

Dated: September 23, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21755 Filed 9–28–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13–04–039]

RIN 1625–AA08

Special Local Regulations for Marine Events, Strait Thunder Hydroplane Races, Port Angeles, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Strait Thunder Hydroplane Races held on the waters of Port Angeles Harbor, Port Angeles, Washington. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 9 a.m. on October 1, 2004 through 5 p.m. on October 3, 2004 Pacific Daylight Time.

ADDRESSES: Documents indicated in this preamble as being available in the docket are port of docket CGD13–04–039 and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jessica Hagen at (206) 217–6231.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The hydroplane race poses several dangers to the public including excessive noise, objects falling from any accidents, and hydroplanes racing at high speeds in proximity to other vessels. Accordingly, prompt regulatory action is needed in order to provide for the safety of spectators and participants during the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. The Coast Guard finds that good cause exists for not publishing an NPRM, because doing so would be contrary to the interests of public safety because immediate action is necessary to protect the public.

Under 5 U.S.C.(d)(3), for the same reasons cited above, the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Discussion of Rule

This rule will create two regulated areas, a race area and a viewing area. These regulated areas restrict the movement of spectator, non-participant, vessels during hydroplane races. These regulated areas assist in minimizing the inherent dangers associated with hydroplane races. These dangers include, but are not limited to, excessive noise, race craft traveling at high speed in close proximity to one another and to spectator craft, and the risk of airborne objects from any accidents associated with hydroplanes. In the event that hydroplanes require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public safety requires these regulations to

provide for the safety of life on the navigable waters.

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. This expectation is based on the fact that the regulated area established by this rule encompasses an area near Port Angeles Harbor, not frequented by commercial navigation. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the hydroplanes to race. This rule is effective from 9 a.m. on October 1, 2004 through 5 p.m. on October 3, 2004 Pacific Daylight Time. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Port Angeles Harbor during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42U.S.C. 4321–4370f), and have concluded that there are not 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. Under figure 2–1, paragraph (34)(h), of the Instruction, and "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100, as follows:

PART 100—MARINE EVENTS [AMENDED]

■ 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. From 9 a.m. on October 1 through 5 p.m. on October 3, 2004, add temporary § 100.T13–002 to read as follows:

§ 100.T13–002 Special Local Regulations, Strait Thunder Hydroplane Races, Port Angeles, WA.

(a) *Regulated areas.* (1) The *race area* encompasses all waters located inside of a line connecting the following points located near Port Angeles, Washington: Point 1: 48°07′24″ N, 123°25′32″ W; Point 2: 48°07′26″ N, 123°24′35″ W; Point 3: 48°07′12″ N, 123°25′31″ W; Point 4: 48°07′ 15″ N, 123°24′34″ W. [Datum: NAD 1983].

(2) The *spectator area* encompasses all waters located within a box bounded by the following points located near Port Angeles, Washington: Point 1: 48°07′32″ N, 123°25′33″ W; Point 2: 48°07′29″ N, 123°24′36″ W; Point 3: 48°07′24″ N, 123°25′32″ W, Point 4: 48°07′26″ N, 123°24′35″ W. [Datum: NAD 1983].

(b) *Definitions.* (1) For the purposes of this section, *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Port Angeles. The Coast Guard Patrol Commander is empowered to control the movement of vessels in the regulated area.

(2) For the purposes of this section, *Patrol Vessel* means any Coast Guard vessel, Coast Guard Auxiliary vessel, or other federal, state or local law enforcement vessel.

(c) *Special Local Regulations.* (1) From 9 a.m. on October 1, 2004 through 5 p.m. on October 3, 2004, non-participant vessels are prohibited from entering the race area unless authorized by the Coast Guard Patrol Commander.

(2) Spectator craft may remain in the designated spectator area but must follow the directions of the Coast Guard Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds that will create a minimum wake, and not exceed seven knots. The maximum speed may be reduced at the discretion of the Coast Guard Patrol Commander.

(3) A succession of sharp, short signals by whistle or horn from a Patrol Vessel will serve as a signal to stop. Vessels signaled must stop and comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Coast Guard Patrol Commander may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

Dated: September 22, 2004.

J.M. Garrett,

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

[FR Doc. 04–21846 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Use of Best Available Science in Implementing Land Management Plans

AGENCY: Forest Service, USDA.

ACTION: Final rule; Interpretation.

SUMMARY: The Department of Agriculture is adopting this interpretative rule to clarify the intent of the transition section of the planning regulations regarding the consideration and use of the best available science to inform project decision making that implements a land management plan and, as appropriate, plan amendments.

DATES: This interpretative rule is effective September 29, 2004.

ADDRESSES: Written inquiries about this interpretative rule may be sent to the Director, Ecosystem Management Coordination Staff, USDA Forest Service, 1400 Independence Ave., SW., Mailstop Code 1104, Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205–1019; Fax (202) 205–1012.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is clarifying the effect of the transition provisions of the National Forest System land and resource management planning regulation at 36 CFR part 219 (65 FR 67514) adopted on November 9, 2000 (2000 planning rule). The transition provisions govern National Forest System planning during the transition period originally set forth in the 2000 planning rule and amended by interim final rules promulgated on May 17, 2001 (66 FR 27552), and May 20, 2002 (67 FR 35431).

Section 219.35(a) of the transition provisions requires the responsible official, during the transition period, to consider the best available science in implementing and, if appropriate, in amending existing plans. Section 219.35(b) currently allows the responsible official, during this period, to elect to prepare plan amendments and revisions using the provisions of the 1982 planning rule. Section 219.35(d) currently exempts projects implementing land and resource management plans from compliance with the substantive provisions of the 2000 planning regulation during the transition period.

The transition period began on November 9, 2000. The May 17, 2001 and May 20, 2002 interim final rules amended the 2000 planning rule to extend the transition period until final adoption of the proposed revision to the 2000 planning rule published on December 6, 2002 (67 FR 72770). During this period, while the substantive provisions of the 2000 rule are not binding, the transition provisions remain in effect.

Considerable uncertainty has arisen regarding the impact of the 2000 planning rule and the transition provisions. Some courts have properly determined the 1982 planning rule is no longer in effect. Others, however, have enforced its provisions. See, e.g., *Forest Watch* v. *United States Forest Service*, 322 F.Supp. 2d 522 (D. Vt. 2004) ("Applicable regulations require the Forest Service to "consider the best available science" when implementing the forest plan," citing 36 CFR 219.35(a)); *Clinch Coalition* v. *Damon*, 316 F.Supp. 2d 364, 381 (W.D.Va. 2004) (suggesting that the 1982 planning rule could not be applied to a 2001 decision,

yet considering the decision under both 1982 planning rule and 2000 planning rule); *Chattooga Conservancy* v. *USFS and Georgia Transmission Corporation*, 2:03–CV–0101 (March 3, 2004) (1982 planning rule provision "eliminated when the National Forest System Land and Resource Management Planning rule was amended in November of 2000."); *Shawnee Trail Conservancy* v. *Nicholas*, Case No. 02–cv–4065–JPG (S.D. Ill.) (June 30, 2004) ("On November 9, 2000, the Department of Agriculture made wholesale changes to the relevant regulations, making prior citations obsolete."). This uncertainty has affected the ability of the Forest Service to utilize fully the provisions of § 219.35 paragraph (a) to consider the best science available in plan amendments and project decision making. For example, while population data have been held to be required for management indicator species under the 1982 rules, other tools often can be useful and more appropriate in predicting the effects of projects that implement a land management plan, such as examining the effect of proposed activities on the habitat of specific species; using information identified, obtained, or developed through a variety of methods, such as assessments, analysis, and monitoring results; or using information obtained from other sources such as State fish and wildlife agencies and organizations such as The Nature Conservancy. The purpose of this interpretative rule is to clarify that, both for projects implementing plans and plan amendments, paragraph (a)'s mandate to use the best available science applies.

The transition provisions as originally enacted, and now twice amended, explicitly refer to the 1982 planning rule as the rule "in effect prior to November 9, 2000." At the same time, given the extension of the effective date of paragraph (d), within which site-specific decisions must comply with the 2000 planning rule (68 FR 53294), it is clear that site-specific decisions entered into during the transition period are not to comply with the substantive provisions of the 2000 planning rule. This interpretative rule clarifies that until a new final rule is promulgated, the transition provisions of the 2000 planning rule, as amended by the May 2002 interim final rule remain in effect, including the requirement of § 219.35 paragraph (a) of the transition provisions that responsible officials consider the best available science in implementing national forest land management plans and, as appropriate, plan amendments. Pursuant to paragraph (b), the provisions of the 1982 planning rule may continue to be used only for plan amendments and revisions upon election of the responsible official. Appropriate plan amendments and projects proposed during the transition period should be developed considering the best available science in accordance with § 219.35 paragraph (a).

Conclusion

Misunderstandings have arisen concerning the law to be applied to site-specific projects and plan amendments decided during the transition period. To clarify the intent of § 219.35, the Department is adopting this interpretative rule.

This rulemaking consists of an interpretative rule and is issued by the Department to advise the public of the Department's preexisting construction of one of the rules it administers—that is, 36 CFR 219.35, in the context of National Forest System land and resource management planning. See, *e.g., Shalala, Secretary of Health and Human Services* v. *Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995). Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the **Federal Register**.

Regulatory Certifications

Regulatory Impact

It has been determined that this is not an economically significant rule. This interpretative rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rulemaking will not interfere with an action taken or planned by another agency. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rulemaking is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Moreover, this rulemaking has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is therefore certified that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Act. This rule will not impose record keeping requirements; will not affect small entities' competitive position in relation to large entities; and will not affect small entities' cash flow, liquidity, or ability to remain in the market.

Environmental Impact

This rulemaking has no direct, indirect, or cumulative effect on the environment, but merely clarifies the intent of the Department concerning the consideration of the best available science to inform decision making that implements land management plans. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." Based on the nature and scope of this rulemaking, the Department has determined that the interpretative rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

No Takings Implications

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the rule will not pose the risk of a taking of private property, as the interpretative rule is limited clarification of the intent of the transition procedures in the November 9, 2000, planning rule.

Energy Effects

This rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule (1) does not preempt State and local laws and regulations that conflict with or impede its full implementation; (2) has no retroactive effect; and (3) will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C.

1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and Tribal governments and the private sector. This rule will not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Federalism

The Department has considered this rule under the requirements of Executive Order 13132, Federalism. The Department has determined that the rule conforms with the federalism principles set out in this Executive order; will not impose any significant compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with Tribes is not required.

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirement as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320, Controlling Paperwork Burden on the Public, do not apply.

Government Paperwork Elimination Act Compliance

The Department is committed to compliance with the Government Paperwork Elimination Act (44 U.S.C. 3504), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Forest and forest products, Indians, Intergovernmental relations, National Forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is amended as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

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

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

■ 2. Add an appendix at the end of § 219.35 to read as follows:

* * * * *

Appendix B to § 219.35

Interpretative Rule Related to Paragraphs 219.35(a) and (b)

The Department is clarifying the intent of the transition provisions of paragraphs (a) and (b) of this section with regard to the consideration and use of the best available science to inform project decisionmaking that implements a land management plan as follows:

1. Under the transition provisions of paragraph (a), the responsible official must consider the best available science in implementing and, if appropriate, in amending existing plans. Paragraph (b) allows the responsible official to elect to prepare plan amendments and revisions using the provisions of the 1982 planning regulation until a new final planning rule is adopted. A proposed rule to revise the November 9, 2000, planning regulations was published in the **Federal Register** on December 6, 2002 (67 FR 72770). A new final rule has not been promulgated.

2. Until a new final rule is promulgated, the transition provisions of § 219.35 remain in effect. The 1982 rule is not in effect. During the transition period, responsible officials may use the provisions of the 1982 rule to prepare plan amendments and revisions. Projects implementing land management plans must comply with the transition provisions of § 219.35, but not any other provisions of the 2000 planning rule. Projects implementing land management plans and plan amendments, as appropriate, must be developed considering the best available science in accordance with § 219.35(a). Projects implementing land management plans must be consistent with the provisions of the governing plan.

Dated: September 24, 2004.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 04–21844 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–11–P

POSTAL SERVICE

39 CFR Parts 3, 4, and 6

Bylaws of the Board of Governors

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On September 14, 2004, the Board of Governors of the United States Postal Service adopted a number of amendments to its Bylaws. These amendments changed the quorum of Governors required to vote on a recommended decision of the Postal Rate Commission, reserved the election of the Board's Vice Chairman to the Governors, and altered the rules for scheduling meetings. Consequently, the Postal Service hereby publishes this final rule.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000; (202) 268–4800.

SUPPLEMENTARY INFORMATION: This document publishes amendments to parts 3, 4, and 6 of 39 CFR, amending the Bylaws of the Board of Governors of the United States Postal Service. The Board amended parts 3 and 4 to reserve the election of the Board's Vice Chairman to a vote of the Governors, rather than a vote of the entire Board. In part 6, the Board changed the procedure for establishing an annual schedule of meetings to conform to current practice. The Board also amended part 6 to change from 5 to 4 the number of Governors required for a quorum to vote on a recommended decision of the Postal Rate Commission.

List of Subjects in 39 CFR Parts 3, 4, 6

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.

■ Accordingly, parts 3, 4, and 6 of 39 CFR are amended as follows:

PART 3—[AMENDED]

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

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 414, 416, 1003, 2802–2804, 3013; 5 U.S.C. 552b(g), (j); Inspector General Act, 5 U.S.C. app.; Pub. L. 107–67, 115 Stat. 514 (2001).

§ 3.3 [Amended]

■ 2. Amend § 3.3 by removing and reserving paragraph (a).

■ 2.a. Amend § 3.4 by revising paragraph (c) to read as follows:

§ 3.4 Matters reserved for decision by the Governors.

* * * * *

(c) Election of the Chairman and Vice Chairman of the Board of Governors, 39 U.S.C. 202(a).

* * * * *

PART 4—[AMENDED]

■ 3. The authority citation for part 4 continues to read as follows:

Authority: 39 U.S.C. 202–205, 401(2), (10), 402, 1003, 3013.

§ 4.2 [Amended]

■ 4. Amend § 4.2 by removing the words "The Vice Chairman is elected by the Board" and adding the words "The Vice Chairman is elected by the Governors" in their place.

PART 6—[AMENDED]

■ 5. The authority citation for part 6 continues to read as follows:

Authority: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b(e), (g).

§ 6.1 [Amended]

■ 6 Amend § 6.1 by revising the first sentence to read as follows:

§ 6.1 Regular meetings, annual meeting.

The Board shall meet regularly on a schedule established annually by the Board. * * *

§ 6.6 [Amended]

■ 7. Amend § 6.6(f) by removing the numeral "5" and adding the numeral "4" in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–21557 Filed 9–28–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0255; FRL–7681–3]

Fenamidone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-) in or on garlic, bulb; garlic, great headed; grape (imported); leek; onion, dry bulb; onion, green; onion, welsh; shallot, bulb; shallot, fresh leaves; tomato; tomato, paste; tomato, puree; vegetable, cucurbit, group 09; vegetable, tuberous and corm, subgroup 01C and establishes tolerances for combined residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl) in or on fat (beef, goat, and sheep); meat (beef, goat, and sheep); meat byproducts (beef, goat, and sheep); milk; wheat, grain; wheat forage; wheat, hay; and wheat, straw. Wheat tolerances are being established for inadvertent residues in/on a rotated crop. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

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

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0255. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6742; e-mail address: *mcneilly.dennis@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; 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 January 28, 2004 (69 FR 4138–4143) (FRL–7337–3), 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 1F6300) by Bayer CropScience, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This amended the petition previously

announced in the **Federal Register** of January 4, 2002 (67 FR 592–597) (FRL–6812–2) by including raw agricultural commodity subgroup 01C. The petition requested that 40 CFR 180.579 be amended by establishing tolerances for combined residues of the fungicide fenamidone, and its metabolites in or on the raw agricultural commodities: Potato, 0.05 parts per million (ppm), tomato, 1.0 ppm; tomato paste, 3.5 ppm, tomato puree, 3.5 ppm, bulb vegetable crop group, 1.5 ppm; cucurbit crop group, 0.1 ppm; head lettuce, 15.0 ppm; leaf lettuce, 20.0 ppm; wheat grain, 0.05 ppm, wheat straw, 0.5 ppm; wheat forage, 0.5 ppm, and wheat hay, 0.5 ppm. Tolerances were also proposed for fenamidone and its metabolite RPA 410193 on imported wine grapes at 0.5 ppm. Agency review of the residue data indicates that the following tolerance levels are appropriate: Fenamidone, 4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-, in or on garlic, bulb at 0.20 ppm; garlic, great headed at 0.20 ppm; grape (imported) at 1.0 ppm, leek at 1.5 ppm, onion, dry bulb at 0.20 ppm; onion, green at 1.5 ppm; onion, welsh at 1.5 ppm; shallot, bulb at 0.20 ppm; shallot, fresh leaves at 1.5 ppm; tomato at 1.0 ppm; tomato, paste at 2.2 ppm; tomato, puree at 2.0 ppm; vegetable, cucurbit, group 09 at 0.15 ppm and vegetable, tuberous and corm, subgroup 01C at 0.02 ppm and also for the combined residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl) in or on fat (beef, goat, and sheep) at 0.10 ppm; meat (beef, goat, and sheep) at 0,10 ppm, meat byproducts (beef, goat, and sheep) at 0.10 ppm; milk at 0.02 ppm; wheat forage at 0.15 ppm; wheat, grain at 0.10 ppm; wheat, hay at 0.50 ppm; wheat, straw at 0.35 ppm. The Agency is establishing tolerances for animal tolerances based on review of the residue data and evaluation of food animal diets, which could include wheat forage and hay. That notice included a summary of the petition prepared by Bayer CropScience, 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 (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 fenamidone, in or on garlic, bulb at 0.20 ppm; garlic, great headed at 0.20 ppm; grape (imported) at 1.0 ppm, leek at 1.5 ppm, onion, dry bulb at 0.20 ppm; onion, green at 1.5 ppm; onion, welsh at 1.5 ppm; shallot, bulb at 0.20 ppm; shallot, fresh leaves at 1.5 ppm; tomato at 1.0 ppm; tomato, paste at 2.2 ppm; tomato, puree at 2.0 ppm; vegetable, cucurbit, group 09 at 0.15 ppm and vegetable, tuberous and corm, subgroup 01C at 0.02 ppm and also for the combined residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl) in or on fat (beef, goat, and sheep) at 0.10 ppm; meat (beef, goat, and sheep) at 0,10 ppm, meat byproducts (beef, goat, and sheep) at 0.10 ppm; milk at 0.02 ppm; wheat forage at 0.15 ppm; wheat, grain at 0.10 ppm; wheat, hay at 0.50 ppm; wheat, straw at 0.35 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 fenamidone are discussed in the **Federal Register** of September 27, 2002 (67 FR 7196–7198). There have been no changes in the toxicological profile since that **Federal Register** notice and therefore, the Agency will not repeat the entire table in this final rule but refers to the original document.

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. A 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 fenamidone used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENAMIDONE 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 (General population including infants and children)	NOAEL = 125 milligram/kilogram/day (mg/kg/day) UF = 1,000 Acute RfD = 0.13 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD (0.13)/Special FQPA SF 1X = 0.13 mg/kg/day	Acute Neurotoxicity Study in Rats LOAEL = 500 mg/kg/day based on urination, staining/soiling of the anogenital region, mucous in the feces, and unsteady gait in the females.
Chronic Dietary (All populations)	NOAEL= 2.83 male/femal (M/F) mg/kg/day UF = 1,000 Chronic RfD = 0.003 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD (0.003)/Special FQPA SF 1X = 0.003 mg/kg/day	2-Year Chronic Toxicity/Carcinogenicity Study in Rats LOAEL = 7.07/9.24 mg/kg/day based on increase in severity of diffuse thyroid C-cell hyperplasia in both sexes.
Short-Term Dermal (1 to 7 days) (Residential)	Dermal (or oral) study NOAEL= 10.4 mg/kg/day	LOC for MOE = 1,000 (Residential)	90-Day Feeding Study in Rats LOAEL = 68.27 mg/kg/day based on increased liver weights and incidences of ground glass appearance of the hepatocytes in males.
Intermediate-Term Dermal (1 week to several months) (Residential)	Dermal (or oral) study NOAEL = 5.45 mg/kg/day	LOC for MOE = 1,000 (Residential)	2-Generation Reproduction Study in Rats LOAEL = 89.2 mg/kg/day based on decreased absolute brain weight in female F1 adults and females F2 offspring.
Long-Term Dermal (Several months to lifetime) (Residential)	Dermal (or oral) study NOAEL= 2.83 mg/kg/day	LOC for MOE = 1,000 (Residential)	2-Year Chronic Toxicity/Carcinogenicity Study in Rats LOAEL = 7.07/9.24 mg/kg/day M/F based on increase in severity of diffuse thyroid C-cell hyperplasia in both sexes.
Short-Term Inhalation (1 to 7 days) (Residential)	Inhalation (or oral) study NOAEL= 10.4 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential)	90-Day Feeding Study in Rats LOAEL = 68.27 mg/kg/day based on increased liver weights and incidences of ground glass appearance of the hepatocytes in males.
Intermediate-Term Inhalation (1 week to several months) (Residential)	Inhalation (or oral) study NOAEL = 5.45 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential)	2-Generation Reproduction Study in Rats LOAEL = 89.2 mg/kg/day based on decreased absolute brain weight in female F1 adults and female F2 offspring.
Long-Term Inhalation (Several months to lifetime) (Residential)	Inhalation (or oral) study NOAEL= 2.83 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential)	2-Year Chronic Toxicity/Carcinogenicity Study in Rats LOAEL = 7.07/9.24 mg/kg/day M/F based on increase in severity of diffuse thyroid C-cell hyperplasia in both sexes.
Cancer (Oral, dermal, inhalation)	Classification: "Not likely"		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.579) for residues of fenamidone, in or on head and leaf lettuce. Risk assessments were conducted by EPA to assess dietary exposures from fenamidone 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 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute analysis assumed 100% crop treated and field trial residue data treated at maximum labeled rate, minimum preharvest interval. Therefore, the acute analysis is considered conservative. The results, reported in Unit III.E. are for the general U.S. population, all infants (< 1 year old), children 1–2, children 3–5, children 6–12, youth 13–19, females, 13–49, adults 20–49, and adults 50+ years. The acute dietary exposure estimates were ≤ 24% aPAD (95th percentile; children 1–2 years old were the most highly exposed population).

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with 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: The chronic analysis was refined through the use of projected percent crop treated (PCT) estimates and average field trial residues. Since the chronic analysis assumed that all meat/milk commodities will contain fenamidone residues (i.e., no adjustment for feed PCT) and since the analysis made use of field trial residues (treated at maximum labeled rate, minimum preharvest interval), the Agency concludes that the chronic exposure estimates are conservative.

iii. *Cancer.* Fenamidone is classified as "not likely to be carcinogenic to humans" by all relevant routes of exposure based on adequate studies in two animal species.

iv. *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 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. As required by section 408(b)(2)(E) of FFDCA, EPA will issue a data call-in for information relating to anticipated residues 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 in Table 2 of this unit as follows:

TABLE 2.—PERCENT CROP TREATED ESTIMATES FOR FENAMIDONE

Commodity	Acute % Crop Treated	Chronic % Crop Treated
Tomato	100%	31%
Potato	100%	20%
Lettuce	100%	24%
Cucurbits	100%	9%
Bulb crops	100%	19%

For each crop, EPA projected a PCT estimate for fenamidone by assuming that fenamidone would duplicate the PCT of the fenamidone alternative that had the highest PCT and, like fenamidone, is a relatively new pesticide, targets the same pests as fenamidone, and tends to replace the same older pesticides (e.g., chlorothalonil and EBDCs). Further, fenamidone had to be price competitive with the alternative on which the projection was based.

The Agency believes that the three conditions listed in Unit III.C.1.iv. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data on fenamidone alternatives, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. 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 fenamidone 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 fenamidone 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 fenamidone.

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

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fenamidone they are further discussed in the aggregate risk sections in Unit III.E.2.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of fenamidone for acute exposures are estimated to be 10.47 parts per billion (ppb) for surface water and 8.19 ppb for ground water. The EECs for chronic exposures are estimated to be 2.58 ppb for surface water and 8.19 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). Fenamidone 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 fenamidone and any other substances and fenamidone 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 fenamidone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the 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.* The Agency concluded that there is not a concern for pre- and/or postnatal toxicity resulting from exposure to fenamidone. No quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental toxicity studies was observed. There was no developmental toxicity in rabbit fetuses up to 100 mg/kg/day highest dose tested (HDT), which resulted in an increased absolute liver weight in the does. Since the liver was identified as one of the principal target organs in rodents and dogs, the occurrence of this finding in rabbits at 30 and 100 mg/kg/day was considered strong evidence of maternal toxicity. In the rat developmental study, developmental toxicity manifested as decreased fetal body weight and incomplete fetal ossification in the presence of maternal toxicity in the form of decreased body weight and food consumption at the Limit Dose (1,000 mg/kg/day). The effects at the limit dose were comparable between fetuses and dams. No quantitative or qualitative evidence of increased susceptibility was observed in the 2-generation reproduction study in rats. In that study, both the parental and offspring based on decreased absolute brain weight in female F1 adults and female F2 offspring at 89.2 mg/kg/day. At 438.3 mg/kg/day, parental effects consisted of decreased body weight and food consumption, and increased liver and spleen weight. Decreased pup body weight was also observed at the same dose level of 438.3 mg/kg/day. There were no effects on reproductive performance up to 438.3 mg/kg/day (HDT).

3. *Conclusion.* Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The toxicity database is not complete because EPA has required that a developmental neurotoxicity (DNT)

study be conducted due to evidence from fenamidone studies of clinical signs of neurotoxicity and decreased brain weight. EPA has retained the FQPA additional 10X safety factor for the protection of infants and children because of the absence of the DNT study. This FQPA safety factor is in the form of a database uncertainty factor. A 1,000-fold uncertainty factor (10x UF_{DB} for lack of a (DNT) study; 10X for interspecies extrapolation; and 10x for intraspecies variation) were incorporated into the acute and chronic RfD . The reference dose (RfD) for acute and chronic risks from fenamidone is equal to the applicable NOAEL divided by the 1000x uncertainty factor.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fenamidone the highest exposed population subgroup was children 1-2 years old which accounted for 24% of the aPAD. The acute aggregate risk associated with the proposed use of fenamidone does not exceed the Agency's level of concern for the general U.S. population or any population subgroups.. In addition, there is potential for acute dietary exposure to fenamidone in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

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

Population Subgroup	aPAD (mg/kg)	% aPAD (Food DEEM)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General U.S. population	0.13	16%	10.47	8.19	3800
Children 1–2 yearsold	0.13	24%	10.47	8.19	990
Youth 13–19 yearsold	0.13	15%	10.47	8.19	330
Adults 20–49 yearsold	0.13	17%	10.47	8.19	3800
Females 13–49 years old	0.13	17%	10.47	8.19	3200

1. Maximum water exposure (mg/kg/day) = aPAD (mg/kg/day) - food exposure (mg/kg/day).
2. The crop producing the highest level was used.
3. DWLOC calculated as follows:
DWLOC = (maximum water exposure (mg/kg/day)) x (body weight (kg)) x (1,000 µg (gram)/mg) ÷ water consumption (L/day)

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that the chronic dietary exposure analysis was partially refined through the use of projected PCT estimates and average field trial residues. Since the chronic analysis assumed that all meat/ milk commodities will contain fenamidone residues (i.e. no adjustment for feed PCT) and since the analysis made use of field trial residues (treated at maximum labeled rate, minimum preharvest interval, samples frozen upon collection and remained frozen until analysis), EPA concludes that the chronic exposure estimates are conservative. The highest exposed population subgroup was children 1–2 years old which occupies 69% of the cPAD. There are no residential uses for fenamidone that result in chronic residential exposure to fenamidon. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

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

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.003	29%	2.58	8.19	74

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

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children 1–2 years old	0.003	69%	2.58	8.19	9.2
Youth 13–19 years old	0.003	26%	2.58	8.19	67
Adults 20–49 years old	0.003	26%	2.58	8.19	78
Females 13–49 years old	0.003	26%	2.58	8.19	67

3. *Short-term risk.* Short-term risk assessment was not performed because there are no existing or proposed residential uses for fenamidone.

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

4. *Intermediate-term risk.* Intermediate-term risk assessment was not performed because there are no existing or proposed residential uses for fenamidone.

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

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

5. *Aggregate cancer risk for U.S. population.* A cancer aggregate risk assessment was not performed because fenamidone is not considered to be carcinogenic.

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 fenamidone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The registrant has proposed a liquid chromatograph/mass spectroscopy (LC/MS) method for the enforcement of the plant tolerances (the method does not distinguish the S- and R-enantiomers). Adequate method validation, radiovalidation, and independent method validation (ILV) of the proposed enforcement method have been submitted.

The Agency concludes that livestock tolerances are necessary. The petitioner has proposed a livestock enforcement method and submitted an ILV for this method. The Agency notes that methods AR 200-99 (milk) and AR 178-98 (tissue) have been adequately radiovalidated for the determination of fenamidone, RPA 717879, and RPA 408056. An ILV study has been submitted for the livestock enforcement method and it indicates that the method is satisfactory for enforcement purposes.

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 currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for fenamidone in/on requested crops; therefore, harmonization is not an issue for this petition.

C. Conditions

1. *Toxicity data requirements.* A DNT study in rats is required. The Agency concluded that the DNT was required based on the following:

i. Clinical signs of neurotoxicity were seen in the mutagenicity studies with parent and plant metabolites, particularly RPA 412636 and RPA 412708.

ii. In the acute neurotoxicity study in rats, decreased brain weight in male rats was observed.

iii. In the 2-generation reproduction study in rats, decreased absolute brain weight was observed in the female F1 adults and the female F2 offspring.

The Agency reassessed the requirement for a DNT study in rats for fenamidoene in response to the waiver request by Bayer CropSciences.

2. *Residue chemistry data requirements*—i. The Agency is requesting that the petitioner hydrolyze the extractable and non extractable residues from the N-phenyl studies to determine if conjugated aniline(s) are present (data validating the storage interval are also required).

ii. The Agency is also requiring additional identification/characterization on the N-phenyl livestock samples to determine the metabolic fate of the N-phenyl ring in livestock (data validating the storage interval are also required).

iii. Submission of storage stability data for confined accumulation in rotational crop study.

V. Conclusion

Therefore, the tolerance is established for residues of fenamidone, 4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-, in or on garlic, bulb at 0.20 ppm; garlic, great headed at 0.20 ppm; grape (imported) at 1.0 ppm, leek at 1.5 ppm, onion, dry bulb at 0.20 ppm; onion, green at 1.5 ppm; onion, welsh at 1.5 ppm; shallot, bulb at 0.20 ppm; shallot, fresh leaves at 1.5 ppm; tomato at 1.0 ppm; tomato, paste at 2.2 ppm; tomato, puree at 2.0 ppm; vegetable, cucurbit, group 09 at 0.15 ppm and vegetable, tuberous and corm, subgroup 01C at 0.02 ppm and also for the combined residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl) in or on fat (beef, goat, and sheep) at 0.10 ppm; meat (beef, goat, and sheep) at 0,10 ppm., meat byproducts (beef, goat, and sheep) at 0.10 ppm; milk at 0.02 ppm; wheat forage at 0.15 ppm; wheat, grain at 0.10 ppm; wheat, hay at 0.50 ppm; wheat, straw at 0.35 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate

adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0255 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 2004.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0255, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 21, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.579 is amended by designating the text of paragraph (a) as paragraph (a)(1) and alphabetically adding new commodities to the table in paragraph (a)(1) and by adding new paragraph (a)(2) and text to paragraph (d) to read as follows:

§ 180.579 Fenamidone; tolerances for residues.

(a) * * *

(1) Tolerances are established for residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-) from the application of the fumgicide fenamidone in or on the following raw agricultural commodities:

Commodity	Parts per million
garlic, bulb	0.20
garlic, great headed	0.20
Grape (imported)	1.0
Leek	1.5
* * * * *	
Onion, dry bulb	0.20
Onion, green	1.5
Onion, welsh	1.5
Shallot, bulb	0.20
Shallot, fresh leaves	1.5
Tomato	1.0
Tomato, paste	2.2
Tomato, puree	2.0
Vegetable, cucurbit, group 09	0.15
Vegetable, tuberous and corm, subgroup 01C	0.02

(2) Tolerances are established for the combined residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino), (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl), expressed as parent compound, in or on the following commodities:

Commodity	Parts per million
beef, fat	0.10
beef, meat	0.10
beef, meat byproducts	0.10
goat, fat	0.10
goat, meat	0.10
goat, meat byproducts	0.10
milk	0.02
sheep, fat	0.10
sheep, meat	0.10
sheep, meat byproduct	0.10

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the fungicide fenamidone (4-H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methlthio)-5-phenyl-3-(phenylamino, (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl) in or on the following agricultural commodities when present therein as a result of application of fenamidone to the crops in paragraph (a)(1).

Commodity	Parts per million
Wheat, grain	0.10
Wheat, hay	0.50
Wheat, forage	0.15
Wheat, straw	0.35

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0300; FRL–7677–6]

Citrate Esters; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of acetyl tributyl citrate (ATBC) also known as citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and triethyl citrate (TEC) also known as citric acid, triethyl ester (CAS Reg. No. 77–93–0) when used as inert ingredients in pesticide products. Morflex submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ATBC or TEC.

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

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0300. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- 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 Electronic Documents 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. Background and Statutory Findings

In the **Federal Register** of January 5, 2001 (66 FR 1129) (FRL–6761–4), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP (8E4966 and 8E4967) by Morflex Inc., 2110 High Point Road, Greensboro, NC 27403. That notice included a summary of the petition prepared by the petitioner.

The petition requested that 40 CFR 180.1001 (c), and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of acetyl tributyl citrate (ATBC) also known as citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and triethyl citrate (TEC) also known as citric acid, triethyl ester (CAS Reg. No. 77–93–0). There were no comments received in response to the notice of filing.

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

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by ATBC also known as citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and TEC also known as citric acid, triethyl ester (CAS Reg. No. 77–93–0) are discussed in this unit. Both chemicals are derivatives of citric acid. ATBC is prepared by esterification of butyl alcohol with citric acid, followed by acetylation. TEC is prepared by esterification of ethyl alcohol with citric acid.

The Agency evaluated the toxicity data base submitted by the petitioner, Morflex which included a 2–generation reproductive study, and several articles from open literature. Other reliable sources of information used by the Agency in performing this assessment are information from the internet on (1) World Health Organization (WHO) evaluations, (2) British Industrial Biological Research Association (BIBRA) abstracts, and (3) the Opinion of the European Commission, Health and Consumer Protection Directorate-General (CSTEE), and (4) structure-activity-relationship (SAR) assessments performed on surrogate chemicals as prepared by the Agency's Office of Pollution Prevention and Toxics. The toxicological databases for these chemicals are a mixture of guideline studies performed in the last 15 years and older studies from the 1970s and 1950s. These older studies are more difficult to evaluate given the different standards of reporting that existed some years ago.

Both ATBC and TEC have low acute oral toxicity (Toxicity Category IV). Ocular irritation is moderate. Both are Toxicity Category IV for dermal irritation. Neither are human sensitizers. Both chemicals have been reviewed by other entities. None of these organizations indicated any specific concerns for ATBC or TEC. Based on the submitted studies, neither ATBC or TEC is mutagenic.

In a rat metabolism study, ATBC was readily absorbed and rapidly excreted in urine and feces within 48 hours. The following metabolites were detected in the urine: Acetyl citrate, monobutyl citrate, acetyl monobutyl citrate, dibutyl citrate, and acetyl dibutyl citrate. ATBC was hydrolyzed in both human and rat liver homogenates resulting in n-butanol and tributyl citrate (TBC). However, in human serum the half-life was 7 hours versus 30 minutes in the rat. These *in vivo* and *in vitro* studies indicate that ATBC is hydrolysed.

No metabolism studies were reviewed for TEC. However, it is expected that all citrate esters would undergo hydrolysis to citric acid and the corresponding alcohol. For TEC, this would be ethanol. The human body is able to effectively metabolize both ethanol and citric acid. Thus, the human body has known pathways to metabolize TEC hydrolysis metabolites.

The ATBC 2–generation reproductive toxicity study was recently re-evaluated by the Agency. No adverse reproductive performance was observed at any dose. The reproductive toxicity no observed adverse level (NOAEL) was 1,000 milligrams/kilograms/day (mg/kg/day), the highest dose tested. A lowest observed adverse level (LOAEL) was not observed. The parental no observed level (NOEL) and the offspring NOEL is 1,000 mg/kg/day. The parental lowest observed level (LOEL) and the offspring LOEL was not observed.

The available information consists of the FDA-affirmed GRAS status of TEC (21 CFR 184.1911), ATBC's approval as a synthetic flavoring substance under 21 CFR 172.515, the approval of both ATBC and TEC under 21 CFR 181.27 as prior sanctioned plasticizers, the abstracts of the BIBRA toxicity profiles, several evaluations by the World Health Organization, the SAR assessments of the structurally-related chemicals, the CSTEE Opinion, and the toxicity studies submitted by the petitioner. Taken together the weight of evidence of the available information indicate chemicals of lower toxicity.

Greater detail on the Agency's review and evaluation of the submitted studies and articles from open literature are in the ATBC and TEC Science Assessment in EDOCKET at *(http://www.epa.gov/edocket/)* (See OPP–2004–0300).

V. Aggregate Exposures

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

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

Various publicly-available screening-level models were used to estimate some of the existing levels of exposure that could occur in and around the home. To assure protectiveness, these models create estimates that are deliberately intended to over-estimate exposure. All modeling (with the exception of the CSTEE plastic toy scenario) was performed by EPA. The highest potential exposure level was 0.422 mg/kg/day for children (1–2 years old) for dietary exposure through consumption of food (as a result of application of a pesticide product containing either ATBC or TEC to crops). All of the screening-level exposures are much less than any of the NOAELs/NOELs from the repeated dose oral toxicity studies. Greater detail on the Agency's exposure assessment are in the ATBC and TEC Science Assessment in EDOCKET at *(http://www.epa.gov/edocket/)* (See OPP–2004–0300).

VI. Cumulative Effects

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to acetyl tributyl citrate, triethyl citrate or any citrate esters. These esters do not appear to produce a toxic metabolite produced by other substances. These are lower toxicity chemicals; therefore, the resultant risks separately and/or combined should also be low. For the purposes of this action, therefore, EPA has not assumed that acetyl tributyl citrate or triethyl citrate have 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/*.

VII. Children's Safety Factor

The toxicity database for ATBC includes a rat oral reproductive toxicity study in which NOELs of 1,000 mg/kg/day were identified. There are also the SARs on structurally-related citrate esters which did not indicate any concerns for developmental or reproductive toxicity.

ATBC, given the additional acetylation step, is the more complex, larger molecule. The acetylation step also increases the number of possible metabolites as evidenced by the results of the ATBC rat metabolism study. ATBC data can be used as surrogate data for TEC. TEC cannot be used as surrogate data for ATBC. ATBC is the more toxic of the two chemicals and has the larger available data base.

There is sufficient information for the Agency to judge the potential for developmental and reproductive effects of ATBC and TEC. No additional data are needed to assess the toxicity of ATBC and TEC. There is no reason to expect that the reasonably, foreseeable uses of ATBC and TEC will constitute any significant hazard. EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

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

The Agency believes that ATBC and TEC are of low toxicity. Of highest consideration in this judgement is the body's ability to effectively metabolize both ATBC and TEC to citric acid and the corresponding alcohols. The metabolism studies provided by the petitioner were helpful in reaching this determination. Both of these chemicals

are well-studied. FDA, WHO, and CSTEE have all conducted assessments on the uses of these chemicals. No toxicological concerns were specified in any of the reviews and evaluations.

The Agency has used various screening-level models to estimate some of the existing levels of exposure to ATBC and TEC. To assure protectiveness, these estimates are deliberately intended to over-estimate exposure. Given the consistent pattern of NOAELs/NOELs of 1,000 mg/kg/day, an understanding of the metabolism of ATBC and TEC, and a significant gap between very over-estimated exposure numbers and the NOAELs/NOELs, there is no need to pursue further numerical refinements to the estimated exposures.

EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and citric acid, triethyl ester (CAS Reg. No. 77–93–0). Accordingly, EPA finds that exempting citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and citric acid, triethyl ester (CAS Reg. No. 77–93–0) will be safe.

IX. Other Considerations

A. Endocrine Disruptors

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

B. Analytical Method

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

C. Existing Exemptions

There is an existing tolerance exemption for acetyl tributyl citrate (CAS Reg. No. 77–90–7) in 40 CFR 180.930 when used as a component of plastic animal tags.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for ATBC or TEC nor have any CODEX maximum residue levels been established for any food crops at this time.

E. List 4A (Minimal Risk) Classification

The Agency established 40 CFR 180.950 (see the rationale in the proposed rule published January 15, 2002 (67 FR 1925) (FRL–6807–8)) to collect the tolerance exemptions for those substances classified as List 4A, i.e., minimal risk substances. As part of evaluating an inert ingredient and establishing the tolerance exemption, the Agency determines the chemical's list classification. Given the available information which indicates the body's ability to effectively metabolize both ATBC and TEC to citric acid and the corresponding alcohols and the consistent pattern of NOAELs/NOELs of 1,000 mg/kg/day, citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and citric acid, triethyl ester (CAS Reg. No. 77–93–0) are to be classified as List 4A inert ingredients.

X. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of acetyl tributyl citrate (ATBC) also known as citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and triethyl citrate (TEC) also known as citric acid, triethyl ester (CAS Reg. No. 77–93–0) Accordingly, EPA finds that exempting citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and citric acid, triethyl ester (CAS Reg. No. 77–93–0) from the requirement of a tolerance will be safe.

Therefore, the exemptions from the requirement of a tolerance for citric acid, 2-(acetyloxy)-, tributyl ester (CAS Reg. No. 77–90–7) and citric acid, triethyl ester (CAS Reg. No. 77–93–0) are established in 40 CFR 180.950. Since the tolerance exemptions are established under 40 CFR 180.950, the existing tolerance exemption for acetyl tributyl citrate (CAS Reg. No. 77–90–7) in 40 CFR 180.930 is a duplication, and will be removed.

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0300 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 2004.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your

copies, identified by docket ID number OPP–2004–0300, 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).

XII. Statutory and Executive Order Reviews

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

XIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 14, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.930, the table is amended by removing the entry for "acetyl tributyl citrate" (CAS Reg. No. 77–90–7).

■ 3. In § 180.950, the table in paragraph (e) is amended by adding alphabetically

the following inert ingredients to read as follows

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical Name	CAS No.
* * *	* *
Citric acid, 2-(acetyloxy)-, tributyl ester	77–90–7
* * *	* *
Citric acid, triethyl ester ..	77–93–0
* * *	* *

[FR Doc. 04–21587 Filed 9–28–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0256; FRL–7678–9]

Carfentrazone-ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of carfentrazone-ethyl and its metabolite in or on certain raw agricultural commodities. FMC Corporation and Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

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

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0256. 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: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 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 at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of March 31, 2004 (69 FR 16921) (FRL–7348–4), 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 petitions (PP 2F6468 and 3E6746) by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 and IR-4, Technology Center, of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by FMC Corporation, the registrant. Comments on the petition were filed by B. Sachau, 15 Elm St., Florham Park, NJ 07932. A response to these comments is provided in Unit V.

In the **Federal Register** of July 28, 2004 (69 FR 45042) (FRL–7365–2), 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 petitions (PP 2F6468, 3E6746, 4E6814, and 3F6584) by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 and IR-4, Technology Center, of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by FMC Corporation, the registrant. Comments on the petition were filed by B. Sachau, 15 Elm St., Florham Park, NJ 07932, and Bonita Poulin, R. R. #3, Brockville, Ont. A response to these comments is provided in Section V.

The petitions requested that 40 CFR 180.515(a) be amended by establishing proposed tolerances for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl)-4-fluorobenzenepropanoate and the metabolite carfentrazone-ethyl chloropropionic acid (alpha,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid), in or on: Acerola at 0.1 parts per million (ppm); almond hulls at 0.20 ppm and grass, forage, fodder and hay, group 17 at 12 ppm; hops at 0.05 ppm; avocado at 0.1 ppm; atemoya at 0.1 ppm; banana at 0.1 ppm; berry group 13 at 0.1 ppm; birida at 0.1 ppm; borage, seed at 0.1 ppm; cacao at 0.1 ppm; cactus at 0.1 ppm; canistel at 0.1 ppm; cherimoya at 0.1 ppm; citrus, crop group 10 at 0.1 ppm; citrus cultivars and/or hybrids of grapefruit and pummelo, including uniq fruit at 0.1 ppm; coconut at 0.1 ppm; coffee at 0.1 ppm; crambe, seed at 0.1 ppm; custard apple at 0.1 ppm; date at

0.1 ppm; feijoa at 0.1 ppm; fig at 0.1 ppm; fish at 0.2 ppm; flax, seed at 0.1 ppm; grape at 0.1 ppm; grapefruit at 0.1 ppm; guava at 0.1 ppm; guayule at 0.1 ppm; herbs and spice group 19 at 0.1 ppm; horseradish at 0.1 ppm; ilama at 0.1 ppm; Indian mulberry at 0.1 ppm; jabotica at 0.1 ppm; Juneberry at 0.1 ppm; kava at 0.1 ppm; kiwi fruit at 0.1 ppm; lingonberry at 0.1 ppm; lychee at 0.1 ppm; longan at 0.1 ppm; mango at 0.1 ppm; mustard seed, Indian at 0.1 ppm; mustard seed, field at 0.1 ppm; mustard seed, black at 0.1 ppm; okra at 0.1 ppm; olive at 0.1 ppm; palm heart, leaves at 0.1 ppm; passionfruit at 0.1 ppm; papaya at 0.1 ppm; pawpaw at 0.1 ppm; peanut at 0.1 ppm; persimmon at 0.1 ppm; pistachio at 0.1 ppm; pome fruit, crop group 11 at 0.1 ppm; pomegranate at 0.1 ppm; pulasan at 0.1 ppm; pummelo at 0.1 ppm; rambutan at 0.1 ppm; rapeseed, Indian at 0.1 ppm; rapeseed, seed at 0.1 ppm; safflower, seed at 0.1 ppm; salal at 0.1 ppm; sapodilla at 0.1 ppm; sapote, black at 0.1 ppm; sapote, mamey at 0.1 ppm; shellfish at 0.2 ppm; sorghum, sweet, stalks at 0.1 ppm; sorghum, sweet, syrup at 0.1 ppm; soursop at 0.1 ppm; Spanish lime at 0.1 ppm; star apple at 0.1 ppm; starfruit at 0.1 ppm; stone fruit, crop group 12 at 0.1 ppm; strawberry at 0.1 ppm; strawberrypear at 0.1 ppm; stevia at 0.1 ppm; sugar apple at 0.1 ppm; sugarcane at 0.1 ppm; sunflower, seed at 0.1 ppm; ti, leaves at 0.1 ppm; tea at 0.1 ppm; tree nut, crop group 14 at 0.1 ppm; tuberous and corm vegetables, crop subgroup 1C at 0.1 ppm; vanilla at 0.1 ppm; vegetable, brassica, leafy, group 5 at 0.1 ppm; vegetable, bulb, group 3 at 0.1 ppm; vegetable, cucurbit group 9 at 0.1 ppm; vegetable, foliage of legume, group 7 at 0.1 ppm; vegetables, fruiting, group, crop group 8 at 0.1 ppm; vegetable, leaves of root and tuber, group 2 at 0.1 ppm; vegetable, leafy, except brassica, group 4 at 0.1 ppm; vegetable, legume, group 6 at 0.1 ppm; vegetable, root and tuber, group 1 at 0.1 ppm; wasabi, roots at 0.1 ppm; and wax jambu at 0.1 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, for a tolerance for combined residues of carfentrazone-ethyl and its metabolite, carfentrazone-ethyl chloropropionic acid, on Vegetable, root and tuber, group 01 at 0.10 ppm; vegetable, leaves of root and tuber, group 2 at 0.10 ppm; vegetable, bulb, group 3 at 0.10 ppm; vegetable, leafy, except brassica, group 4 at 0.10 ppm; vegetable, brassica, leafy, group 5 at 0.10 ppm; vegetable, legume, group 6 at 0.10 ppm; vegetable, foliage of legume (except soybean), group 7 at 0.10 ppm; vegetable, fruiting, group 8 at 0.10 ppm; vegetable, cucurbit, group 9 at 0.10 ppm; fruit, citrus, group 10 at 0.10 ppm; fruit, pome, group 14 at 0.10 ppm; fruit, stone, group 12 at 0.10 ppm; berry, group 13 at 0.10 ppm; nut, tree, group 14 at 0.10 ppm; herbs and spices, group 19 at 2.0 ppm; almond, hull at 0.20 ppm; grape at 0.10 ppm; grass, forage at 5.0 ppm; grass, hay at 8.0 ppm; canola at 0.10 ppm; hop, dried cones at 0.10 ppm; peanut at 0.10 ppm; peanut, hay at 0.10 ppm; strawberry at 0.10 ppm; sugarcane at 0.10 ppm; sunflower, seed at 0.10 ppm; okra at 0.10 ppm; stevia at 0.10 ppm; pistachio at 0.10 ppm; coconut at 0.10 ppm; strawberrypear at 0.10 ppm; date at 0.10 ppm; fig at 0.10 ppm; papaya at 0.10 ppm; avocado at 0.10 ppm; sapote, black at 0.10 ppm; canistel at 0.10 ppm; sapote, mamey at 0.10 ppm; mango at 0.10 ppm; sapodilla at 0.10 ppm; star apple at 0.10 ppm; pummelo at 0.10 ppm; guava at 0.10 ppm; feijoa at 0.10 ppm; jaboticaba at 0.10 ppm; wax jambu at 0.10 ppm; starfruit at 0.10 ppm; passionfruit at 0.10 ppm; acerola at 0.10 ppm; lychee at 0.10 ppm; longan at 0.10 ppm; Spanish lime at 0.10 ppm; rambutan at 0.10 ppm; pulasan at 0.10 ppm; sugar apple at 0.10 ppm; atemoya at 0.10 ppm; custard apple at 0.10 ppm; cherimoya at 0.10 ppm; ilama at 0.10 ppm; soursop at 0.10 ppm; biriba at 0.10 ppm; lingonberry at 0.10 ppm; Juneberry at 0.10 ppm, salal at 0.10 ppm; kiwifruit at 0.10 ppm; pomegranate at 0.10 at ppm; persimmon at 0.10 ppm; pawpaw at 0.10 ppm; palm heart at 0.10 ppm; palm heart, leaves at 0.10 ppm; kava, kava at 0.10 ppm; ti, leaves at 0.10 ppm; ti, roots at 0.10 ppm; wasabit, roots at 0.10 ppm; cactus at 0.10 ppm; sorghum, sweet at 0.10 ppm; rapeseed, seed at 0.10 ppm; rapeseed, forage at 0.10 ppm; mustard, seed at 0.10 ppm; flax, seed at 0.10 ppm; safflower, seed at 0.10 ppm; crambe, seed at 0.10 ppm; borage at 0.10 ppm; olive at 0.10 ppm; banana at 0.10 ppm; cacao at 0.10 ppm; tea at 0.10 ppm; mulberry, Indian at 0.10 ppm; vanilla at 0.10 ppm; coffee at 0.10 ppm; horseradish at 0.10 ppm; fish at 0.30 ppm; shellfish at 0.30 ppm; meat, byproducts (cattle, goat, horse, and sheep) at 0.10 ppm; meat (cattle, goat, horse, and sheep) at 0.10 ppm; fat (cattle, goat, horse, and sheep) at 0.10 ppm and milk at 0.05 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 carfentrazone-ethyl are discussed in the Unit III.A. of the final rule on carfentrazone-ethyl published in the **Federal Register** of August 9, 2000 (65 FR 48620) (FRL–6597–7).

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 carfentrazone-ethyl used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of August 9, 2000 (65 FR 48620).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.515(a) for the combined residues of carfentrazone-ethyl and its metabolite, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from carfentrazone-ethyl 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 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, conservative estimates of expected residues were assumed for all food commodities with current or proposed carfentrazone-ethyl tolerances, and it was assumed that all of the crops included in the analysis were treated. Percent Crop Treated (PCT) and/or 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 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, conservative estimates of expected residues were assumed for all food commodities with current or proposed carfentrazone-ethyl tolerances, and it was assumed that all of the crops included in the analysis were treated. PCT and/or anticipated residues were not used in the chronic risk assessment.

iii. *Cancer.* Carfentrazone-ethyl is classified as "not likely" a human carcinogen.

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

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

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

Since the models used are considered to be screening tools in the risk

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

Based on the FIRST and SCI-GROW models, the EECs of carfentrazone-ethyl for acute exposures are estimated to be 34.3 parts per billion (ppb) for surface water and 13.4 ppb for ground water. The EECs for chronic exposures are estimated to be 19.0 ppb for surface water and 13.4 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).

Carfentrazone-ethyl is currently registered for use on the following residential non-dietary sites: Ornamental lawns and turf (application by commercial operators only. There is a proposed aquatic use under review. The risk assessment was conducted using the following residential exposure assumptions: Exposures to toddlers in the residential lawn setting would be higher than that encountered by toddlers in an institutional setting, such as in schools and parks. It was anticipated that herbicide application to homeowner lawns is a seasonal event, thus, only short-term post-application residential exposures were conducted. A swimmer exposure assessment was conducted based on the proposed aquatic application. The swimmer assessment estimates exposures from oral (ingestion) and inhalation routes. No systemic toxicity was seen at the limit-dose (1,000 milligrams/kilogram/day (mg/kg/day)) in a 21–day dermal toxicity study in rats, therefore, these risk assessments are not required. Based on the use pattern, long-term exposure is not anticipated.

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 carfentrazone-ethyl and any other substances and carfentrazone-ethyl 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 carfentrazone-ethyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with carfentrazone-ethyl. There is no evidence of increased susceptibility of rats in the reproduction study with carfentrazone-ethyl. EPA concluded there are no residual uncertainties for prenatal and/or postnatal exposure.

3. *Conclusion.* EPA concluded that, based on the absence of residual uncertainties for prenatal and/or postnatal exposure and complete toxicology, environmental fate, residue chemistry data bases, and the conservative assumptions used when generating the dietary and residential exposure estimates, there are reliable data showing that it is safe for infants and children to remove the additional 10X safety factor.

E. Aggregate Risks and Determination of Safety

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

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female and youth 13-19, and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a

pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to carfentrazone-ethyl will occupy less than 1% of the aPAD for the U.S. population and all population subgroups.

In addition, there is potential for acute dietary exposure to carfentrazone-ethyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1 of this unit.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CARFENTRAZONE-ETHYL

Population Subgroup	aPAD	%aPAD (Food)	Surface Water EDWC[1] ppb	Ground Water EDWC[1] ppb	DWLOC[2] ppb
U.S. pop - all seasons	5	< 1	34.3	13.4	1.7e + 05
All Infants (< 1 year old)	5	< 1	34.3	13.4	5.0e + 04
Children (1-2 years old)	5	< 1	34.3	13.4	5.0e + 04
Children (3-5 years old)	5	< 1	34.3	13.4	5.0e + 04
Children (6-12 years old)	5	< 1	34.3	13.4	5.0e + 04
Youth (13-19 years old)	5	< 1	34.3	13.4	1.5e + 05
Adults (20-49 years old)	5	< 1	34.3	13.4	1.7e + 05
Adults (50+ years old)	5	< 1	34.3	13.4	1.7e + 05
Females (13-49 years old)	5	< 1	34.3	13.4	1.5e + 05

[1] EDWCs resulting from maximum registered and proposed application rate (0.4 lbs ai/acre/season - caneberry)
[2] DWLOC = ((aPAD -food exposure) x (body weigth) x (1,000 µg/mg)) ÷ (water consumption)

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to carfentrazone-ethyl from food will utilize ≤75% of the of the cPAD with children 1–2 years old the population subgroup with the highest exposures. Based the use pattern, chronic residential exposure to residues of carfentrazone-ethyl is not expected. In addition, there is potential for chronic dietary exposure to carfentrazone-ethyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

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

Population Subgroup	cPAD mg/ kg/day	% cPAD (Food)	Surface Water EDWC[1] ppb	Ground Water EDWC[1] ppb	DWLOC[2] ppb
U.S. population - all seasons	0.03	24	19.0	13.4	8.1e + 02
All Infants (<1 year old)	0.03	43	19.0	13.4	1.8e + 02
Children (1-2 years old)	0.03	75	19.0	13.4	8.6e + 01
Children (3-5 years old)	0.03	58	19.0	13.4	1.3e + 02
Children (6-12 years old)	0.0	35	19.0	13.4	2.1e + 02
Youth (13-19 years old)	0.03	21	19.0	13.4	7.3e + 02
Adults (20-49 years old)	0.03	18	19.0	13.4	8.5e + 02
Adults (50+ years old)	0.03	18	19.0	13.4	8.5e + 02
Females (13-49 years old)	0.03	18	19.0	13.4	7.1e + 02

[1] EDWCs resulting from registered and proposed application rate (0.4 lbs ai/acre/season - caneberry); 56–day surface water average ÷ 3
[2] DWLOC = ((cPAD -food exposure) x (body weigth) x (1,000 µg/mg)) ÷ (water consumption)

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).

Carfentrazone-ethyl is currently registered for use 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 carfentrazone-ethyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures (including potential aquatic exposure) aggregated result in aggregate MOEs of 72,875 for the general population and 22,339 for children 1–2 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of carfentrazone-ethyl in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CARFENTRAZONE-ETHYL

Population Subgroup	Agg. MOE (food and res.)[1]	Aggregate Level of Concern (LOC)	Ground Water EDWC (ppb)	Surface Water EDWC (ppb)	DWLOC[2] (ppb)
General U.S. population	72875	100	19.0	13.4	1.7e + 05
All Infants (<1 year old)	37843	100	19.0	13.4	5.0e + 04
Children (1-2 years old)	22339	100	19.0	13.4	5.0e + 04
Children (3-5 years old)	29228	100	19.0	13.4	5.0e + 04
Children (6-12 years old)	51965	100	19.0	13.4	5.0e + 04
Youth (13-19 years old)	85253	100	19.0	13.4	1.5e + 05
Adults (20-49 years old)	87396	100	19.0	13.4	1.7e + 05
Adults (50+ years old)	87457	100	19.0	13.4	1.7e + 05
Females (13-19 years old)	78541	100	19.0	13.4	1.5e + 05

[1] Aggregate MOE = (NOAEL ÷ (Avg Food Exposure + Residential Exposure))
[2] DWLOC = ((maximum water exposure) x (body weight) x (1,000 µg/mg)) ÷ (water consumption)

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 carfentrazone-ethyl residues.

IV. 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 is neither a Codex proposal, nor Canadian or Mexican maximum residue limits, for residues of carfentrazone-ethyl and F8426-Cl-PAC in/on the proposed crops, livestock, fish, or shellfish. Therefore, harmonization is not an issue.

C. Conditions

Residue chemistry: Successful Agency Validation of Proposed Livestock/Fish/Shellfish Enforcement Method.

V. Comments

Three comments were received in response to the notices of filing. Two comments from B. Sachau 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. Bonita Poulin commented that she doesn't approve of more chemical contamination of our food when we should be decreasing the residual poisons building up within us, which are already causing health problems. She also indicated that there are safe alternatives available.

Ms. Sachau's and Ms. Poulin'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 carfentrazone ethyl, including all anticipated dietary exposures and all other exposures for which there is reliable information.

VI. Conclusion

Therefore, the tolerance is established for combined residues of carfentrazone-ethyl (ethyl-alpha,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl)-4-fluorobenzenepropanoate and the metabolite carfentrazone-ethyl chloropropionic acid (alpha,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid), all expressed as carfentrazone-ethyl, in or on vegetable, root and tuber, group 01 at 0.10 ppm; vegetable, leaves of root and tuber, group 2 at 0.10 ppm; vegetable, bulb, group 3 at 0.10 ppm; vegetable, leafy, except brassica, group 4 at 0.10 ppm; vegetable, brassica, leafy, group 5 at 0.10 ppm; vegetable, legume, group 6 at 0.10 ppm; vegetable, foliage of legume (except soybean), group 7 at 0.10 ppm; vegetable, fruiting, group 8 at 0.10 ppm; vegetable, cucurbit, group 9 at 0.10 ppm; fruit, citrus, group 10 at 0.10 ppm, fruit; pome, group 14 at 0.10 ppm; fruit, stone, group 12 at 0.10 ppm; berry, group 13 at 0.10 ppm; nut, tree, group 14 at 0.10 ppm; herbs and spices, group 19 at 2.0 ppm; almond, hull at 0.20 ppm; grape at 0.10 ppm; grass, forage at 5.0 ppm; grass, hay at 8.0 ppm; canola at 0.10 ppm, hop, dried cones at

0.10 ppm; peanut at 0.10 ppm; peanut, hay at 0.10 ppm; strawberry at 0.10 ppm; sugarcane at 0.10 ppm; sunflower, seed at 0.10 ppm; okra at 0.10 ppm; stevia at 0.10 ppm; pistachio at 0.10 ppm; coconut at 0.10 ppm; strawberrypear at 0.10 ppm; date at 0.10 ppm; fig at 0.10 ppm; papaya at 0.10 ppm; avocado at 0.10 ppm; sapote, black at 0.10 ppm; canistel at 0.10 ppm; sapote, mamey at 0.10 ppm; mango at 0.10 ppm; sapodilla at 0.10 ppm; star apple at 0.10 ppm; pummelo at 0.10 ppm; guava at 0.10 ppm; feijoa at 0.10 ppm; jaboticaba at 0.10 ppm; wax jambu at 0.10 ppm; starfruit at 0.10 ppm; passionfruit at 0.10 ppm; acerola at 0.10 ppm; lychee at 0.10 ppm; longan at 0.10 ppm; Spanish lime at 0.10 ppm; rambutan at 0.10 ppm; pulasan at 0.10 ppm; sugar apple at 0.10 ppm; atemoya at 0.10 ppm; custard apple at 0.10 ppm; cherimoya at 0.10 ppm; ilama at 0.10 ppm; soursop at 0.10 ppm; biriba at 0.10 ppm; lingonberry at 0.10 ppm; Juneberry at 0.10 ppm, salal at 0.10 ppm; kiwifruit at 0.10 ppm; pomegranate at 0.10 at ppm; persimmon at 0.10 ppm; pawpaw at 0.10 ppm; palm heart at 0.10 ppm; palm heart, leaves at 0.10 ppm; kava, kava at 0.10 ppm; ti, leaves at 0.10 ppm; ti, roots at 0.10 ppm; wasabit, roots at 0.10 ppm; cactus at 0.10 ppm; sorghum, sweet at 0.10 ppm; rapeseed, seed at 0.10 ppm; rapeseed, forage at 0.10 ppm; mustard, seed at 0.10 ppm; flax, seed at 0.10 ppm; safflower, seed at 0.10 ppm; crambe, seed at 0.10 ppm; borage at 0.10 ppm; olive at 0.10 ppm; banana at 0.10 ppm; cacao at 0.10 ppm; tea at 0.10 ppm; mulberry, Indian at 0.10 ppm; vanilla at 0.10 ppm; coffee at 0.10 ppm; horseradish at 0.10 ppm; fish at 0.30 ppm; shellfish at 0.30 ppm; meat, byproducts (cattle, goat, horse, and sheep) at 0.10 ppm; meat (cattle, goat, horse, and sheep) at 0.10 ppm; fat (cattle, goat, horse, and sheep) at 0.10 ppm and milk at 0.05 ppm.

VII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0256 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 2004.

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 d(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.

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

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

VIII. Statutory and Executive Order Reviews

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

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

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 16, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.515(a) is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.515 Carfentrazone-ethyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
Acerola	0.10
Almond, hull	0.20
Atemoya	0.10
Avocado	0.10
Banana	0.20
Berry, group 13	0.10
Birida	0.10
Borage	0.10
Cacao	0.10
Cactus	0.10
* * * * *	
Canistel	0.10
Canola	0.10
Cherimoya	0.10
Coffee	0.10
Coconut	0.10
* * * * *	
Crambe, seed	0.10
Custard apple	0.10
Date	0.10
Fat (cattle, goat, horse, and sheep)	0.10
Feijoa	0.10
Fig	0.10
Fish	0.30
Flax, seed	0.10
Fruit, citrus, group 10	0.10
Fruit, pome, group 11	0.10
Fruit, stone, group 12	0.10
* * * * *	
Grape	0.10
Grass, forage	5.0
Grass, hay	8.0
Guava	0.10
Herb and Spices, group 19	2.0
Hops, dried cones	0.10
Horseradish	0.10
Ilama	0.10
Jaboticaba	0.10
Juneberry	0.10
Kava, Kava	0.10
Kiwi fruit	0.10
Lingonberry	0.10
Longan	0.10
Lychee	0.10
Mango	0.10
Meat, (cattle, goat, horse, and sheep)	0.10
Meat, byproducts, cattle, goat, horse, and sheep)	0.10
Milk	0.05
Mulberry, Indian	0.10
Mustard, seed	0.10
Nut, tree, group 14	0.10
Okra	0.10
Olive	0.10
Palm heart	0.10
Palm heart, leaves	0.10
Papaya	0.10
Passionfruit	0.10
Pawpaw	0.10
Peanut	0.10
Peanut, hay	0.10
Persimmon	0.10
Pistachio	0.10
Pomegranate	0.10
Pummelo	0.10
Pusalan	0.10
Rambutan	0.10
Rapeseed, forage	0.10
Rapeseed, seed	0.10
* * * * *	
Safflower, seed	0.10
Salal	0.10
Sapodilla	0.10
Sapote, black	0.10
Sapote, mamey	0.10
Shellfish	0.30
Sorghum, sweet	0.10
Soursop, group	0.10
* * * * *	
Spanish lime	0.10
Star apple	0.10
Starfruit	0.10
Stevia	0.10
Strawberry	0.10
Strawberrypear	0.10
Sugar, apple	0.10
Sugarcane	0.10
Sunflower, seed	0.10
Tea	0.10
Ti, leaves	0.10
Ti, roots	0.10
Vanilla	0.10
Vegetable, bulb, group 03	0.10
Vegetable, brassica, leafy, group 05	0.10
Vegetable, cucurbit, group 09	0.10
Vegetable, foliage of legume (except soybean), group 07	0.10
Vegetable, fruiting, group 8	0.10

Commodity	Parts per million
Vegetable, legume, group 06	0.10
Vegetable, leafy, except brassica, group 04	0.10
Vegetable, leaves of root and tuber, group 02	0.10
Vegetable, root and tuber, group 01	0.10
Wasabia, roots	0.10
Wax, Jambu	0.10

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0260; FRL–7679–7]

Allethrin, Bendiocarb, Burkholderia cepacia, Fenridazon potassium, and Molinate; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking all tolerances for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and biological pesticide *Burkholderia cepacia* because EPA canceled food registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (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 in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 110 tolerances and tolerance exemptions of which 106 count as tolerance reassessments toward the August 2006 review deadline.

DATES: This regulation is effective September 29, 2004. However, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings must be received on or before November 29, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0260. 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: 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), 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

A. What Action is the Agency Taking?

In the **Federal Register** of July 7, 2004 (69 FR 40831) (FRL–7362–2), EPA issued a proposed rule to revoke certain tolerances and tolerance exemptions for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and biological pesticide *Burkholderia cepacia*. Also, the July 7, 2004 proposal provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the Federal Food, Drug, and Cosmetic Act (FFDCA) standards.

In this final rule, EPA is revoking certain tolerances and tolerance exemptions for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and the biological pesticide *Burkholderia cepacia* because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically expressed a concern that retention of tolerances that

are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of July 7, 2004 (69 FR 40831), EPA received one comment during the 60–day comment period, as follows:

Comment. EPA received a comment from the California Rice Commission (CRC), who expressed support for EPA's decision to revoke the tolerances for residues of molinate in or on rice grain and rice straw, each with an expiration date of September 1, 2009. Also, the CRC expressed support for the molinate 5–year phase out and stated that the phase out allows rice growers a phase in period for newer pesticides while the registrants work with EPA in bringing replacement products to market. The CRC described itself as a statutory organization representing 2,500 rice growers who farm approximately 500,000 acres of California farmland.

Agency response. EPA appreciates the support of the CRC on the phase out of molinate, which has been a tool for California rice growers in controlling pests. The phase out and tolerance revocations for molinate are discussed in detail elsewhere in this document.

1. *Allethrin.* Many food use registrations for allethrin were canceled in 1989 and 1991 due to non-payment of maintenance fees. After reviewing labels for allethrin stereoisomer active ingredients (bioallethrin, 004003; s-bioallethrin, 004004; and d-cis-trans-allethrin, 004005), EPA has determined that their current active registered uses are not associated with any of the existing tolerances in 40 CFR 180.113 or tolerance exemptions in 40 CFR 180.1002 for allethrin (004001). The allethrin stereoisomers are primarily used as flying insect killers and repellents.

EPA defines the tolerances and exemptions in 40 CFR 180.113 and 180.1002 as pertaining solely to allethrin (004001) as the active ingredient. This is the earliest form of the allethrin stereoisomers, and may be referred to as a racemic mixture. Because there are no active registrations for use of allethrin (004001) on commodities associated with these tolerances or tolerance exemptions, these tolerances and tolerance exemptions are no longer needed. Therefore, EPA is revoking the 30 tolerances in 40 CFR 180.113 for residues of allethrin in or on apple, postharvest; barley, grain, postharvest; blackberry, postharvest; blueberry, postharvest; boysenberry, postharvest; cherry, postharvest; corn, grain, postharvest; crabapple, postharvest; currant, postharvest; dewberry, postharvest; fig, postharvest; gooseberry, postharvest; grape, postharvest; guava, postharvest; huckleberry, postharvest; loganberry, postharvest; mango, postharvest; muskmelon, postharvest; oat, grain, postharvest; orange, postharvest; peach, postharvest; pear, postharvest; pineapple, postharvest; plum, postharvest; plum, prune, fresh, postharvest; raspberry, postharvest; rye, grain, postharvest; sorghum, grain, grain, postharvest; tomato, postharvest; and wheat, grain, postharvest. Note, huckleberry was listed separately from blueberry and plum was listed separately from plum, prune, fresh in a final rule published in the **Federal Register** of July 1, 2003 (68 FR 39435) (FRL–7316–9), which revised tolerance nomenclatures.

Also, EPA is revoking 43 tolerance exemptions in 40 CFR 180.1002 for residues of allethrin in or on apples, artichokes (Jerusalem), beans, beets, beets, sugar; broccoli, Brussels sprouts, cabbage, carrots, cauliflower, celery, chickory, chinese cabbage, citrus, collards, corn, endive, escarole, garlic, horseradish, kale, kohlrabi, leeks, lettuce, mushrooms, mustard greens, onions, parsley, parsnips, peaches, pears, peppers, potatoes, radishes, rutabagas, salsify, shallots, sorghum (milo), sorghum, grain; spinach, sweet potatoes, tomatoes, and turnips.

For FQPA tolerance reassessment purposes, EPA will count the 73 revocations as a total of 69 tolerance reassessments because in the baseline of tolerances to be counted toward reassessment, the tolerance for huckleberry is counted with blueberry, the tolerance for plum is counted with plum, prune, fresh; the tolerance exemption for escarole is counted with endive; and the tolerance exemption for sorghum milo is counted with the sorghum grain exemption.

2. *Bendiocarb.* On April 26, 2002 (67 FR 20767) (FRL–6833–8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active bendiocarb registrations for food use. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders with an effective date of October 24, 2002, and allowed the registrant to sell and distribute existing stocks for a period of 12 months after the cancellation request was received; i.e., until approximately April 26, 2003. There are no active registrations and the tolerances are no longer needed. Therefore, EPA is revoking the non-numerical tolerances in 40 CFR 180.530 for residues of the insecticide 2,2-dimethyl-1,3-benzodioxol-4-yl methylcarbamate, known as bendiocarb, in or on processed food and animal feed with an expiration/revocation date of April 26, 2005, in order to allow end-users sufficient time to exhaust existing stocks.

3. *Burkholderia cepacia type Wisconsin.* On August 28, 2002 (67 FR 55236) (FRL–7189–4), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active *Burkholderia cepacia* type Wisconsin registrations for food use. EPA approved the registrant's requests for voluntary cancellation and issued cancellation orders with an effective date of February 27, 2003, and allowed the registrant to sell and distribute existing stocks for a period of 12 months after the cancellation request was received; i.e., until May 13, 2003. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared the channels of trade. Because there are no active registrations and the tolerance exemption is no longer needed, EPA is revoking the tolerance exemption in 40 CFR 180.1115 for residues of *Burkholderia cepacia* type Wisconsin in or on all raw agricultural commodities when applied to plant roots and seedling roots, or as a seed treatment for growing agricultural crops.

4. *Fenridazon potassium.* On July 25, 2003 (68 FR 44081) (FRL–7315–6), EPA

published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active fenridazon potassium product registration. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders on November 5, 2003 (68 FR 62582) (FRL–7328–7), with an effective date of November 5, 2003. The registrant has not manufactured the canceled product since 1989. No existing stocks are expected to be in the channels of trade. No active registrations exist and therefore the tolerances are no longer needed. Consequently, EPA is revoking the tolerances in 40 CFR 180.423 for residues of the hybridizing agent potassium salt of fenridazon in or on cattle, fat; cattle, kidney; cattle, liver; cattle, meat; cattle, meat byproducts; egg; goat, fat; goat, kidney; goat, liver; goat, meat; goat, meat byproducts; hog, fat; hog, kidney; hog, liver; hog, meat; hog, meat byproducts; horse, fat; horse, kidney; horse, liver; horse, meat; horse, meat byproducts; milk; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, kidney; sheep, liver; sheep, meat; sheep, meat byproducts; wheat, grain; and wheat, straw.

5. *Molinate.* On September 17, 2003 (68 FR 54451) (FRL–7324–7), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrants to voluntarily cancel registrations of all their molinate products, and to modify the terms and conditions of their molinate registrations. After considering comments received, EPA decided to accept the registrants' requests for voluntary cancellation. On April 7, 2004 (69 FR 18368) (FRL–7350–9), the Agency issued a cancellation order with an effective date of June 30, 2008, and a modification of the terms and conditions of the molinate registrations. The 2002 sales level of the molinate active ingredient will be the maximum amount that the registrants will sell or distribute in 2004, 2005, and 2006. The registrants may not sell or distribute any more than 75% of the 2002 sales levels in the year 2007, and sell or distribute more than 50% of the 2002 sales levels in the year 2008.

As stated in the cancellation order of April 7, 2004 (69 FR 18368), registrants will provide annual production/sales reports to EPA beginning in the year 2004 through 2009, and inventory reports for the years 2007, 2008, and 2009. These reports will be submitted by September 30 of each year to the Agency's Chemical Review Manager for molinate. Failure by either registrant to comply with the sale or distribution limits contained in the molinate registration constitutes grounds for immediate cancellation of the registration without opportunity for a hearing.

After June 30, 2008, the registrants may not sell or distribute any molinate products except to distribute the molinate active ingredient in 2009 for the purposes of facilitating usage by August 31, 2009. No use of products containing molinate will be permitted after the 2009 growing season (August 31, 2009). Currently, this is a state registration under FIFRA section 24, active only in California, Tennessee, and Texas. Because the tolerances on rice are no longer needed beyond the 2009 growing season, EPA is revoking the tolerances in 40 CFR 180.228 for residues of the herbicide S-ethyl hexahydro-1H-azepine-1-carbothioate, known as molinate, in or on rice, grain and rice, straw with an expiration/revocation date of September 1, 2009.

Also, in 40 CFR 180.228, EPA is removing the "(N)" designation from all entries to conform to current Agency administrative practice ("(N)" designation means negligible residues).

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. 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.

C. When Do These Actions Become Effective?

With the exception of certain tolerances for bendiocarb and molinate, for which EPA is revoking certain tolerances/exemptions with specific expiration/revocation dates, the Agency is revoking specific tolerances/exemptions for allethrin, *Burkholderia cepacia*, and fenridazon potassium, and revising commodity terminologies effective on September 29, 2004. With the exception of bendiocarb and molinate, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is revoking certain bendiocarb and molinate tolerances with expiration/revocation dates of April 26, 2005, and September 1, 2009, respectively.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue 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 (FDA) 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 a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that 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 in existence on August 2, 1996. As of September 15, 2004, EPA has reassessed over 6,840 tolerances. In this final rule, EPA is revoking a total of 110 tolerances and tolerance exemptions. For FQPA tolerance reassessment counting purposes, EPA counts the 73 revocations for allethrin as 69 reassessments because the tolerances for huckleberry and plum are counted with blueberry and plum, prune, fresh; respectively, and the tolerance exemptions for escarole and sorghum milo are counted with endive and sorghum grain, respectively. Therefore, 106 tolerances/exemptions are counted as reassessed toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

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. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. 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 and Regulations," 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. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0260 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 2004.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0260, 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).

V. Statutory and Executive Order Reviews

This final rule revokes specific tolerances established under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a 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 final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final 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 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 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. This analysis was published on December 17, 1997 (62 FR 66020), and was 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 rule, the Agency hereby certifies that this final rule 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 pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. 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.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 17, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§ 180.113 [Removed]

■ 2. Section 180.113 is removed.

■ 3. Section 180.228 is amended by revising the table in paragraph (a) to read as follows:

§ 180.228 S-Ethyl hexahydro-1H-azepine-1-carbothioate; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Rice, grain	0.1	9/1/09
Rice, straw	0.1	9/1/09

* * * * *

§ 180.423 [Removed]

■ 4. Section 180.423 is removed.

■ 5. Section 180.530 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 180.530 2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate; tolerances for residues.

(a) *General.* (1) The insecticide 2,2-dimethyl-1,3-benzodioxol-4-yl methylcarbamate may be safely used in spot and/or crack and crevice treatments in animal feed handling establishments, including feed manufacturing and processing establishments, such as stores, supermarkets, dairies, meat slaughtering and packing plants, and canneries until the tolerance expiration/revocation date of April 26, 2005.

(2) The insecticide 2,2-dimethyl-1,3-benzodioxol-4-yl methylcarbamate may be safely used in spot and/or crack and crevice treatments in food handling establishments, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries until the tolerance expiration/revocation date of April 26, 2005.

* * * * *

§ 180.1002 [Removed]

■ 6. Section 180.1002 is removed.

§ 180.1115 [Removed]

■ 7. Section 180.1115 is removed.

[FR Doc. 04–21695 Filed 9–28–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0321; FRL–7682–3]

Fludioxonil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil in or on bean, dry; bean, succulent; citrus, crop group 10; fruit, pome, group 11; grapefruit, oil; kiwifruit; leafy greens subgroup 4A, except spinach; melon subgroup 9A; and yam, true. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

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

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0321. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney C. Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington. DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@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 March 17, 2004 (69 FR 12680) (FRL–7347–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 3E6551, 3E6639, 3E6701, 3E6742, and 3E6803) by IR–4, 681 US Highway #1 South, New Brunswick, NJ 08902–3390. These petitions requested that 40 CFR 180.516 be amended by establishing tolerances for residues of the fungicide fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile, in or on bean, dry and bean, succulent at 0.4 parts per million (ppm) (PP 3E6701); citrus, crop group 10 at 10 ppm; citrus, dried pulp at 20 ppm, citrus, oil at 500 ppm, and pomegranate at 2.0 ppm (PP 3E6803); fruit, pome, group 11 at 5.0 ppm, yam at 8.0 ppm, and melon subgroup 9A at 0.03 ppm (PP 3E6742); kiwifruit at 20 ppm (PP 3E6551); and leafy greens subgroup 4A, except spinach at 30 ppm (PP 3E6639). That notice included a summary of the petitions prepared by Syngenta Crop Protection, Incorporated, the registrant. Subsequently, PP 3E6803 has been amended to delete citrus, dried pulp at 20 ppm, and pomegranate at 2.0 ppm. In addition, "citrus, oil" at 500 ppm, and "yam" at 8.0 ppm has been translated to "grapefruit, oil" at 500 ppm, and "yam, true" at 8.0, respectively. There were no comments received in response to the notice of filing.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure,

consistent with section 408(b)(2) of FFDCA, for tolerances for residues of fludioxonil on bean, dry; bean, succulent at 0.4 ppm; citrus, crop group 10 at 10 ppm; fruit, pome, group 11 at 5.0 ppm; grapefruit, oil at 500 ppm; kiwifruit at 20 ppm; leafy greens subgroup 4A, except spinach at 30 ppm; melon subgroup 9A at 0.03; and yam, true at 8.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances 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 fludioxonil 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 29, 2000 (65 FR 82927) (FRL–6760–9).

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 fludioxonil used for human risk assessment is shown in Table 1. of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUDIOXONIL 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 = 100 mg/kg/day UF = 100 Acute RfD = 1.0 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD ÷ Special FQPA SF = 1.0 mg/kg/day	Developmental Toxicity Study LOAEL = 1,000 mg/kg/day based on increased incidence of fetuses and litters with dilated renal pelvis and dilated ureter
Chronic Dietary (All populations)	NOAEL = 3.3 mg/kg/day UF = 100 Chronic RfD = 0.03 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD ÷ Special FQPA SF = 0.03 mg/kg/day	One year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased body weight gain in female dogs
Incidental Oral, Short-Term Dermal	Oral study NOAEL = 10 mg/kg/day	LOC for MOE = 100 (Residential)	Rabbit developmental study LOAEL = 100 mg/kg/day based on decreased body weight gain during gestation

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUDIOXONIL 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
Incidental Oral, Intermediate-Term Dermal	Oral study NOAEL = 3.3 mg/kg/day	LOC for MOE = 100 (Residential)	One year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased body weight gain in female dogs
Short- and Intermediate-Term Dermal (1–30 days and 1–6 months) (Occupational/Residential)	None	No systemic toxicity was seen at the limit dose (1,000 mg/kg/day) in the 28-day dermal toxicity study in rats. Additionally, there were no developmental concerns. There risk assessments are not required	Endpoint was not selected
Long-Term Dermal (6 months-lifetime) (Occupational/Residential)	Oral study NOAEL = 3.3 mg/kg/day (dermal absorption rate = 40% when appropriate)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	One year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased body weight gain in females dogs
Short-Term Inhalation (1 to 30 days) (Inhalation)	Inhalation (or oral) study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	Rabbit developmental study LOAEL = 100 mg/kg/day based on decreased body weight gain during gestation
Intermediate-Term Inhalation (1 month–6 months) (Inhalation)	Oral study NOAEL = 3.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	One year chronic toxicity study LOAEL = 35.5 mg/kg/day based on decreased body weight gain in female dogs
Long-Term Inhalation (6 months-lifetime) (Occupational/Residential)	Oral study NOAEL= 3.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	One year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased body weight gain in female dogs
Cancer (oral, dermal, inhalation)	"Group D" - not classified as to human carcinogenicity via relevant routes of exposure	Not applicable	Acceptable oral rat and mouse carcinogenicity studies; evidence of carcinogenic and mutagenic potential

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.516) for the residues of fludioxonil, in or on a variety of raw agricultural commodities which includes the following: Brassica, head and stem, Brassica, leafy greens, bushberry, caneberry, carrot, cereal grain, forage, fodder, and straw, cotton gin byproducts, cotton, undelinted seed, flax, seed, grape, grass, forage, fodder and hay, herb and spice group, juneberry, leafy vegetables except Brassica, lingonberry, longan, lychee, non-grass animal feed, dry bulb and green onion, peanut hay, peanut, pistachio, pulasan, rambutan, rapeseed and rapeseed forage, safflower seed, salal, Spanish lime, stone fruit, strawberry, sunflower seed, turnip greens, bulb vegetables, cucurbit vegetables, fruiting legume vegetables, root and tuber vegetables, foliage of legume vegetables, and watercress. Risk assessments were conducted by EPA to assess dietary exposures from fludioxonil 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.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An unrefined, Tier 1 acute dietary exposure assessment used tolerance-level residue values and 100% crop treated (CT) as assumptions for all of the registered and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A partially refined, Tier 2 chronic dietary exposure assessment was conducted for the general U.S. population and related population subgroups. Tolerance-level values and a default of 100% CT were used for all the current and proposed fludioxonil tolerances except for apple, grapefruit, lemon, lime, orange, and pear. Average application rate (AR) values replaced tolerances for apple,

grapefruit, lemon, lime, orange, and pear. In addition, processing factors from processing studies were used for apple juice and citrus juices.

iii. *Cancer.* EPA's Cancer Peer Review Committee (CPRC) classified fludioxonil as a Group D chemical that is considered not classifiable as to human carcinogenicity. Therefore, a cancer risk assessment was not performed.

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

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

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fludioxonil they are further discussed in the aggregate risk sections in Unit III.E.1.–4.

Based on the FIRST and SCI-GROW models, the EECs of fludioxonil for acute exposures are estimated to be 132 parts per billion (ppb) for surface water and 0.11 ppb for ground water. The EECs for chronic exposures are estimated to be 49 ppb for surface water and 0.11 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).

Fludioxonil is currently registered for use on the following residential non-dietary sites: Turfgrass and ornamentals in residential landscapes (registered product: Medallion®, EPA Reg. No. 100–769). Medallion® is a wettable powder in water-soluble packets, and the current label indicates that this product is "for professional use only." As such, no residential handler (i.e. applicator) exposures are anticipated. However, short- and intermediate-term dermal (adults and toddlers), and incidental ingestion (toddlers) post-application residential exposures are anticipated based on the use pattern for turfgrass applications detailed on the Medallion label (specifies that the product be applied at 14-day application intervals, with an annual maximum rate of 2 lbs ai/A/yr, which equates to about 3 applications at the maximum per application rate. Also, fludioxonil has half-lives ranging from 95 to 440 days in thatch sod). A residential post-application dermal assessment was not performed since the risks from short- and intermediate-term dermal exposure are negligible. Short- and intermediate-term dermal endpoints were not selected due to the NOAEL of 1,000 mg/kg/day (highest dose tested) in the 28-day dermal toxicity study in rats and also since there were no developmental concerns. EPA has concluded that there are no significant post-application exposures anticipated from treated landscape ornamentals. Therefore, the risk assessment was conducted using the following residential exposure assumption: Post-residential lawn applications for toddler incidental ingestion.

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 fludioxonil and any other substances and fludioxonil 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 fludioxonil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility

of rats or rabbits to in utero and/or postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for fludioxonil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X because:

- The toxicology data base is complete.
- The developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.
- A developmental neurotoxicity study is not required because there was no evidence of neurotoxicity in the current toxicity data base.
- The exposure assessment approach will not underestimate the potential dietary (food and water) and non-dietary exposures for infants and children resulting from the use of fludioxonil.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fludioxonil will occupy 0.13% of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2. of this unit:

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

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Female 13–49 years old	1.0	0.13	132	0.11	26,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fludioxonil from food will utilize 39.4% of the cPAD for the U.S. population, 43.7% of the cPAD for all infants < 1 year old, 65.2% of the cPAD for children 1–2 years old, and 39.4% of the cPAD for females 13–49 years old. Based on the use pattern, chronic residential exposure to residues of fludioxonil is not expected. In addition, there is potential for chronic dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3. of this unit:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.03	39.4	49	0.11	630
All infants < 1 year old	0.03	43.7	49	0.11	170
Children 1–2 years old	0.03	65.2	49	0.11	100
Females 13–49 years old	0.03	39.4	49	0.11	570

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). Fludioxonil is currently registered for use 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 fludioxonil.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 390 for all infants < 1 year old, 300 for children 1–2 years old, and 320 for children 3–5 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4. of this unit:

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

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
All infants < 1 year old	390	100	49	0.11	740
Children 1–2 years old	300	100	49	0.11	670
Children 3–5 years old	320	100	49	0.11	690

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

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 160 for all infants < 1 year old, 120 for children 1–2 years old, and 130 for children 3–5 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5. of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO FLUDIOXONIL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
All infants < 1 year old	160	100	49	0.11	100
Children 1–2 years old	120	100	49	0.11	30
Children 3–5 years old	130	100	49	0.11	50

5. *Aggregate cancer risk for U.S. population.* EPA has classified fludioxonil in "Group D" - not classifiable as to human carcinogenicity. Based on available data, the Agency concludes that the proposed use of fludioxonil does not present discernable aggregate cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. Apple, pear, kiwifruit, cantaloupe, yam, citrus, and pomegranate were analyzed for fludioxonil using Syngenta tolerance enforcement method AG–597B, Analytical Method for the Determination of CGA–219417 in Crops by High Performance Liquid Chromatography Including Validation Data, with Modifications. Head and leaf lettuce, lima bean, dry bean, and snap bean were analyzed for fludioxonil using Novartis working method AG–631B, Determination of Residues of CGA–219417 in Crops by High Performance Liquid Chromatography with Column Switching.

Adequate enforcement methodology (liquid 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 tolerances/maximum residue levels (MRLs) for fludioxonil residues on kiwifruit, yam, bean, dry and bean, succulent, citrus, leafy greens except spinach, melons, or pome fruit. Thus, harmonization is not an issue at this time.

V. Conclusion

Therefore, the tolerances are established for residues of fludioxonil,

4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile, in or on bean, dry; bean, succulent at 0.4; citrus, crop group 10 at 10 ppm; fruit, pome, group 11 at 5.0 ppm; grapefruit, oil at 500 ppm; kiwifruit at 20 ppm; leafy greens subgroup 4A, except spinach at 30 ppm; melon subgroup 9A at 0.03; and yam, true at 8.0 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0321 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 2004.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0321, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 22, 2004.

Lois Rossi,

Director, Registration Division, 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 180.516 is amended as follows:

a. By alphabetically adding commodities to the table in paragraph (a).

b. By removing the commodities "Apricot," "Caneberry," "Nectarine," "Peach," and "Plum" in the table in paragraph (b).

§ 180.516 Fludioxonil; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bean, dry	0.4
Bean, succulent	0.4
* * *	* *
Citrus, crop group 10	10
* * *	* *
Fruit, pome, group 11	5.0
* * *	* *
Grapefruit, oil	500
* * *	* *
Kiwifruit	20
Leafy greens subgroup 4A, except spinach	30
* * *	* *
Melon subgroup 9A	0.03
* * *	* *
Yam, true	8.0

* * * * *

[FR Doc. 04–21803 Filed 9–28–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0312; FRL–7681–6]

Methoxyfenozide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of methoxyfenozide (benzoic acid, 3-methyl-2-methyl-,2-(3,5-methylbenzoyl)-2-(1,1-dimethylethyl) hydrazide) in or onblack sapote; canistel; coriander, leaves; mamey sapote; mango; papaya; pea and bean, succulent shelled, subgroup 6B; peppermint; sapodilla; spearmint; star apple; strawberries; vegetable, foliage of legume (except soybean), subgroup 7A; vegetable, leaves of root and tuber, group 2; vegetable, legume, edible podded, subgroup 6A; vegetable, root, subgroup 1A. Interregional Research Project Number 4 (IR-4) and Dow AgroSciences are requesting these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

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

ADDRESSES : To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0312. 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 Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6411; e-mail address:*tavano.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. 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 August 18, 2004 (69 FR 51298) (FRL–7361–1), 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 PP 3E6768, PP 3E6784, PP 3E6790, PP 3E6796, and PP 3E6801) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.544 be amended by establishing a tolerance for residues of the insecticide methoxyfenozide, benzoic acid, 3-methoxy-2-methyl, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide, in or on the following raw agricultural commodities: Spearmint, tops at 7.0 parts per million (ppm); peppermint, tops at 7.0 ppm; and dill at 7.0 ppm (PP 3E6768); strawberry at 1.5 ppm (PP 3E6784); vegetable, root, subgroup 1A at 0.5 ppm, and vegetable, leaves of root and tuber, group 2 at 30 ppm (PP 3E6790); papaya; star apple; sapote, black; mango; sapodilla; canistel; and sapote, mamey at 0.5 ppm (PP 3E6796); coriander, leaves at 30 ppm (PP 3E6796); and vegetable, legume, edible podded, subgroup 6A at 1.5 ppm; pea and bean, succulent shelled, subgroup 6B at 0.2 ppm; and vegetable, foliage of legume, except soybean, subgroup 7A at 35 ppm (PP 3E6801). That notice included a summary of the petition prepared by Dow AgroScience, 9330 Zionsville Road, Indianapolis, IN 46268, 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 (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 methoxyfenozide, benzoic acid,3-methoxy-2-methyl, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide, in or on edible podded legumes (Crop Group 6A), mint, root vegetables (Crop Group 1A), strawberries, succulent shelled pea and bean (Crop Group 6B), and tropical/subtropical fruit crop: black sapote, canistel, mamey sapote, mango, papaya, sapodilla, and star apple) at 1.5, 7.0, 0.5, 1.5, 0.2, 0.5 ppm respectively. 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 methoxyfenozide 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 September 20, 2002 (67 FR 59193) (FRL–7198–5).

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 data base 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 methoxyfenozide used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 20, 2002 (67 FR 59193) (FRL–7198–5).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.544) for the residues of methoxyfenozide, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from methoxyfenozide 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.

Acute dietary risk assessments are performed for a food use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide. Thus, the risk from acute exposure is considered negligible. A summary of the acute dietary risk assessment for methoxyfenozide used for human risk assessment is discussed in Unit III.C.1.i. of the final rule published in the **Federal Register** of September 20, 2002 (67 FR 59193).

ii. *Chronic exposure.* Conducting the chronic dietary risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A Tier 1 (assumptions: tolerance level residues and 100 percent crop treated) chronic dietary risk assessment was conducted via DEEM-FCID. The established tolerances of 40 CFR 180.544 and the proposed tolerances were included in the analysis. DEEM default processing factors (from DEEM Version 7.76) were used for all processed commodities that do not have individual tolerances. Tolerances are not being recommended for animal commodities as a result of the proposed uses.

iii. *Cancer.* Methoxyfenozide is classified as a "not likely" human carcinogen. Therefore this risk is considered negligible.

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

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. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to methoxyfenozide, they are further discussed in the aggregate risk section Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of

methoxyfenozide for acute exposures are estimated to be 43 parts per billion (ppb) for surface water and 3.5 ppb for ground water. The EECs for chronic exposures are estimated to be 30 ppb for surface water and 3.5 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). Methoxyfenozide 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 methoxyfenozide and any other substances and methoxyfenozide 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 methoxyfenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to methoxyfenozide.

3. *Conclusion.* There is a complete toxicity data base for methoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The 10X FQPA factor was removed and reduced to 1X as discussed in the final rule published in the**Federal Register** of September 20, 2002 (67 FR 59193).

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk.* No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Accordingly, no acute risk is expected from exposure to methoxyfenozide.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO METHOXYFENOZIDE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.102	22.9	30	3.5	2800
All Infants (less than 1 year old)	0.102	37.3	30	3.5	290

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO METHOXYFENOZIDE—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children (1-2 years old)	0.102	71.3	30	3.5	2900
Children (3-5 years old)	0.102	50.1	30	3.5	2900
Children (6-12 years old)	0.102	27.1	30	3.5	2900
Youth (13-19 years old)	0.102	18.1	30	3.5	2900
Adults (20-49 years old)	0.102	18.6	30	3.5	2900
Females (13-49 years old)	0.102	19.1	30	3.5	2500
Adults (50+ years old)	0.102	18.8	30	3.5	2900

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to methoxyfenozide from food will utilize 22.9% of the cPAD for the U.S. population, 37.3% of the cPAD for all infants (less than 1 year old), and 71.3% of the cPAD for children, 1-2 years old. There are no residential uses for methoxyfenozide that result in chronic residential exposure to methoxyfenozide.

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

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified methoxyfenozide as a "not likely" human carcinogen according to the "EPA Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996)." This classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, methoxyfenozide is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities. The available Analytical Enforcement Methodology was previously reviewed in the **Federal Register** of September 20, 2002 (67 FR 59193)

B. International Residue Limits

There are no Codex or Canadian MRLs established for residues of methoxyfenozide. Mexican MRLs are established for residues of methoxyfenozide in cottonseed (0.05 ppm) and maize (0.01 ppm). The U.S. tolerances on these commodities are 2.0 ppm and 0.05 ppm, respectively. Based on the current use patterns, the U.S. tolerance levels cannot be reduced to harmonize with the Mexican MRLs, so incompatibility will exist.

V. Conclusion

Therefore, tolerances are established for residues of methoxyfenozide, in or on black sapote; canistel; coriander, leaves; mamey sapote; mango; papaya; pea and bean succulent shelled, subgroup 6B; peppermint; sapodilla; spearmint; star apple; strawberries; vegetable, foliage of legume (except soybean), subgroup 7A; vegetable, leaves of root and tuber, group 2; vegetable, legume, edible podded, subgroup 6A; vegetable, root, subgroup 1A at 0.5, 0.5, 30, 0.5, 0.5, 0.5, 0.2, 7.0, 0.5, 7.0, 0.5, 1.5, 35, 30, 1.5, 0.5, respectively.

The original petition submitted by the petitioner requested a tolerance for dill, but data was not provided to the Agency to support the establishment of a tolerance.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0312 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0312, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the**Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 22, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.544 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* *	* * *
Black sapote	0.5
* *	* * *
Canistel	0.5
* *	* * *
Coriander, leaves	30
* *	* * *
Mamey sapote	0.5
Mango	0.5
* *	* * *
Papaya	0.5
Pea and bean, succulent shelled, subgroup 6B	0.2
* *	* * *
Peppermint	7.0
* *	* * *
Sapodilla	0.5
* *	* * *
Spearmint	7.0
Star apple	0.5
Strawberries	1.5
* *	* * *
Vegetable, foliage of legume, (except soybean)subgroup 7A	35
Vegetable, leaves of root and tuber, group 2	30
Vegetable, legume, edible podded, subgroup 6A	1.5
Vegetable, root, subgroup 1A	0.5

* * * * *

[FR Doc. 04–21804 Filed 9–28–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 04–2923]

Commission Organization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends part 0 of the Commission's rules to update the geographical coordinate locations of the Commission's protected field installations where radio spectrum monitoring operations are conducted to delete the Commission's Anchorage, Alaska monitoring facility.

DATES: Effective September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Gabriel Collazo, Enforcement Bureau, Spectrum Enforcement Division, (202) 418–1160.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 04–2923, adopted on September 8, 2004, and released on September 13, 2004. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text may be retrieved from the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, or (800) 378–3160.

The Order amends § 0.121(b) of the rules to update the geographical coordinate locations of the Commission's protected field installations where radio spectrum monitoring operations are conducted. Specifically, the Order deletes the geographical coordinates of the Commission's Anchorage, Alaska monitoring facility from the list of protected field installations set forth in § 0.121(b) of the rules. These locations are protected from harmful radio frequency interference to the Commission's monitoring activities that could be produced by the proximity of any nearby radio transmitting facilities.

Pursuant to the authority contained in sections 4(i) and (5) of the Communications Act of 1934, as amended, and § 0.231(b) of the rules, part 0 of the rules is amended as set forth in the rule changes.

As the rule amendment adopted in the Order pertains to agency organization, procedure and practice, the notice and comment provision of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rule are rules of agency organization, procedure, or practice that do not "substantially affect the rights or obligations of non-agency parties."

The rule amendment set forth in the rule changes will become effective September 29, 2004.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

Joseph P. Casey.

Spectrum Enforemtion Division Enforcement Bureau

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

§ 0.121 [Amended]

■ 2. Section 0.121 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Protected field offices are located at the following geographical coordinates (coordinates are referenced to North American Datum 1983 (NAD83)):

Allegan, Michigan, 42°36′20.1″ N. Latitude, 85°57′20.1″ W. Longitude

Belfast, Maine, 44°26′42.3″ N. Latitude, 69°04′56.1″ W. Longitude

Canandaigua, New York, 42°54′48.2″ N. Latitude, 77°15′57.9″ W. Longitude

Douglas, Arizona, 31°30′02.3″ N. Latitude, 109°39′14.3″ W. Longitude
Ferndale, Washington, 48°57′20.4″ N. Latitude, 122°33′17.6″ W. Longitude
Grand Island, Nebraska, 40°55′21.0″ N. Latitude, 98°25′43.2″ W. Longitude
Kenai, Alaska, 60°43′26.0″ N. Latitude, 151°20′15.0″ W. Longitude
Kingsville, Texas, 27°26′30.1″ N. Latitude, 97°53′01.0″ W. Longitude
Laurel, Maryland, 39°09′54.4″ N. Latitude, 76°49′15.9″ W. Longitude
Livermore, California, 37°43′29.7″ N. Latitude, 121°45′15.8″ W. Longitude
Powder Springs, Georgia, 33°51′44.4″ N. Latitude, 84°43′25.8″ W. Longitude
Santa Isabel, Puerto Rico, 18°00′18.9″ N. Latitude, 66°22′30.6″ W. Longitude
Vero Beach, Florida, 27°36′22.1″ N. Latitude, 80°38′05.2″ W. Longitude
Waipahu, Hawaii, 21°22′33.6″ N. Latitude, 157°59′44.1″ W. Longitude

[FR Doc. 04–21724 Filed 9–28–04; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No.. 188
Wednesday, September 29, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–200 series turbofan engines. That AD currently requires installing and periodically inspecting individual or sets of certain part number (P/N) temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action. This proposed AD would require installing and periodically inspecting two P/N 810486 temperature indicators on all PW JT8D–200 series turbofan engines, including those incorporating high pressure turbine (HPT) containment hardware. This proposed AD results from five uncontained HPT shaft failures out of thirteen HPT shaft fractures. The HPT shafts fractured through the No. 4½ oil return holes due to oil fires within the No. 4 and 5 bearing compartment. We are proposing this AD to prevent oil fires and the resulting fracture of the HPT shaft, which can result in uncontained release of engine fragments; engine fire; in-flight engine shutdown; and possible airplane damage.

DATES: We must receive any comments on this proposed AD by November 29, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–1605.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 96–ANE–35–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally. and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On September 10, 1997, the FAA issued AD 97–19–13, Amendment 39–10134 (62 FR 49135, September 19, 1997). That AD requires installing and periodically inspecting temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action. That AD resulted from a report of an uncontained turbine failure due to an HPT shaft fracture on an engine that had the containment hardware installed. The HPT shaft fractures were caused by oil fires within the No. 4 and 5 bearing compartment, due to thirteenth stage pressure cooling pressure (PCP) air leaking into the bearing compartment. The PCP air leakage was due to:

- Inner heat shield cracking; or
- No. 5 compartment carbon seal support burn-through.

That condition, if not corrected, could result in uncontained release of engine fragments, engine fire, in-flight engine shutdown, and possible airplane damage.

Actions Since AD 97–19–13 Was Issued

Since that AD 97–19–13 was issued, PW found a new source of thirteenth stage PCP air leakage into the No. 4 and 5 bearing compartments that might lead to compartment oil fires. The source of air leaks into the No. 4 and 5 bearing compartments is from the thirteenth stage PCP air, due to:

- Inner heat shield cracking; or
- No. 5 compartment carbon seal support burn-through; or
- No. 5 carbon seal sticking in the open position.

This air leakage resulted in oil fires, fracturing the HPT shaft through the No. 4½ oil return holes, leading to an uncontained turbine failure. We are

proposing this AD to prevent oil fires and the resulting fracture of the HPT shaft, which can result in uncontained release of engine fragments; engine fire; in-flight engine shutdown; and possible airplane damage.

Relevant Service Information

We have reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 5944, Revision 4, dated April 8, 2004. The ASB describes procedures for installing and inspecting temperature indicator devices on the No. 4 and 5 bearing compartment scavenge tubes on PW JT8D–200 series turbofan engines.

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 products of this same type design. We are proposing this AD, which would require installation and inspection of temperature indicator devices on the No. 4 and 5 bearing compartment scavenge tube. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

There are about 2,345 PW JT8D–200 series turbofan engines of the affected design in the worldwide fleet. We estimate that 1,143 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 1 work hour per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $37 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $116,586.

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 96–ANE–35–AD" in your request.

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 Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–10134 (62 FR 49135, September 19, 1997) and by adding a new airworthiness directive (AD) to read as follows:

Pratt & Whitney: Docket No. 96–ANE–35–AD. Supersedes AD 97–19–13, Amendment 39–10134.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 29, 2004.

Affected ADs

(b) This AD supersedes AD 97–19–13, Amendment 39–10134.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–200 series turbofan engines. These engines are installed on, but not limited to, McDonnell Douglas MD–80 series and Boeing 727 series airplanes.

Unsafe Condition

(d) This AD results from five uncontained high pressure turbine (HPT) shaft failures out of thirteen HPT shaft fractures due to oil fires in the No. 4 and 5 bearing compartments. We are proposing this AD to prevent oil fires; fracture of the HPT shaft, which can result in uncontained release of engine fragments; engine fire; in-flight engine shutdown; and possible airplane damage.

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.

Installation of the Dual-Window Temperature Indicators

(f) Install two dual-window temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tubes of PW JT8D–200 series turbofan engines within 90 days after the effective date of this AD. Use paragraph 1.A. of Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 5944, Revision 4, dated April 8, 2004, to install the temperature indicators.

Initial Visual Inspection of the Dual-Window Temperature Indicators

(g) Perform initial visual inspection of the dual-window temperature indicators installed in paragraph (f) of this AD within 65 hours time-in-service (TIS) since installation.

(1) If the color of any temperature indicator window has turned black, perform troubleshooting, diagnostic testing, and corrective action as required, using paragraph 1.B. of the Accomplishment Instructions of PW ASB No. 5944, Revision 4, dated April 8, 2004.

(2) If one temperature indicator is missing, inspect the remaining temperature indicator. If the remaining temperature indicator has turned black, perform troubleshooting, diagnostic testing, and corrective action as required, using paragraph 1.B. of the Accomplishment Instructions of PW ASB No. 5944, Revision 4, dated April 8, 2004. If the remaining temperature indicator has not turned black, replace the missing temperature indicator as specified in paragraph (f) of this AD, and inspect as specified in paragraph (g) of this AD, prior to returning the engine to service.

(3) If both temperature indicators are missing, remove the engine from service.

(4) Prior to returning the engine to service, replace any temperature indicator that has turned black as specified in paragraph (f) of this AD and inspect as specified in paragraph (g) of this AD.

Repetitive Visual Inspection of the Dual-Window Temperature Indicators

(h) Perform repetitive visual inspections of the dual-window temperature indicators installed in paragraph (f) of this AD within 65 hours TIS since last inspection. Use paragraph (g) of this AD to inspect the temperature indicators.

Material Incorporated by Reference

(i) None.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on September 22, 2004.

Francis A. Favara,

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

[FR Doc. 04–21812 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19200; Directorate Identifier 2003–NM–195–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 Series Airplanes; and Model 747SP and 747SR Series Airplanes; Equipped with Pratt & Whitney JT9D–3, and –7 (except –70) Series Engines or General Electric CF6–50 Series Engines with Modified JT9D–7 Inboard Struts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing airplanes listed above. This proposed AD would require repetitive detailed inspections of the midspar web of the inboard and/or outboard struts for cracking, disbonding, or buckling; repetitive detailed inspections of the midspar stiffeners for any crack or fracture; related investigative actions; and corrective actions, if necessary. This proposed AD is prompted by reports of cracking in the midspar web. We are proposing this AD to detect and correct cracking in the midspar assembly, which could result in the loss of the midspar assembly load path, and could, combined with the loss of the Nacelle Station 180 bulkhead load path, lead to the separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by November 15, 2004.

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, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or 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.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19200; Directorate Identifier 2003–NM–195–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*.

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

Examining the Docket

You can examine the AD docket 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 DMS receives them.

Discussion

We have received reports of cracking in the midspar web, and one report of a fractured stiffener on certain Boeing Model 747 series airplanes with Pratt & Whitney Model JT9D–7 series engines. The cracking/fracture was caused by fatigue and sonic-induced vibration. This condition, if not detected and corrected, could result in the loss of the midspar assembly load path, and could, combined with the loss of the Nacelle Station 180 bulkhead load path, lead to the separation of the engine from the airplane.

Similar Design

The subject area on Boeing Model 747 series airplanes with Pratt & Whitney Model JT9D–3 series engines or General Electric Model CF6–50 series engines with modified JT9D–7 inboard struts is identical to that on the affected Model 747 series airplanes with JT9D–7 series engines. Therefore, those Model 747 series airplanes with JT9D–3 series engines or CF6–50 series engines with modified JT9D–7 inboard struts may be subject to the same unsafe condition revealed on the Model 747 series airplanes with JT9D–7 series engines.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–54A2219, dated September 4, 2003, which describes the following procedures:

- *For Group 1 and 2 airplanes:* Performing repetitive detailed inspections of the midspar web of the inboard struts for cracking, disbonding, or buckling.
- *For Group 1 airplanes:* Performing repetitive detailed inspections of the midspar web of the outboard struts for cracking, disbonding, or buckling.
- *For Group 1 and 2 airplanes:* Performing repetitive detailed inspections of the midspar stiffeners of the inboard struts for any crack or fracture.
- *For Group 1 airplanes:* Performing repetitive detailed inspections of the midspar stiffeners of the outboard struts for any crack or fracture.
- *For Group 1 and 2 airplanes:* Performing related investigative actions. The related investigative actions include performing a high frequency eddy current (HFEC) or penetrant inspection for cracking of any buckle found on the midspar web and performing an ultrasonic inspection for disbonding of any buckle found on the midspar web.
- *For Group 1 and 2 airplanes:* Performing corrective actions, if necessary. The corrective actions include repairing the midspar web or replacing the midspar stiffener with a new midspar stiffener (includes an HFEC inspection of the stiffener hole for any crack), and contacting Boeing if any crack is found in the stiffener hole or if any buckle is found that does not have any cracking and the web is not disbonded.

We have determined that accomplishing the actions specified in the service bulletin will 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 repetitive detailed inspections of the midspar web of the inboard and/or outboard struts for cracking, disbonding, or buckling; repetitive detailed inspections of the midspar stiffeners for any crack or fracture; related investigative actions; and corrective actions, if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Costs of Compliance

This proposed AD would affect about 78 airplanes of U.S. registry and 228 airplanes worldwide. The proposed actions would take about 6 to 13 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 between $30,420 and $65,910, or between $390 and $845 per airplane, per inspection cycle.

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–2004–19200; Directorate Identifier 2003–NM–195–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 15, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes; and Model 747SP and 747SR series airplanes; certificated in any category; equipped with Pratt & Whitney JT9D–3, and –7 (except–70) series engines or General Electric CF6–50 series engines with modified JT9D–7 inboard struts; as listed in Boeing Alert Service Bulletin 747–54A2219, dated September 4, 2003.

Unsafe Condition

(d) This AD was prompted by reports of cracking in the midspar web. We are issuing this AD to detect and correct cracking in the midspar assembly, which could result in the loss of the midspar assembly load path, and could, combined with the loss of the Nacelle Station 180 bulkhead load path, lead to the separation of the engine from the airplane.

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.

Compliance Times

(f) Within 18 months after the effective date of this AD, do the actions in paragraphs (g) and (h) of this AD, as applicable. Repeat the actions thereafter at intervals not to exceed 1,200 flight cycles.

Inboard Strut Midspar Inspection

(g) For Group 1 and 2 airplanes specified in paragraph 1.A.1. of Boeing Alert Service Bulletin 747–54A2219, dated September 4, 2003: Perform a detailed inspection of the midspar web of the inboard struts for cracking, disbonding, or buckling; a detailed inspection of the midspar stiffeners for any crack or fracture; related investigative actions; and any applicable corrective actions; in accordance with "Part 1" of the Work Instructions of Boeing Alert Service Bulletin 747–54A2219, dated September 4, 2003; except as required by paragraph (i) of this AD. Perform any related investigative actions and any applicable corrective actions before further flight.

Outboard Strut Midspar Inspection

(h) For Group 1 airplanes specified in paragraph 1.A.1. of Boeing Alert Service

Bulletin 747–54A2219, dated September 4, 2003: Perform a detailed inspection of the midspar web of the outboard struts for cracking, disbonding, or buckling; a detailed inspection of the midspar stiffeners for any crack or fracture; related investigative actions; and any applicable corrective actions; in accordance with "Part 2" of the Work Instructions of Boeing Alert Service Bulletin 747–54A2219, dated September 4, 2003; except as required by paragraph (i) of this AD. Perform any related investigative actions and any applicable corrective actions before further flight.

Contact the FAA/Designated Engineering Representative

(i) Where Boeing Alert Service Bulletin 747–54A2219, dated September 4, 2003, specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on September 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21821 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19201; Directorate Identifier 2003–NM–100–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for all Boeing Model 767–200, –300, and –300F series airplanes. That AD currently requires examination of maintenance records to determine if Titanine JC5A (also known as Desoto 823E508) corrosion inhibiting compound ("C.I.C.") was ever used; inspection for cracks or corrosion and corrective action, if applicable; repetitive inspections and C.I.C. applications; and modification of the aft trunnion area of the outer cylinder, which terminates the need for the repetitive inspections and C.I.C. applications. This proposed AD would also require, for certain other airplanes, repetitive inspections for cracks or corrosion, corrective action if necessary, and repetitive C.I.C. applications. This proposed AD is prompted by a report that JC5A was used on more airplanes during production than previously identified. We are proposing this AD to prevent severe corrosion in the main landing gear (MLG) outer cylinder at the aft trunnion, which could develop into stress corrosion cracking and consequent collapse of the MLG.

DATES: We must receive comments on this proposed AD by November 15, 2004.

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.
- *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, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or 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.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

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–2004–19201; Directorate Identifier 2003–NM–100–AD" at the beginning 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 received 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 our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve

the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.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 DMS receives them.

Discussion

On April 11, 2002, we issued AD 2002–08–07, amendment 39–12715 (67 FR 19322, April 19, 2002), for all Boeing Model 767–200, –300, and –300F series airplanes. That AD requires examination of maintenance records to determine if Titanine JC5A (also known as Desoto 823E508, and hereafter collectively referred to as JC5A) corrosion inhibiting compound ("C.I.C.") was ever used; inspection for cracks or corrosion and corrective action, if applicable; repetitive inspections and C.I.C. applications; and modification of the aft trunnion area of the outer cylinder, which terminates the need for the repetitive inspections and C.I.C. applications. That AD was prompted by reports of an approved C.I.C. causing severe corrosion in the MLG at the outer cylinder aft trunnion on Boeing Model 767 series airplanes. We issued that AD to prevent severe corrosion in the MLG outer cylinder at the aft trunnion, which could develop into stress corrosion cracking and consequent collapse of the MLG.

Actions Since Existing AD Was Issued

Since we issued AD 2002–08–07, we have determined that the identified unsafe condition (*i.e.*, corrosion in the aft trunnion caused by the use of JC5A, a C.I.C. that deteriorates over time and degrades primer and cadmium plating when it comes into contact with moisture) addressed in that AD could still exist on 15 Model 767–200, –300, and –300F series airplanes of U.S. registry (within the group of line numbers (L/N) 834 through 874 inclusive). We have been advised that JC5A was used on more airplanes during production than those previously identified in the original issue of Boeing Alert Service Bulletin 767–32A0192. Based on previous information and the records examination required by AD 2002–08–07, an operator could have incorrectly determined that JC5A had not been used on certain airplanes and consequently not corrected the unsafe condition. Therefore, we have determined that these airplanes are subject to the inspections, C.I.C applications, and modification required by AD 2002–08–07.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–32A0192, Revision 1, dated March 13, 2003. The procedures specified in Revision 1 of the service bulletin are essentially the same as the procedures specified in the original issue of the service bulletin, as cited in AD 2002–08–07. Revision 1 of the service bulletin identifies affected airplanes, L/Ns 834 through 874, as assembled new with JC5A in the outer cylinder aft trunnion. 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 products of this same type design. Therefore, we are proposing this AD, which would supersede AD 2002–08–07. This proposed AD would continue to require, for certain airplanes, examination of maintenance records to determine if JC5A C.I.C. was ever used; inspection for cracks or corrosion and corrective action, if applicable; repetitive inspections and C.I.C. applications; and modification of the aft trunnion area of the outer cylinder, which terminates the need for the repetitive inspections and C.I.C. applications. This proposed AD would also require, for certain other airplanes, repetitive inspections for cracks or corrosion, corrective action if necessary, and repetitive C.I.C. applications. This proposed AD would require you to use the service information described previously to perform these actions except as discussed under "Differences Between the Proposed AD and the Service Bulletins."

Differences Between the Proposed AD and the Service Bulletins

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins require reporting all corrosion found in the aft trunnions of certain airplanes, this proposed AD would not require that action.

Change to Existing AD

This proposed AD would retain all requirements of AD 2002–08–07. Since AD 2002–08–07 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2002–08–07	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (g).
Paragraph (b)	Paragraph (h).
Paragraph (c)	Paragraph (i).
Paragraph (d)	Paragraph (j).
Paragraph (e)	Paragraph (k).
Paragraph (f)	Paragraph (l).
Paragraph (g)	Paragraph (m).
Paragraph (h)	Paragraph (n).
Paragraph (i)	Paragraph (q).
Paragraph (j)	Paragraph (r).
Paragraph (k)	Paragraph (o).
Paragraph (l)	Paragraph (p).

We have also changed all references to the ambiguous time of "years ago" in paragraphs (j)(2), (j)(3), (k)(2)(i)(A), (k)(2)(i)(B), and (m)(2) of this proposed AD to "years before May 6, 2002."

Costs of Compliance

There are about 848 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 357 airplanes of U.S. registry. The new requirements of this proposed AD add no additional economic burden for operators affected by AD 2002–08–07. The current costs for this AD are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
C.I.C. Application	1	$65	(1)	$65, per application cycle	$23,205 per application cycle.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Cross Bolt Hole Inspection—Bushings Removed.	2	65	(1)	130	46,410.
Restoration for Bushings Removed.	6	65	(1)	390	139,230.
Cross Bolt Inner Chamfer Inspection—Bushings Not Removed.	2	65	(1)	130, per inspection cycle	46,410, per inspection cycle.
Restoration for Bushings Not Removed.	6	65	(1)	390	139,230.
Terminating Action	64	65	6,356	10,581	3,777,417.

[1] None.

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 removing amendment 39–12715 (67 FR 19322, April 19, 2002) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19201; Directorate Identifier 2003–NM–100–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by November 15, 2004.

Affected ADs

(b) This AD supersedes AD 2002–08–07, amendment 39–12715 (67 FR 19322, April 19, 2002).

Applicability: (c) This AD applies to all Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that Titanine JC5A (also known as Desoto 823E508) was used on more airplanes during production than previously identified. We are issuing this AD to prevent severe corrosion in the main landing gear (MLG) outer cylinder at the aft trunnion, which could develop into stress corrosion cracking and consequent collapse of the MLG.

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.

Requirements of AD 2002–08–07, Amendment 39–9783: Line Numbers (L/N) 1 Through 833 Inclusive, and 875 and Subsequent

(f) For airplanes with L/Ns 1 through 833 inclusive, and 875 and subsequent:

Do the actions specified in paragraphs (g) through (q) of this AD, as applicable.

Records Examination

(g) Within 90 days after May 6, 2002 (the effective date of AD 2002–08–07, amendment 39–9783), examine airplane records to determine if Titanine JC5A or Desoto 823E508 (hereafter collectively referred to as "JC5A") corrosion inhibiting compound ("C.I.C.") was used in the aft trunnion area of the MLG outer cylinder during general maintenance, overhaul, or incorporation of Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995; Revision 1, dated October 10, 1996 (required by paragraph (e) of AD 96–21–06, amendment 39–9783); or Revision 2, dated November 30, 2000; in accordance with Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003. If records do not show conclusively which compound was used, assume JC5A was used. Refer to Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001, for the line numbers of airplanes that were assembled new using JC5A.

Note 1: Prior to January 31, 2001, if BMS 3–27 was ordered from Boeing, Boeing shipped JC5A as a substitute.

MLGs on Which JC5A Was Not Used

(h) Except as provided by paragraph (p) ("Use of JC5A Prohibited") of this AD, if, according to the criteria of paragraph (g) of this AD, JC5A was never used, no further action is required by this AD.

C.I.C. Applications, Inspections, and Corrective Actions if Necessary

(i) For Category 1 MLG outer cylinders as identified in Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001: If, according to the criteria of paragraph (g) of this AD, JC5A may have been used, perform the actions specified in both paragraphs (j) and (k) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003.

(j) For MLGs and MLG outer cylinders identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD: Within 90 days after May 6, 2002, perform the C.I.C. application on the MLG in accordance with "Part 3—C.I.C. Application" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003. Thereafter, repeat at intervals not to exceed 180 days until the terminating action required by paragraph (q) of this AD has been accomplished.

(1) MLG outer cylinders that are less than 3 years old since new.

(2) MLGs that have been overhauled less than 3 years before May 6, 2002.

(3) MLGs on which rework per Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995; Revision 1, dated October 10, 1996; or Revision 2, dated November 30, 2000, was accomplished less than 3 years before May 6, 2002.

(k) Before the MLG outer cylinder is 3 years old since new, since last overhaul, or since rework per Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995; Revision 1, dated October 10, 1996; or

Revision 2, dated November 30, 2000; or within 90 days after May 6, 2002; whichever is later; perform a detailed inspection for cracks and corrosion of the cross bolt bushing holes and chamfers in accordance with "Part 1—Cross Bolt Hole Inspection—Bushings Removed" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003.

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

(1) If no crack or corrosion is found during the detailed inspection required by paragraph (k) of this AD, perform the actions in paragraphs (k)(1)(i), (k)(1)(ii), and (k)(1)(iii) of this AD, at the applicable times indicated.

(i) Before further flight, perform the restoration steps shown in Figure 2 of the service bulletin; and thereafter at intervals not to exceed 180 days, perform the C.I.C. application on the landing gear in accordance with "Part 3—C.I.C. Application" of the Accomplishment Instructions of the service bulletin.

(ii) Within 18 months after performing the detailed inspection required by paragraph (k) of this AD, and thereafter at intervals not to exceed 18 months, perform the detailed inspection for cracks and corrosion of the cross bolt hole inner chamfer, in accordance with "Part 2—Cross Bolt Hole Inner Chamfer Inspection—Bushings Not Removed" of the Accomplishment Instructions of the service bulletin, until the terminating action required by paragraph (q) of this AD has been accomplished.

(iii) Before the MLG cylinder is 6½ years old since new, since last overhaul, or since rework per Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995; Revision 1, dated October 10, 1996; or Revision 2, dated November 30, 2000: whichever is later; perform the terminating action described in paragraph (q) of this AD.

(2) If any corrosion is found on the cross bolt holes or outer chamfers during the detailed inspection required by paragraph (k) of this AD, before further flight, remove the corrosion per Figure 2 of the service bulletin.

(i) If all of the corrosion can be removed: Before further flight, perform the restoration steps shown in Figure 2 of the service bulletin; thereafter at intervals not to exceed 180 days, perform the C.I.C. application on the MLG in accordance with "Part 3—C.I.C. Application" of the Accomplishment Instructions of the service bulletin; and perform the terminating action described in paragraph (q) of this AD, at the applicable time specified in paragraph (k)(2)(i)(A) or (k)(2)(i)(B) of this AD.

(A) If the MLG outer cylinder is less than 5 years old since new, if the MLG was last overhauled less than 5 years before May 6, 2002, or if rework per Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995; Revision 1, dated October 10, 1996; or Revision 2, dated November 30, 2000; was accomplished less than 5 years before May 6, 2002: Within 18 months after performing the detailed inspection required by paragraph (k) of this AD.

(B) If the MLG outer cylinder is 5 years old or more since new, if the MLG was last overhauled 5 years or more before May 6, 2002, or if rework per Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995; Revision 1, dated October 10, 1996; or Revision 2, dated November 30, 2000; was accomplished 5 years or more before May 6, 2002: Before the MLG outer cylinder is 6½ years old since new, since last overhaul, or since rework per Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995; Revision 1, dated October 10, 1996; or Revision 2, dated November 30, 2000; whichever is later.

(ii) If any corrosion cannot be removed, before further flight, perform the terminating action described in paragraph (q) of this AD.

(3) If any crack is found anywhere during the detailed inspection required in paragraph (k) of this AD, or if corrosion in the inner cross bolt hole chamfers is found, before further flight, perform the terminating action described in paragraph (q) of this AD.

(l) For Category 2 MLG outer cylinders as identified in Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001: If, according to the criteria of paragraph (g) of this AD, JC5A may have been used, perform the actions specified in both paragraphs (m) and (n) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003.

(m) For MLGs and MLG outer cylinders identified in paragraphs (m)(1) and (m)(2) of this AD: Within 90 days after May 6, 2002, perform the C.I.C. application on the MLG in accordance with "Part 3—C.I.C. Application" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003. Thereafter, repeat the application at intervals not to exceed 180 days until the terminating action required by paragraph (q) of this AD has been accomplished.

(1) MLG outer cylinders that are less than 3 years old since new.

(2) MLGs that have been overhauled less than 3 years before May 6, 2002.

(n) Before the MLG outer cylinder is 3 years old since new or since the last overhaul, or within 90 days after May 6, 2002, whichever is later, perform a detailed inspection for cracks and corrosion of the cross bolt hole inner chamfer, in accordance with "Part 2—Cross Bolt Hole Inner Chamfer Inspection—Bushings Not Removed" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003.

(1) If no crack or corrosion is found during the inspection required by paragraph (n) of this AD, before further flight, and thereafter at intervals not to exceed 180 days, perform the C.I.C. application on the MLG in accordance with "Part 3—C.I.C. Application" of the Accomplishment Instructions of the service bulletin, until the next MLG overhaul. After the next MLG overhaul has been completed, no further action is required by this AD.

(2) If any corrosion is found during the detailed inspection required by paragraph (n) of this AD, before further flight, remove the cross bolt bushings and perform the detailed inspection specified in paragraph (k) of this AD, and remove the corrosion per Figure 2 of the service bulletin.

(i) If all of the corrosion can be removed, perform the actions specified in paragraph (n)(2)(i)(A) and (n)(2)(i)(B) of this AD, at the applicable times indicated.

(A) Prior to further flight, perform the restoration steps shown in Figure 2 of the service bulletin; and thereafter at intervals not to exceed 180 days, perform the C.I.C. application on the MLG in accordance with "Part 3—C.I.C. Application" of the Accomplishment Instructions of the service bulletin.

(B) Within 18 months after the corrosion removal required by paragraph (n)(2) of this AD, perform the terminating action described in paragraph (q) of this AD.

(ii) If all the corrosion cannot be removed, before further flight, perform the terminating action required by paragraph (q) of this AD.

(3) If any crack is found during the detailed inspection required by paragraph (n) of this AD, before further flight, perform the terminating action described in paragraph (q) of this AD.

Parts Installation

(o) As of May 6, 2002, no person shall install on any airplane an MLG outer cylinder unless maintenance records conclusively show that JC5A has never been used on that MLG outer cylinder, or unless it complies with paragraph (q) of this AD.

Use of JC5A Prohibited

(p) As of May 6, 2002, no person shall use the C.I.C. JC5A in the aft trunnion area of the MLG outer cylinder on any airplane.

Terminating Action

(q) Perform the terminating action (including removal of the existing bushings, repair of the aft trunnion area of the outer cylinder, and machining and installation of new bushings) in accordance with "Part 4—Terminating Action" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001; or Revision 1, dated March 13, 2003. Completion of the terminating action terminates the requirements for the repetitive inspections and C.I.C. applications of this AD.

Credit for Terminating Action

(r) For all airplanes, accomplishment of the actions specified in paragraph (q) of this AD is considered acceptable for compliance with the requirements of paragraph (e) of AD 2002–01–13, amendment 39–12607.

New Requirements of This AD: L/Ns 834 Through 874 Inclusive

(s) For airplanes with L/Ns 834 through 874 inclusive: Do the actions specified in paragraphs (s)(1), (s)(2), and (s)(3) of this AD.

(1) Within 90 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days: Do the actions specified in paragraph (m) of this AD until the terminating action required by paragraph (q) of this AD has been accomplished.

(2) Before the MLG outer cylinder is 3 years old since new or since last overhaul, or within 90 days after the effective date of this AD, whichever is later: Do the actions as specified in paragraph (n) of this AD.

(3) As of the effective date of this AD, the actions specified in paragraphs (o) and (p) of this AD must be complied with.

Reporting Requirement

(t) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance (AMOCs)

(u)(1) 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.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21820 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19202; Directorate Identifier 2004–NM–95–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 series airplanes. This proposed AD would require identification of the part number for the cable assembly for the lower anti-collision light, and related investigative/corrective actions if necessary. This proposed AD is prompted by a report of damage caused by an electrical arc in a connector on the cable assembly for the lower anti-collision light. We are proposing this AD to prevent an electrical arc in the cable assembly for the lower anti-collision light, which could result in a fire in a flammable leakage zone of the airplane.

DATES: We must receive comments on this proposed AD by November 15, 2004.

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, P.O. 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.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Marcia Smith, 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) 917–6484; fax (425) 917–6590.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

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–2004–19202; Directorate Identifier 2004–NM–95–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.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.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 on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report of damage caused by an electrical arc in a

connector on the cable assembly for the lower anti-collision light. The connector was installed on a Boeing Model 757 series airplane. Investigation revealed that the electrical arc was caused by fluids that collected in the open back-shell of the connector. The fluids conducted electricity between the pins in the connector, which caused the electrical arc. The cable assembly is located in a flammable leakage zone, in the main wheel well, under the center fuel tank. An electrical arc in a flammable leakage zone may cause a fire. An electrical arc in the cable assembly for the lower anti-collision light could result in a fire in a flammable leakage zone of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 757–33A0048 (for Model 757–200, –200CB, and –200PF series airplanes) and 757–33A0049 (for Model 757–300 series airplanes), both dated March 28, 2002. The alert service bulletins describe procedures for the related investigative/corrective actions if certain part numbers (P/Ns) for the cable assembly for the lower anti-collision light are installed. The corrective actions include replacing the cable assembly with a new, improved cable assembly; or modifying the existing cable assembly. The related investigative actions include testing the anti-collision light after replacing or modifying the cable assembly. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Both of the alert service bulletins refer to Grimes Service Bulletin 60–3414–33–SB02, dated December 1, 2001, as an additional source of service information for modifying the cable assembly.

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 identification of the P/N for the cable assembly for the lower anti-collision light, and related investigative/corrective actions if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and the Service Information."

Differences Between the Proposed AD and the Service Information

The alert service bulletins do not include an inspection or review of airplane maintenance records to identify the P/N of the cable assembly for the lower anti-collision light. This proposed AD would require these actions. This requirement provides relief to operators who do not have the specified P/Ns installed on their airplanes. Operators who do not have the specified part numbers installed would not be required to do an unnecessary replacement or modification.

The alert service bulletins do not provide a compliance time for the replacement or modification of the cable assembly for the lower anti-collision light. We have determined that a compliance time of within 60 months after the effective date of the AD is appropriate. In developing an appropriate compliance time, we considered the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the proposed actions. In light of these factors, we find that a 60-month compliance time for completing the proposed actions is warranted because it allows affected airplanes to continue to operate without compromising safety. The manufacturer concurs with this compliance time.

Costs of Compliance

This proposed AD would affect about 974 airplanes worldwide, and 650 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection/Records Review	1	$65	None	$65	650	$42,250

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–2004–19202; Directorate Identifier 2004–NM–95–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 15, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes listed in Boeing Alert Service Bulletin 757–33A0048, dated March 28, 2002; and Boeing Model 757–300 series airplanes listed in Boeing Alert Service Bulletin 757–33A0049, dated March 28, 2002; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of damage caused by an electrical arc in a connector on the cable assembly for the lower anti-collision light. We are issuing this AD to prevent an electrical arc in the cable assembly for the lower anti-collision light, which could result in a fire in a flammable leakage zone of the airplane.

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.

Identification of Cable Assembly Part Number (P/N)

(f) Within 60 months after the effective date of this AD: Do an inspection or a review of airplane maintenance records to identify the P/N of the cable assembly for the lower anti-collision light. If Boeing P/N S283T012–15 or Grimes P/N 60–3414–9 is identified, or if the part number of the cable assembly cannot be positively identified, do the related investigative and corrective actions required by paragraph (g) of this AD.

Related Investigative and Corrective Actions

(g) Within 60 months after the effective date of this AD: Replace the cable assembly for the lower anti-collision light with a new, improved cable assembly, or modify the existing cable assembly; and do the related investigative actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–33A0048 (for Model 757–200, 200CB, and 200PF series airplanes); or 757–33A0049 (for Model 757–300 series airplanes); both dated March 28, 2002; as applicable.

Parts Installation

(h) As of the effective date of this AD, no person can install a cable assembly, Boeing P/N S283T012–15 or Grimes P/N 60–3414–9, in a flammable leakage zone on any airplane.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, 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 September 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21819 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19203; Directorate Identifier 2004–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757–200 series airplanes. This proposed AD would require modifying the frequency converters located in the closet assembly in the passenger compartment, and making various wiring changes in and between the closet assembly and forward purser work station. This proposed AD also would require modifying the in-flight entertainment system prior to or concurrently with the modification of the frequency converters. This proposed AD is prompted by a certification review that revealed a frequency converter failure mode not identified in the original system design. We are proposing this AD to prevent a short circuit between the frequency converter output and the distribution circuit breakers, which could result in overheating and failure of adjacent wiring and consequent degraded operation of airplane systems.

DATES: We must receive comments on this proposed AD by November 15, 2004.

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, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or 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–2004–19203; the directorate identifier for this docket is 2004–NM–109–AD.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19203; Directorate Identifier 2004–NM–109–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*.

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

Discussion

During a certification review of a Boeing Model 737–700C series airplane, a frequency converter failure mode that was not identified in the original system design was found. This failure mode could cause a wiring short circuit between the frequency converter output and the distribution circuit breakers. The current is only limited by the maximum current capacity of the frequency converter. The frequency converter reacts to a short circuit condition by increasing the output current to approximately 54 amps, and significantly reducing the voltage. Investigation revealed that the wiring between the converter and the wiring fault was inadequate in size to handle the frequency converters increased output current. These conditions, if not corrected, could result in a short circuit between the frequency converter output and the distribution circuit breakers, which could result in overheating and failure of adjacent wiring and consequent degraded operation of airplane systems.

The frequency converters on certain Model 757–200 series airplanes are identical to those on the affected Model 737–700C series airplane (the unsafe condition has been corrected on Model 737–700C series airplanes). Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Service Bulletin 757–25–0255, dated December 11, 2003. The service bulletin describes procedures for modifying the frequency converters located in the closet assembly in the passenger compartment. The modification involves installing new, improved frequency converters, relay assemblies, thermal switches, and related components, and making various wiring changes in and between the closet assembly and forward purser work station.

Affected airplanes are separated into Groups 1 and 2, and the Accomplishment Instructions of the service bulletin provide modification procedures for each group, as follows: The procedures for Groups 1 and 2 include replacing three frequency converters in closet assembly S3 in the passenger compartment; installing three relay assemblies; and changing wire bundles in the P37 panel and forward purser work station, including at and above closet assembly S3. Additional procedures for Group 2 include changing wire bundle W3910 in the ceiling between closet assembly S3 and the forward purser work station. The procedures for Groups 1 and 2 also specify doing an operational test of the new/changed frequency converters and related circuit changes.

Service Bulletin 757–25–0255 recommends prior or concurrent accomplishment of Boeing Service Bulletin 757–24–0093, dated August 14, 2003. Service Bulletin 757–24–0093 describes procedures for modifying the in-flight entertainment system (circuit breaker, relays, and wiring). The modification procedures include installing a relay and changing the wiring in the main electronics compartment at the P37 panel assembly; and installing a relay and changing the wiring in the P36 panel assembly. The procedures also specify doing a continuity test. The modification procedures are for airplanes listed in Group 1 of Service Bulletin 757–24–0093.

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 modifying the frequency converters located in the closet assembly in the passenger compartment, and making various wiring changes in and between the closet assembly and forward purser work station. This proposed AD also would require accomplishment of various other actions prior to or concurrently with the modification of the frequency converters. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 4 airplanes of U.S. registry and 4 airplanes worldwide.

For airplanes listed in Group 1 of Service Bulletin 757–25–0255: The proposed modification would take about 97 work hours (including access, close-up, and test), at an average labor rate of $65 per work hour. Required parts would cost about $10,710 per airplane. Based on these figures, the estimated cost of the proposed modification for U.S. operators is $17,015 per airplane.

For airplanes listed in Group 2 of Service Bulletin 757–25–0255: The proposed modification would take about 105 work hours (including access, close-up, and test), at an average labor rate of $65 per work hour. Required parts would cost about $10,956 per airplane. Based on these figures, the estimated cost of the proposed modification for U.S. operators is $17,781 per airplane.

For airplanes listed in Group 1 of Service Bulletin 757–24–0093: The proposed concurrent modification, if not previously done, would take about 49 work hours, at an average labor rate of $65 per work hour. Required parts would cost about $5,315 per airplane. Based on these figures, the estimated cost of the proposed modification for U.S. operators is $8,500 per airplane.

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–2004–19203; Directorate Identifier 2004–NM–109–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 15, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 757–200 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 757–25–0255, dated December 11, 2003.

Unsafe Condition

(d) This AD was prompted by a certification review that revealed a frequency converter failure mode not identified in the original system design. We are issuing this AD to prevent a short circuit between the frequency converter output and the distribution circuit breakers, which could result in overheating and failure of adjacent wiring and consequent degraded operation of airplane systems.

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.

Modification

(f) For all airplanes: Within 18 months after the effective date of this AD: Modify the frequency converters located in the closet assembly in the passenger compartment by doing all the applicable actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0255, dated December 11, 2003.

Prior or Concurrent Modification

(g) For Group 1 airplanes listed in Boeing Service Bulletin 757–24–0093, dated August 14, 2003: Before or concurrent with accomplishment of paragraph (f) of this AD, Modify the in-flight entertainment system by doing all the applicable actions in accordance with Boeing Service Bulletin 757–24–0093, dated August 14, 2003.

Part Installation

(h) As of the effective date of this AD, no person may install a frequency converter having part number 1–002–0102–0730 on any airplane unless it has been modified as required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, 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 September 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21818 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–257–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes. That action would have required replacement of the lightweight tailpipes of the auxiliary power units (APU). Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received additional information, based on which we have determined that the tailpipes are very light, and that the chances of any injury to persons or damage to equipment from the part being ejected from the APU exhaust duct are minimal. Also, we have determined that 100 percent of the U.S. operators have done the proposed replacement. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 18, 2004 (69 FR 34096). The proposed rule would have required replacement of the lightweight tailpipes of the APU. That action was prompted by reports that stress cracking stemming from design issues had been discovered in the inner liners of the lightweight tailpipes of certain APUs. The proposed actions were intended to prevent stress cracking of the tailpipe inner liner from possibly causing the tailpipe to become separated from the APU during operation, which could have posed a hazard to persons on the ground.

Actions that Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, we have received additional information. The failed part, a sheet metal ring that forms a portion of the tailpipe, weighs less than one pound. If the part does fail and come off, it will blow out the back and not interfere with continued APU or airplane operation. We have determined that the probability of any injury to persons or damage to equipment from the part being ejected from the APU exhaust duct is minimal. Also, we have determined that 100 percent of the U.S. operators have done the proposed replacement.

FAA's Conclusions

Upon further consideration, the FAA has determined that the identified unsafe condition does not exist on the affected airplanes. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility

Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2002–NM–257–AD, published in the **Federal Register** on June 18, 2004 (69 FR 34096), is withdrawn.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21817 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 41, 101, 141

[Docket No. RM04–12–000]

Financial Reporting and Cost Accounting, Oversight and Recovery Practices for Regional Transmission Organizations and Independent System Operators

September 16, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on its accounting and financial reporting requirements for and oversight of regional transmission organization (RTO) and independent system operator (ISO) costs.

DATES: Comments on this NOI are due on November 4, 2004.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commentors unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426. Refer to the Procedure for Comments section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Mark Hegerle (Technical Information), Office of Markets, Tariffs & Rates—Central, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8287, *Mark.Hegerle@ferc.gov*.

Mark Klose (Accounting Information), Office of Executive Director—Regulatory Accounting Policy Division, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8283, *Mark.Klose@ferc.gov*.

Lodie White (Legal Information), Office of General Counsel—Markets, Tariffs & Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6193, *Lodie.White@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Notice of Inquiry

Introduction

1. The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to seek comments on its accounting and financial reporting requirements for and oversight of regional transmission organization (RTO) and independent system operator (ISO) costs. Specifically, the Commission is undertaking a review of:

(a) Whether changes are needed to the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (USofA), (18 CFR part 101), to better account and report RTO and ISO financial information to the Commission, in order to provide greater transparency of transactions and business functions affecting these entities and their member transmission-owning public utilities;

(b) Whether RTOs and ISOs have appropriate incentives to be cost efficient; and

(c) Whether the Commission's rate review methods for RTOs and ISOs are sufficient.

Background

2. In Order No. 888,[1] the Commission encouraged but did not require the formation of ISOs—independent entities that administer regional transmission tariffs and control the transmission facilities of their member transmission-owning utilities. Rather, Order No. 888 delineated eleven principles defining the operations and structure of a properly functioning ISO. Likewise, in Order No. 2000,[2] the Commission encouraged utilities to voluntarily join RTOs, and detailed certain functions an RTO must perform and characteristics that an RTO should have.[3] However, in neither rule did the Commission promulgate specific accounting rules or rate review principles for the new entities. The Commission instead chose to rely on existing rules and policies applicable to traditional public utilities, *i.e.*, principally investor-owned utilities (IOUs).

3. Over the past seven years, beginning in 1997, the Commission issued a series of orders approving several ISOs and RTOs which have since commenced operations. PJM Interconnection, LLC (PJM), ISO New England, Inc. (ISO–NE), and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) were first approved (or conditionally approved) as ISOs and later as RTOs; New York Independent System Operator, Inc. (NYISO) and California Independent System Operator, Inc. (CAISO) were approved as ISOs. The Commission has also conditionally approved Southwest Power Pool, Inc. (SPP), which currently operates a regional transmission tariff, as an RTO. The Commission also conditionally approved a number of other RTOs and ISOs which have not commenced operations.[4]

4. Each of these entities developed independent of one another, using somewhat different business models, software, accounting methods, and rate designs to accomplish the same ultimate goal of providing open-access (non-discriminatory) regional transmission service. In addition, some of these entities administer centrally-dispatched, competitive energy markets. These differences have made comparisons between entities difficult and raised questions concerning the Commission's current accounting and financial reporting rules and our current rate review practices for RTOs and ISOs.

5. Nevertheless there are similarities among RTOs and ISOs as well. Each RTO/ISO administers a regional transmission tariff and performs system monitoring and planning, as well as

[1] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31.036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12,274 (March 14, 1977), FERC Stats. & Regs. ¶ 31.048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group, *et al.* v. 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[2] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs., ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington, et al. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[3] ISOs and RTOs are, in many respects, similar, with one major difference being that RTOs must meet more stringent independence and scope and configuration standards.

[4] RTO West (now Grid West), WestConnect, GridFlorida, GridSouth, and SeTrans.

transmission scheduling—functions that formerly were performed by the transmission-owning utilities that now take transmission service under the RTO's or ISO's tariff. While there may be some needed redundancy with respect to certain functions, such as system reliability monitoring, because an RTO/ISO, with its regional focus and reach, takes over certain functions previously performed by the transmission-owning public utilities, ratepayers should, over time, expect to see economic synergies resulting from the formation of RTOs.[5]

Differences Between RTOs and Investor-Owned Utilities

6. There are several significant differences between RTOs/ISOs and vertically integrated public utilities. As noted above, each RTO/ISO offers transmission service over a wide region of the country, covering multiple IOU and other transmission systems. Many also run energy markets and congestion management systems through central dispatch of the generation located in their footprint. However, unlike IOUs, RTOs and ISOs do not own the transmission and generation facilities under their control. In fact, they are required to be independent from any market participant.[6]

7. RTO and ISO costs are largely associated with sophisticated system control and communications hardware and software designed to oversee the transmission grid, and, for many, to run energy markets, congestion management systems, and transmission scheduling systems. In contrast, an IOU's costs are dominated by the costs of generation, transmission, and distribution facilities.

8. In addition, because RTOs/ISOs provide transmission service and may operate wholesale markets, they do not provide retail electric service, and, therefore, fall under the exclusive jurisdiction of the Commission. This means that RTOs and ISOs, unlike vertically integrated IOUs, are not subject to direct oversight by state commissions.

9. Moreover, while the Commission has not mandated any particular business model for RTOs and ISOs, all current RTOs and ISOs are not-for-profit entities.[7] Each RTO and ISO is required to have an independent board of directors and to consult with an advisory committee made up of all classes of market participants prior to taking action. However, the advisory committee has no ability to block an action of the RTO/ISO; it can only offer non-binding advice on budget and other matters. Moreover, with for-profit entities, shareholders face a risk of lower earnings if costs are found to be imprudent and ineligible for rate recovery. The not-for-profit status of RTOs/ISOs makes cost review more difficult. As the Commission has previously observed, with respect to one of these RTOs, "Midwest ISO's non-profit status complicates a prudence review after the costs are incurred."[8]

Current RTO Accounting, Financial Reporting and Cost Recovery Practices

10. Despite their differences, RTOs/ISOs are public utilities under the Federal Power Act and, like traditional public utilities, must follow the USofA.[9] However, the USofA was developed for traditional public utilities, *i.e.*, public utilities that provide electric generation, transmission, and distribution service. The accounting rules contained in the USofA provide for capturing financial information along these primary functional business lines.[10] However, meaningful functional business segments or service lines for RTOs and ISOs seem quite different. Meaningful business lines for RTOs might include "grid reliability," "ancillary services," or "energy markets," to suggest a few possibilities. But because RTOs use the Commission's existing USofA to capture and classify costs, their financial statements and other reports prepared from their accounting records may not provide sufficient information about their costs and the relationship to services provided or other business activities.

11. Likewise, the current USofA may not provide sufficient transparency with respect to changes in RTO- and ISO-member transmission-owning public utilities' costs to reflect that the RTO/ISO is performing all or a portion of certain functions that were previously performed by the transmission-owning utilities.

12. Differences also exist among RTOs/ISOs with respect to operations, rate design, and accepted rate review methodologies. For example, RTOs/ISOs, while progressing at differing paces, perform similar functions with respect to overseeing the transmission grid and running markets. However, rather than building on the work of others, each RTO/ISO has developed, or contracted with vendors to develop, proprietary software to run its complex systems. The cost of each RTO's/ISO's software package, while largely designed to do similar tasks, varied considerably.

13. With respect to rate design differences, as an example, NYISO has just one charge to recover all of its costs to administer its transmission tariff, energy markets, and congestion management system, including its auction of transmission congestion contracts (comparable to firm transmission rights (FTRs)).[11] However, ISO–NE and Midwest ISO have three charges, PJM five, and CAISO seven to recover comparable costs. Some use formula rates with true-ups; others calculate stated rates for the following calendar year. There are also differences among the RTOs/ISOs with respect to the billing determinants used to calculate similar charges.

14. RTOs/ISOs develop their proposed rates through a collaborative process with their respective advisory committee processes. In general, the RTO/ISO determines the cost side of the equation based on the level of expenditures budgeted to accomplish the RTO's/ISO's functions,[12] and works with its stakeholders through the advisory committee process to arrive at a proposed allocation methodology, which is filed with the Commission (under section 205 of the FPA).[13] The Commission has largely relied on each advisory committee process as a check on RTO expenditures and has focused primarily on the review of the cost allocation and rate design methodologies. In addition, the Commission required one RTO,

[5] For example, Order No. 2000 noted one entity's observation that there may be transmission functions performed by individual company control centers, within existing control areas, or within existing reliability councils, that may be better and/or more efficiently performed by an RTO.

[6] A market participant is defined in relevant part as any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides ancillary services to the RTO or any other entity (*e.g.*, a member transmission-owning utility), which has economic or commercial interests that would be significantly affected by the RTO's actions or decisions. See 18 CFR 35.34(b)(2) (2004).

[7] One exception is that PJM earns money for its members when it sells software and technology to other transmission providers. Nevertheless, like the other RTOs, PJM does not have shareholders and passes through all of its costs of operation to its market participants.

[8] Midwest Independent Transmission System Operator, 101 FERC ¶ 61,221 at P 35 (2002), *order on reh'g*, 103 FERC ¶ 61,035 (2003).

[9] *See* 18 CFR Part 101.

[10] The Commission has explained that RTOs and ISOs are public utilities, and as such, they are required to follow the USofA and file Form No. 1. *See* PJM Interconnection, L.L.C. *et al.*, 107 FERC ¶ 61,087 (2004).

[11] NYISO also has separate charges for unbudgeted costs, and start-up and formation costs.

[12] The costs incurred by the RTO/ISO are tied to the services it performs on behalf of its market participants. The RTO/ISO would not, therefore, take an additional functions without an approving vote of its advisory committee or a directive by the Commission.

[13] 15 U.S.C. 824d (2000).

Midwest ISO, to file its annual budget and progress reports on expenditures related to market development for informational purposes.[14] The Commission reasoned that the informational filings would "provide a sufficient opportunity to review and compare the proposed costs with the actual costs and allow the Commission to monitor Midwest ISO's cost containment efforts." [15]

15. Nevertheless, in all cases, RTOs/ISOs are typically allowed recovery of all expenditures; they do not absorb losses and instead pass through all costs that they incur (*e.g.*, NYISO has a separate charge for unbudgeted expenses; Midwest ISO's Schedule 10 charge, while capped at $0.15/MWh, allows for the deferral, with interest, of any costs which would cause the rate to exceed the cap during one period to be recovered during a later period when actual costs for that period are less than the capped rate).

The Subject of the Notice of Inquiry

16. The Commission wants to explore whether changes to RTO/ISO accounting, financial reporting, and cost recovery practices are necessary to ensure the rates charged by RTOs/ISOs and their member transmission-owning public utilities are just and reasonable. Rate review mechanisms, including the accounting and financial reporting requirements contained in quarterly and annual financial reports applicable to traditional public utilities may no longer be sufficiently descriptive to reflect RTO/ISO operations due to their structure and business functions. Secondarily, current financial reporting by RTOs/ISOs and their member transmission-owning public utilities owners may not provide the Commission and others sufficient transparency of financial trends and emerging issues.

17. As noted above, the Commission's expectation has been that the RTO/ISO would spend only for the benefit of its market participants. The RTO/ISO looked to stakeholders for advice on whether to pursue particular tariff or market design changes which, of course, would necessitate agreement on spending to bring those changes to fruition. However, RTO/ISO stakeholders (including member transmission-owning utilities) have alleged in various forums that this process provides an insufficient check, noting that they only see the budget after it is finalized and they have no veto power. In this regard, member transmission-owning utilities subject to state commission regulation complain that the absence of sufficient oversight of RTO/ISO spending results in their being forced to justify before their state commissions the prudence of RTO/ISO expenditures.

Questions for Response

18. The Commission encourages any and all comments regarding the topics broadly discussed above. In addition the Commission seeks responses to the following specific questions:

A. Accounting and Financial Reporting Issues for RTOs/ISOs

1. Are the individual account descriptions and instructions under the existing USofA adequate for the functions typically performed by RTOs/ISOs? If not, what changes should be made to the account descriptions and instructions under the existing USofA to accommodate the RTO/ISO business model? Are the changes so extensive that an entirely separate USofA should be developed to accommodate RTOs/ISOs?

2. Under the existing USofA costs are accounted for as electric production, transmission, distribution or general plant. What other accounts and functional classifications should be provided for RTO/ISO transactions and events? For example, are additional revenue, expense or detailed fixed asset accounts needed?

3. Should the Commission develop a new financial reporting format for the functions typically performed by RTOs/ISOs? If so what financial information and financial-related information should be reported? If not, how may the existing annual and quarterly financial reports be changed or modified to report relevant RTO/ISO transactions and events?

4. Is additional accounting and financial reporting guidance needed for market operation and market monitoring functions of RTOs/ISOs? If so what transactions and events require additional accounting and financial reporting guidance?

5. Is there sufficient detailed financial and financial-related information being provided to users of RTO/ISO data? If not, what additional information would the users of the information find helpful and why? For example, if detailed information technology cost data is necessary, would it also be helpful for the RTO/ISO to include the cost driver of the data (*e.g.*, quantity of desktop computers in relationship to the number of employees)?

6. Currently the quarterly and annual Commission financial reports include a schedule that requires respondents to report data concerning the transmission of electricity for others. Should RTOs/ISOs report transmission of electric for others for its Commission-jurisdictional members or should those individual members report the information in their individual filings? If the RTO/ISO should report the information, what information should be reported and how should it be shown in the filing?

B. Accounting and Financial Reporting Issues for Public Utilities and Licensees That Are Members of an RTO/ISO

1. Are the individual account descriptions and instructions under the existing USofA useful and applicable for classifying revenues received from RTOs/ISOs? If not, what changes should be made to the account descriptions and instructions under the existing USofA to accommodate these transactions and events?

2. Are the individual account descriptions and instructions under the existing USofA useful and applicable for classifying costs related to providing various services such as ancillary services, energy markets, or costs associated with transmission congestion? If not, what changes should be made to the existing USofA to accommodate these transactions and events?

3. What additional detailed information should be collected or disclosed in the quarterly and annual Commission financial reports of individual utilities to provide greater transparency of RTO transactions and events?

4. What additional disclosures should be made in the quarterly and annual Commission financial reports of individual utilities to describe the economic effects resulting from the respondent transmitting public utility participating in an RTO?

5. Does the Commission's USofA and existing financial reporting requirements for public utility members of RTO/ISOs provide regulators with adequate information to clearly identify which functions are performed by the RTO/ISO and which are performed by the member transmission-owning public utilities, and to ensure that costs are not being double recovered through either Commission-jurisdictional or state-jurisdictional rates? Are they adequate to determine how RTO/ISO costs billed to public utility members should enter into the determination of retail rates? If not, what changes to the Commission's accounting and reporting rules should be made?

C. Cost Management

1. Do not-for-profit RTOs/ISOs currently have the appropriate incentives to contain costs? If not, what are the right incentives (and why would they be the right incentives) and how should they be implemented?

2. Should the Commission revisit the means by which RTO/ISO rates are reviewed, particularly with respect to cost incurrence? If so, what means should the Commission employ to ensure that RTOs'/ISOs' expenditures are prudent and their rates are just and reasonable? Would a "best practices" or "benchmark" approach, where one RTO/ISO's expenditures in a particular cost category are measured against those of other RTOs/ISOs, be sufficient?

3. What is the appropriate role for the Commission with respect to overseeing RTO/ISO software costs? Should an RTO/ISO be required to justify contracting for the development of new software rather than using or modifying "off-the-shelf" software developed for a comparable application for or by another RTO/ISO? To what extent would

[14] *See, e.g.*, Midwest Independent Transmission System Operator, 101 FERC ¶ 61,221 (2002), *order on reh'g*, 103 FERC ¶ 61,035 (2003)

[15] *Id.*, 101 FERC ¶ 61,221 at P 36.

the use of standardized or at least compatible software in neighboring RTO/ISO markets reduce the cost of doing business across RTO/ISO boundaries? How would any such standardization be accomplished?

4. To what degree should an RTO/ISO's stakeholder/advisory committee be involved in reviewing or shaping the RTO/ISO's budget and spending decisions? Are there independence considerations that should prevent or limit such review by market participants?

5. Should the Commission allow differences between RTOs/ISOs with regard to cost allocation and rate design to recover the operation and capital costs for each of their functions (*e.g.*, tariff administration and markets for energy, ancillary service, and FTRs)? If so, how should the various rates be designed, *i.e.*, what are the correct billing determinants for each service?

6. Should the compensation of senior RTO/ISO management be linked to specific performance measures, including cost reductions?

Procedure for Comments

19. The Commission invites interested persons to submit comments, and other information on the matters, issues and specific questions identified in this notice. Comments are due November 4, 2004. Comments must refer to Docket No. RM04–12–000, and must include the commentor's name, the organization they represent, if applicable, and their address.

20. To facilitate the Commission's review of the comments, commentors are requested to provide an executive summary of their position. Commentors are requested to identify each specific question posed by the NOI that their discussion addresses and to use appropriate headings. Additional issues the commentors wish to raise should be identified separately. The commentors should double space their comments.

21. Comments may be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commentors may attach additional files with supporting information in certain other file formats. Commentors filing electronically do not need to make a paper filing. Commentors that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

22. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commentors are not required to serve copies of their comments on other commentors.

Document Availability

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

24. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

25. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov* or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*)

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–21760 Filed 9–28–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Western Gray Squirrel as Endangered Rangewide

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the western gray squirrel (*Sciurus griseus*) as endangered under the Endangered Species Act of 1973, as amended. We find the petition does not present substantial scientific or commercial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made on September 29, 2004.

ADDRESSES: Data, information, comments or questions concerning this petition should be sent to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. L. Karolee Owens (*see* **ADDRESSES** section), telephone 360/753–4369, facsimile 360/753–4369.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information contained in the petition and available in our files at the time the finding is made.

Our standard for substantial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the species, unless a status review has previously been initiated.

Petition

On December 24, 2002, we received a petition dated December 19, 2002, from the Institute for Wildlife Protection (IWP). The petition was submitted as a comment to our request for public comments in a 90-day finding for a petition to list the Washington population of one of the subspecies of the western gray squirrel (*Sciurus griseus griseus*) as threatened or endangered. The petitioner provided a comment letter-petition to list the western gray squirrel rangewide and two attachments. The petitioner requested that we consider listing the western gray squirrel as endangered throughout its range and evaluate "any DPS's (distinct population segments) and subspecies" of the western gray squirrel throughout its range. The petitioner did not provide any

information supporting any western gray squirrel DPS. The petitioner also requested that we consider emergency listing "the squirrel in Washington and the population isolate on the California-Nevada border." The letter contained the name, address, and signature of the petitioning organization's representative. However, it was not initially clear that the comment letter was intended to be a new petition to list the entire species *Sciurus griseus*. We contacted the IWP on January 16, 2003, to determine whether the letter was intended to be a new petition. On January 17, 2003, IWP responded that their letter was, in fact, a petition to list. On February 21, 2003, we responded with a letter acknowledging receipt of the petition and advising IWP that budget limitations would not allow us to complete a 90-day petition finding until fiscal year 2004. We also stated that our initial review of the petition did not indicate that an emergency situation existed, but that if conditions changed such that an emergency listing became warranted an emergency rule could be developed.

On March 19, 2004, IWP filed a complaint in federal district court alleging, among other things, that we failed to make the 90-day petition finding on their petition to list the western gray squirrel as an endangered species under the Act and that we failed to make a finding on their petition for emergency listing. We are making this 90-day petition finding in response to a court order to complete this finding within 60 days of the Court's order of July 26, 2004 (*Institute for Wildlife Protection* v. *Norton*, Case No. C04–0594RSM (W.D. Wash.)).

In the comment-petition letter, the petitioner discusses the reduction and fragmentation of oak savannahs and woodlands and provides information on how much of this habitat has been lost. The petitioner also discusses threats to this habitat including sudden oak death disease, fire suppression, livestock grazing, habitat fragmentation, and threats to the western gray squirrel including competition with other tree and ground squirrels; the unpredictable nature of its food supplies; automobiles; house cats; and susceptibility to risk of extinction from genetic demographic and stochastic fluctuations in effective population sizes. However, no citations specific to the western gray squirrel literature are included to document how these potential threats have affected the species.

The attachment "Biological Effects To Be Considered in a Status Review of the Western Gray Squirrel (*Sciurus griseus*)" is an extensive discussion of biological and ecological factors that should be considered when determining whether any species may be threatened or endangered. However, this document does not provide specific western gray squirrel data or information to indicate that any or all of these threats have resulted in the western gray squirrel being in danger of becoming threatened or endangered throughout all or a significant portion of its range. This document does not use the phrase "western gray squirrels," but refers to "these squirrels," "this species," and "the species" in a very general context that suggests this attachment is intended to be a generic document that can be used in petitions to list a variety of species. The discussion of the threats does not include specific citations from western gray squirrel literature.

A review of the "Supplemental Bibliography" attachment found no literature citations specifically addressing western gray squirrels. None of the literature cited in our previous petition findings for the Washington western gray squirrel populations are included in the "Supplemental Bibliography." Only two references directly pertaining to any squirrel species are included. Those literature citations relate to Mt. Graham red squirrel (*Tamiascurus hudsonicus grahamensis*) and red squirrels (*Tamiascurus hudsonicus*). A number of citations are highlighted in bold font, but many of these are bird-related literature citations.

We reviewed the information provided in the comment-petition letter and the attachments with reference to the guidelines for evaluating petitions provided in 50 CFR 424.14(b)(2). Although the petitioner discusses potential threats to western gray squirrels, there is no detailed narrative justification for listing the western gray squirrel as threatened or endangered rangewide. No information is provided on past and present numbers and distribution of the three subspecies, or possible DPSs, involved. There are no data regarding the status of western gray squirrels over all or a significant portion of the species' range, or the status of each of the three subspecies or potential DPSs. There is little documentation in the form of bibliographic references specific to western gray squirrels, and no reprints of pertinent publications, copies of reports, letters from authorities, or maps supporting the possibility that the western gray squirrel is threatened or endangered throughout all or a significant portion of its range.

In addition to using information provided by the petitioner, we also assess information available in our files at the time of the petition finding. We recently reviewed the status of one subspecies of western gray squirrel, *Sciurus griseus griseus*, in response to a petition to list the Washington populations of this subspecies. Most of the information in our files was gathered while completing the recent 90-day and 12-month petition findings for the Washington populations. In addition, in preparing this 90-day finding for the petition to list the western gray squirrel rangewide, we again contacted all of the Fish and Wildlife Service field offices within the species' range to ask for any additional information received since completing the petition findings for the Washington populations.

Status of the Western Gray Squirrel

The western gray squirrel ranges through parts of Washington, Oregon, California, and Nevada. There are three subspecies: (1) *Sciurus griseus nigripes*, which ranges from south of San Francisco Bay in the central California Coast Range to San Luis Obispo County; (2) *Sciurus griseus anthonyi*, which ranges from the southern tip of the Coast Range, near San Luis Obispo, into south-central California; and (3) *Sciurus griseus griseus*, which ranges from central Washington to the western Sierra Nevada Range in central California (Hall 1981). There is also a small, disjunct population of *Sciurus griseus griseus* in west-central Nevada.

Western gray squirrels are uncommon in Nevada and found only in the Carson Range in west-central Nevada (Biological Resources Division, University of Nevada-Reno 2003). The Nevada western gray squirrel population likely represents a migrant population from the Sierra Nevada in California on the fringe of the subspecies' range (Biological Resources Division, University of Nevada-Reno 2003). The subspecies has never been wide-ranging in Nevada, and its limited range in Nevada may be related to the absence of oak trees (Johnson 1954). The western gray squirrel is a protected species under the Nevada Administrative Code (NAC) (NAC 503.030), and there is no open hunting season on species classified as protected. The National Heritage Status Rank for the western gray squirrel in Nevada is S4 (Apparently Secure) (NatureServe Explorer 2002). Current distribution and population sizes in Nevada have not been documented. However, western gray squirrels in the California-Nevada border population isolate are apparently common and well-adapted to urban environments in the Lake Tahoe area (Peter Maholland,

California Tahoe Conservancy, pers. comm. 2002; J. Shane Romsos, Tahoe Regional Planning Agency (NV), pers. comm. 2002; Kevin Kritz, Service, pers. comm. 2004).

The western gray squirrel is fairly common and is a game species in California. California Department of Fish and Game (CDFG) estimates approximately 30 million acres (ac) (12 million hectares (ha)) of western gray squirrel habitat, not including orchards, are occupied by approximately 18 million squirrels just before the breeding season (CDFG 2002). Their estimates include a net increase of about 1.2 million squirrels annually after consideration of a 50 percent juvenile mortality, a 50 percent adult mortality, and a harvest rate due to hunting of less than 1 percent each year, although environmental and density-dependent mechanisms help keep the populations in check with their habitats. CDFG concludes that hunting mortality does not adversely affect western gray squirrel populations (CDFG 2002). Hunting for tree squirrels is permitted within the range of *Sciurus griseus griseus* and *S. g. nigripes*, but is not permitted in southern California within most of the range of *S. g. anthonyi*. There are no data showing populations of the western gray squirrel having declined such that the subspecies may be threatened or endangered in California. The National Heritage Status Rank for the western gray squirrel in California is S4 (Apparently Secure) and S5 (Secure) (NatureServe Explorer 2002). Separate rankings are not provided for each subspecies in California.

Additionally, several conservation programs, policies, and regulations help maintain western gray squirrel habitat in California, including the Integrated Hardwood Range Management Program, the Oak Woodlands Conservation Fund created by the Oak Woodlands Conservation Act, the California Forest Practice Rules, and California Partners in Flight. The 1985 hardwood conservation policy and 1989 hardwood guidelines developed by the California Fish and Game Commission are used as references to ensure hardwood conservation measures are considered in all project proposals reviewed under the California Environmental Quality Act (Patrick Lauridson, CDFG, in litt. 2002).

There are no population data for western gray squirrels in Oregon, but their numbers and distribution in Oregon are considered to be much reduced based on Bailey (1936) and anecdotal information (Marshall *et al.* 1996). The Natural Heritage Rank for the western gray squirrel in Oregon is S4? (not rare and apparently secure, but with cause for long-term concern; a "?" indicates assigned rank is uncertain) (Oregon Natural Heritage Program 2001). The western gray squirrel is classified as a "sensitive species" of "undetermined status," which indicates the species may be susceptible to population decline of sufficient magnitude that it could qualify for endangered, threatened, critical, or vulnerable status, but additional research is needed (Oregon Department of Fish and Wildlife 1997). Despite their classification as a sensitive species, western gray squirrels are legally hunted in Oregon; however, hunting restrictions delay and shorten the hunting season in north-central Oregon (Marshall *et al.* 1996).

The comment letter-petition describes the degradation, fragmentation, and loss of oak habitats in Oregon, but does not provide data specific to western gray squirrels documenting that the species is threatened or endangered due to these habitat losses. The historical distribution of the western gray squirrel apparently corresponded with the distribution of Oregon white oak (*Quercus garryana*) (Hall 1981; Stein 1990). However, the species uses a variety of food sources, although oak mast is believed to be an important part of the western gray squirrel's diet (Carraway and Verts 1994; Marshall *et al.* 1996). Western gray squirrels also forage in nut orchards (Carraway and Verts 1994; Susan Weston, *in litt.* 2002). At least two populations, the northern Cascades population in Washington and the California-Nevada population isolate, occur outside the range of oak communities. In addition, western gray squirrels have adapted to urban environments, particularly in Oregon, as well as in the Lake Tahoe area in Nevada (S. Weston, *in litt.* 2002; P. Maholland, pers. comm. 2002; S. Romsos, pers. comm. 2002; K. Kritz, pers. comm. 2004). We previously contacted the Oregon Department of Fish and Wildlife concerning the status of the species in Oregon. Although that agency recognizes the changes in oak habitat, the level of concern for the western gray squirrel is not such that they are tracking actively the status of the species with surveys (Charlie Bruce, Oregon Department of Fish and Wildlife, pers. comm. 2002). In summary, we conclude at this time, based on the information in the petition and information in our files, that there is not substantial information indicating that the western gray squirrel may be threatened or endangered in Oregon.

In Washington, our recent review of the status of western gray squirrels was extensive. The western gray squirrel in Washington was more widely distributed in prehistoric times, probably ranging throughout western Washington and the Cascade Mountains in association with oak communities. However, the species' distribution has diminished in recent times along with the decrease in distribution of oak woodlands (Rodrick 1987, WDW 1993). Currently the western gray squirrel is distributed in Washington in three geographically isolated populations: one in the Puget Trough, one in the southern Cascades, and one in the northern Cascades (Bayrakci *et al.* 2001, WDW 1993). The western gray squirrel was classified as a threatened species by the Washington Fish and Wildlife Commission in 1993 (Washington Administrative Code (WAC) 23212011). The Natural Heritage Status Rank for the western gray squirrel in Washington is S2 (imperiled) (NatureServe Explorer 2002).

The western gray squirrel was once common on the partially wooded prairies adjacent to Puget Sound (Bowles 1920, 1921). However, the surviving Puget Trough population, which is at a high risk of extirpation (Bayrakci *et al.* 2001), is now centered on Fort Lewis in southern Pierce and northern Thurston Counties where the largest area of oak woodland remains (Bayrakci *et al.* 2001; Ryan and Carey 1995). The southern Cascade Mountains population, currently the largest remaining population of western gray squirrels in Washington, is widely distributed across Klickitat County. The northern Cascade Mountains population is the least documented population, and no population or trend data are available. This population occurs in an ecological setting that differs from the Puget Trough and southern Cascades populations. The north Cascades population probably resulted from a range expansion northward from Yakima County and beyond the native range of oaks (Stein 1990), which required adaptation to habitats lacking oaks.

Hunting for western gray squirrels in Washington has not been allowed since 1943, with the exception of special seasons in 1949 and 1950 in Pierce and Thurston Counties (WDW 1993). The Washington Department of Fish and Wildlife is developing a recovery plan for the western gray squirrel. Fort Lewis has developed a 10-year oak woodland management strategy that includes management strategies for western gray squirrels (GBA Forestry 2002).

The 12-month petition finding (68 FR 34628), in which we specifically addressed whether the Washington

populations of western gray squirrels should be listed as a threatened or endangered DPS, details our current knowledge of the status of the Washington population. In that finding, we determined that the Washington population does not warrant listing as a DPS and that the Washington population does not represent a significant portion of the subspecies' range. This decision was challenged in federal district court, which upheld the Service's petition finding on August 2, 2004 (*Northwestern Ecosystem Alliance* v. *U.S. Fish and Wildlife Service,* Case No. CV 03–1505–PA (D. Or.)).

Under the requirements of our DPS policy (61 FR 4722), we use three elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. The discreteness standard must be met before considering the significance standard. Both the discreteness and significance standards must be met before considering the conservation status of the population segment.

Although the Washington population met the discreteness standard, we concluded this population did not meet the significance standard, and therefore was not a listable entity. This petition presents no new information that would change this conclusion. Based on the information in our files, we are unable to determine that the Oregon populations are discrete from California populations. The comment-petition letter provided no information to address DPSs. Also, we lack sufficient information to determine the population on the California-Nevada border is sufficiently isolated from other California western gray squirrel populations to meet the discreteness standard. Genetic analyses also may be used as a measure of discreteness. Preliminary genetic analyses indicated there is considerably more genetic differentiation between the Washington populations and either Oregon or California populations than there is between Oregon and California populations. We have no genetic analyses that include the California-Nevada population isolate. In any case, western gray squirrels in the California-Nevada population isolate in the Lake Tahoe area are apparently common and well-adapted to urban environments. Consequently, we do not have sufficient information to determine that any of the California, Oregon, or Nevada populations are discrete. Thus it is not necessary to determine whether any of these populations could meet the significance standard.

Further, we do not have substantial information either from the petition or in our files indicating that any subspecies may be endangered or threatened over all or a significant portion of their ranges. *Sciurus griseus griseus* is abundant in California where extensive habitat remains, and hunting for tree squirrels is permitted in much of the state. In Nevada, the subspecies is abundant and well-adapted to urban environments in the Lake Tahoe area. Information on the status of *S. griseus griseus* in Oregon is limited. Although there have been extensive reductions in oak habitat, the level of concern for the status of the subspecies has not led the Oregon Department of Fish and Wildlife to complete surveys for the species. Also, hunting for tree squirrels is permitted, or is restricted, in parts of the State. In Washington, a large population of the subspecies is found in the southern Cascades. The State does not permit hunting, and the Washington Department of Fish and Wildlife is developing a recovery plan for *S. griseus griseus.* Therefore, we have determined that, based on information presented in the petition and in our files, listing *S. griseus griseus,* throughout all or in any a significant portion of the subspecies' range as a DPS, is not warranted.

We have no information in our files on the historical or current population status and distribution of the other two subspecies, *Sciurus grisues nigripes* and, *S. g anthonyi.* The petitioner did not provide any information or data specific to these subspecies.

Finally, we do not have substantial information, either presented by the petition or in our files, indicating that the species as a whole may be endangered or threatened over all or a significant portion of the species' range. For the same reason, we do not have sufficient information to indicate any of the three subspecies or any DPSs of western gray squirrels warrant listing as threatened or endangered, we do not have sufficient information to indicate the species as a whole may be endangered or threatened over all or a significant portion of the species' range.

Emergency Listing and Critical Habitat Designation

Petitions for emergency listing are not expressly provided for by the Act. However, we may address the need for an emergency rule under section 4(b)(7) of the Act (16 U.S.C. 1533(b)(7)). We may issue an emergency rule to list a species if threats to the species constitute an emergency posing significant risk to the well-being of any species of fish and wildlife or plants (4(b)(7)).

We reviewed the best available information on the status of the western gray squirrel throughout its range, including information in the petition and from other sources. We do not find there is a threat that constitutes an emergency posing significant risk to the well-being of the western gray squirrel across all or a significant portion of the species' range as discussed above. Western gray squirrel populations are apparently secure in California and Nevada. Based on information in the petition and information in our files, there is not substantial information indicating that the western gray squirrel may be threatened or endangered in Oregon. In our recent 12-month petition finding (68 FR 34628), we established that the Washington population does not meet the requirements of the DPS policy. Therefore, the Washington population alone cannot be considered for an emergency listing. Also, we do not have sufficient information indicating that the Oregon population, the California-Nevada isolate, or any other population of western gray squirrels meets the requirements of our DPS policy. Thus, these populations are not listable entities such that a separate emergency listing for one or more DPSs would be possible. Again, western gray squirrels in the California-Nevada population isolate in the Lake Tahoe area are apparently common and well-adapted to urban environments. We have determined that we have insufficient information to indicate an emergency listing is appropriate for *Sciurus griseus* rangewide or for any of the three subspecies. We also have insufficient information to identify any DPSs of the western gray squirrel species, or any of the subspecies, such that an emergency listing for any population segment is possible.

Petition Finding

We have reviewed the petition, including the attached "Biological Effects To Be Considered in a Status Review of the Western Gray Squirrel (*Sciurus griseus*)" and the "Supplemental Bibliography," as well as other literature and information in our files. We find that neither the petition nor information in our files present substantial information that the western gray squirrel or any of its subspecies may be endangered or threatened over all or a significant portion of its range. This finding is

based on insufficient information to: (1) Determine if the species or any subspecies is declining throughout all of a significant portion of its range; (2) identify threats to the species, or the individual subspecies, that suggest a threatened or endangered status is appropriate; or (3) determine whether there are any DPSs of the western gray squirrel. Also, we do not have substantial information either from the petition or in our files to list either the Washington population, as reflected by our recent 12-month petition finding (68 FR 34628), or any other populations, particularly the California-Nevada population isolate, as a DPS. Also, we do not have substantial information either from the petition or in our files to emergency list the *Sciurus griseus* rangewide or any of the three subspecies.

References Cited

A complete list of all references cited is available on request from the Western Washington Fish and Wildlife Office (*see* **ADDRESSES** above).

Author

The primary author of this document is Dr. L. Karolee Owens (*see* **ADDRESSES** above).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 21, 2004.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–21800 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ03

Endangered and Threatened Wildlife and Plants: Removing the Eastern Distinct Population Segment (DPS) of the Gray Wolf From the List of Endangered and Threatened Wildlife

AGENCY: U. S. Fish and Wildlife Service, Interior.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that we will hold one additional public hearing on the proposed rule to remove the Eastern Distinct Population Segment of the gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973, as amended. In a notice made in the **Federal Register** on August 13, 2004 (69 FR 50147), we announced the locations for nine other public hearing previously scheduled.

DATES: See **SUPPLEMENTARY INFORMATION** for hearing date.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing addresses.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information to the Service using the Gray Wolf Phone Line: 612–713–7337, facsimile: 612–713–5292, the general gray wolf electronic mail address: *GRAYWOLFMAIL@FWS.GOV*, or write to: Gray Wolf Questions, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. Additional information is also available on our World Wide Web site at *http://midwest.fws.gov/wolf*. In the event that our internet connection is not functional, please contact the Service by the alternative methods mentioned above. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: Background—On July 21, 2004, we published a proposed rule (69 FR 43664) to remove the Eastern Distinct Population Segment (DPS) of the gray wolf (Canis lupus) from the List of Endangered and Threatened Wildlife established under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We proposed this action because available data indicate that this DPS no longer meets the definition of threatened or endangered under the Act. The gray wolf population is stable or increasing in Minnesota, Wisconsin, and Michigan, and exceeds its numerical recovery criteria. Completed State wolf management plans will provide adequate protection and management to the species in these three States if the gray wolf is delisted in the Eastern DPS. The proposed rule would remove this DPS from the protections of the Act by ending its threatened classification. This proposed rule would also remove the currently designated critical habitat for the gray wolf in Minnesota and Michigan, and remove the current special regulations for gray wolves in Minnesota and other Midwestern States. This proposal would not change the status or special regulations currently in place for the Western or Southwestern DPS of the gray wolf or for the red wolf (*C. rufus*).

In our July 21, 2004, proposed rule, we stated that we would hold public hearings. Consistent with that document, we announced the dates and locations of nine hearings (69 FR 50147). In response to several requests, we are now announcing the date and location for one additional public hearing.

Hearing Information: We will hold only one public hearing on October 20, 2004, at the Black Bear Inn and Conference Center, 4 Godfrey Drive, Orono, Maine.

The hearing will consist of a 1-hour informational meeting from 6:30 to 7:30 p.m., and the official public hearing from 7:30 to 9:30 p.m.

Dated: August 30, 2004.

Marvin E. Moriarty,

Regional Director, Region 5.

[FR Doc. 04–21810 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 188
Wednesday, September 29, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal And Plant Health Inspection Service

[Docket No. 04–086–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the importation into the United States of restricted and controlled animal and poultry products and byproducts, organisms, and vectors.

DATES: We will consider all comments that we receive on or before November 29, 2004.

ADDRESSES: You may submit comments by any of the following methods:

EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–086–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–086–1.

E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–086–1" on the subject line.

Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation into the United States of restricted and controlled materials, contact Dr. Tracye Butler, Senior Staff Veterinarian, Technical Services Unit, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1232; (301) 734–7476. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Restricted and Controlled Animal and Poultry Products and Byproducts, Organisms, and Vectors into the United States.

OMB Number: 0579–0015.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture regulates the importation of certain animal and poultry products and byproducts, organisms, and vectors under 9 CFR parts 94, 95, 96, and 122 to prevent the introduction and spread of livestock and poultry diseases into the United States.

To accomplish this, we must collect information from a variety of individuals, both within and outside the United States, who are involved in handling, transporting, and importing these items. Collecting this information is critical to our mission of ensuring that these imported items do not present a disease risk to the livestock and poultry populations of the United States.

Collecting this information requires us to use a number of forms and documents, which are described below.

VS Form 16–3 (Application for Permit to Import Controlled Materials/Import or Transport Organisms or Vectors) is the application and agreement form used by individuals seeking a permit.

VS Form 16–25 (Application for Approval or Report of Inspection of Establishments Handling Restricted Animal Byproducts or Controlled Materials. This is a dual purpose form. It is an application for U.S. establishments requesting approval to handle restricted imported animal byproducts and controlled materials. It also serves as a report of inspections of establishments to ensure that restricted and controlled imports are being handled in compliance with our requirements.

VS Form 16–26 (Agreement for Handling Restricted Imports of Animal Byproducts and Controlled Materials). This is a form signed by an operator of a U.S. establishment wishing to handle restricted or controlled materials in which the operator agrees to comply with all requirements for handling the restricted and controlled materials.

Certificates. Certain animal and poultry products must have a certificate from the national government of the exporting country to be eligible for importation into the United States. These certificates are required to verify that the animal or poultry products meet the sanitary requirements of our regulations (e.g., originated from disease-free animals and from animals native to the country of origin, or were prepared in a certain manner in an approved establishment).

The certificate, signed by a full-time salaried veterinary official from the country of origin, or other authorized person, provides us with information that enables us to determine whether an article meets our requirements for importation.

Seals. Certain animal or poultry products and byproducts must be

shipped in sealed containers or holds to ensure that the integrity of the shipment is not violated. The seals must be numbered, the numbers of the seals must be recorded on the government certificate that accompanies the shipment, and the seals must not have been tampered with. Federal inspectors at ports of entry inspect the seals and verify that the seals are intact and that the numbers match those on the certificates.

Compliance agreement, recordkeeping requirements. Certain animal or poultry products and byproducts are required to be processed in a certain manner in an establishment in a foreign country before being exported to the United States. We require an official of the processing plant to sign a written agreement prepared by APHIS. By signing this agreement, this official certifies that the animal products being exported to the United States have been processed in a manner approved by APHIS, and that adequate records of these exports are being maintained.

Marking requirements. Before certain animal products may enter the United States, they must be marked, with an ink stamp or brand, to indicate that the products have originated from an approved meat processing establishment and have been inspected by appropriate veterinary authorities. The mark is applied to the meat product by processing plant personnel.

Foreign meat inspection certificate for inportation of fresh meat from regions free of foot-and-mouth disease and rinderpest, but subject to certain restrictions due to their proximity to, or trading relationships with, regions where foot-and-mouth disease or rinderpest exists. This certificate, completed by a veterinary official of the exporting region, provides specific information regarding the establishment where the animals were slaughtered, the origin of the animals, and the processing and handling of the meat or other animal products.

Certification of a national government for importation of pork or pork products from a swine vesicular disease-free region. This is a statement, completed by a government official of an exporting region, certifying that the U.S.-destined pork or pork product originated in a region that is free from swine vesicular disease.

Cleaning and disinfecting methods. This is a letter from veterinary officials of an exporting region stating that appropriate cleaning and disinfecting methods have been applied to trucks, railroad cars, or other means of conveyance used to transport certain animal products destined for the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.39955 hours per response.

Respondents: Importers, exporters, shippers, foreign animal health authorities, owner/operators of establishments (domestic and foreign) that handle restricted and controlled materials.

Estimated annual number of respondents: 10,008.

Estimated annual number of responses per respondent: 7.0029.

Estimated annual number of responses: 70,086.

Estimated total annual burden on respondents: 28,003 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 23rd day of September 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2409 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—2003 Crop Cane Sugar and Sugar Beet Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice which sets forth the establishment and adjustments to the sugar overall allotment quantity for the 2003 crop year (FY 2004), which runs from October 1, 2003 through September 30, 2004. Although CCC already has announced all of the information in this notice, CCC is statutorily required to publish in the **Federal Register** determinations establishing or adjusting sugar marketing allotments. CCC set the 2003 crop overall allotment quantity (OAQ) of domestic sugar to 8.550 million short tons raw value (STRV) on August 13, 2003. On September 30, 2003, CCC allocated only 96.5% of this amount, resulting in a beet sugar sector allotment of 4.484 million STRV and a cane sugar sector allotment of 3.766 million STRV. At that time, CCC also announced the allotments to cane-producing States and allocations to cane and beet sugar processors and set the proportionate share requirement on Louisiana cane sugar producers for the 2003 crop at 84.2 percent. On April 9, 2004, CCC officially reduced the OAQ to 8.250 million STRV and revised State cane sugar allotments and cane sugar processor allocations to reflect updated FY 2004 raw cane production forecasts. On July 22, 2004, CCC revised State cane sugar allotments to reflect further updated raw cane production forecasts.

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: Section 359b(b)(1) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(a)(1)), requires the Secretary to establish, by the beginning of each crop year, an appropriate allotment for the marketing by processors of sugar processed from sugar beets and from domestically produced cane sugar at a level the Secretary estimates will result in no

forfeitures of sugar to the CCC under the loan program. When CCC announced a 8.550 million ton OAQ in August 2003, it noted the existence of sugar market uncertainties and that the OAQ could be adjusted if warranted. The September 11, 2003, USDA World Agricultural Supply and Demand Estimates forecast substantially decreased total use in FY 2003 and FY 2004. Consequently, the FY 2004 free ending stocks-to-use ratio increased to 17.4 percent, up from 15.1 percent when the OAQ was established. Free ending stocks refer to the portion of stocks that are permitted to be sold under the sugar marketing allotment program. In response, CCC allocated 96.5 percent of the OAQ in September 2003 to reduce the free ending stocks-to-use ratio closer to levels associated with a more balanced market. In April 2004, CCC reevaluated estimates of sugar consumption, stocks, production, and imports and determined that 3.5 percent of the OAQ, or 300,000 tons, that was not allocated in September would not be needed for a balanced market in FY 2004. Thus, the official OAQ was reduced by 300,000 tons. In July 2004, CCC again revised State cane sugar allotments to reflect updated production estimates.

To establish cane state allotments, weights of 25 percent, 25 percent, and 50 percent, respectively, are assigned to the three-factor criteria: Past marketings; processing capacity; and ability to market. Because Puerto Rice forecast zero production for the 2003 crop, its FY 2004 allotment was reassigned to all other cane processors based on their respective three-factor proportionate shares.

Proportionate shares relative to the acreage of cane sugar that may be harvested in Louisiana for sugar or seed is set at 84.2 percent of each farm's cane sugar acreage base. These actions apply to all domestic sugar marketed for human consumption in the United States from October 1, 2003, through September 30, 2004.

The established 2003 crop beet and cane sugar marketing allotments are listed in the following table, along with the adjustments that have occurred since:

FY 2004 Overall Beet/Cane Allotments—Establishment and Adjustments

	August 13, 2003 announcement establishing FY04 allotments at 8,550,000 STRV	September 30, 2003 announcement revising FY04 allotments to 8,250,000 STRV	April 9, 2004 announcement adjusting FY04 allotments	July 22, 2004 announcmeent adjusting FY04 allotments
Beet sugar	4,646,925	4,483,875	.....	.....
Cane sugar	3,903,075	3,766,124	.....	.....
Total OAQ	8,550,000	8,250,000	.....	.....
State cane sugar alltoments:				
Florida	.....	1,877,086	1,910,863	1,949,112
Louisiana	.....	1,411,954	1,376,626	1,403,800
Texas	.....	157,617	159,230	157,256
Hawaii	.....	319,468	319,406	255,956
Puerto Rico	.....	0	0	0

Signed in Washington, DC on September 3, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–21771 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service Notice of Intent To Establish an Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to establish an information collection for the Expanded Food and Nutrition Education Program (EFNEP).

DATES: Written comments on this notice must be received by December 3, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice may be mailed to Jason Hitchcock, E-Government Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216 or sent electronically to: *jhitchcock@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection, contact Jason Hitchcock at (202) 720–4343; facsimile at (202) 720–0857; or electronically at: *jhitchcock@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Expanded Food and Nutrition Education Program (EFNEP).

OMB Number: 0524–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract: The USDA's CSREES EFNEP is a unique program that began in 1969, designed to reach limited resource audiences, especially youth and families with young children. EFNEP operates in 50 States of the United States, American Samoa, Guam, Micronesia, the Commonwealth of the Northern Marianas, the Commonwealth of Puerto Rico, and the Virgin Islands of the United States. Extension professionals train and supervise paraprofessionals and volunteers who teach food and nutrition information and skills to limited resource families and youth.

The objectives of EFNEP are to assist limited resource families and youth in acquiring the knowledge, skills, attitudes, and changed behaviors necessary for making diet decisions that are nutritionally sound, and to contribute to their personal development and the improvement of the total family diet and nutritional well-being.

The evaluation processes of EFNEP are consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62), the Federal Activities Inventory Reform Act of 1998 (FAIR Act) (Pub. L. 105–270), and the Agricultural, Research, Extension and Education Reform Act of 1998 (AREERA)(Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential Management Agenda initiatives, Budget and Performance Integration, builds on GPRA and earlier efforts to identify program goals and performance measures, and link them to the budget process. The FAIR Act requires the development and implementation of a system to monitor and evaluate agricultural research and extension activities in order to measure the impact and effectiveness of research, extension, and education programs. AREERA requires a performance evaluation to be conducted to determine whether Federally funded agricultural research, extension, and education programs result in public goods that have national or multi-state significance.

Since 1969, states have annually reported demographic and dietary behavior change of their EFNEP audience to the Federal Cooperative Extension Service (CES) EFNEP National Program Leader, at CSREES, or its preceding agencies, in USDA. Through 1992, the reports were submitted on OMB approved forms, Forms ES–255 and ES–256. The data gathered using these forms was of limited usefulness at the State and local level, and data quality was questionable.

The Evaluation/Reporting System (E/RS) is a database that was developed to capture the impacts of EFNEP. The system provides a variety of reports that are useful for management purposes, provides diagnostic assessments of participant needs, and exports summary data for State and National assessment of the program's impact. The specifications for this system were developed by a committee made up of representatives from across the United States.

E/RS stores information in the form of records about the program participants, their family structure and their dietary practices. The system is structured to collect data about adult participants, youth and youth group members, and staff assignments, and hours worked. The E/RS consists of separate software sub-systems for the county, state, and Federal levels. Each county-level system accumulates data about individuals. This data is exported electronically to the state-level system. At the state level, university staff imports the data and create state reports that are exported electronically to the Federal-level system. By the time the data gets to the Federal level, it is state compiled data excluding any personal identifying information of participants. National reports are then created at the Federal level.

Estimate of Burden: Each year, the county offices aggregate local electronic data into the state report, and transmit it electronically to CSREES. This requirement constitutes the Federal burden CSREES imposes on the States and is the only burden measured and accounted for in this estimate. CSREES estimates that it takes one State or Territory 1,234.5 hours to aggregate the local level information and transmit the summary information to CSREES. There are a total of 56 responses annually, thus constituting a total annual estimated burden of 69,132 hours for this information collection.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done in Washington, DC, this 1st day of September, 2004.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 04–21752 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent to Establish an Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to establish an information collection for Children, Youth, and Families at Risk (CYFAR).

DATES: Written comments on this notice must be received by December 3, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice may be mailed to Jason Hitchcock, E-Government Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216 or sent electronically to: *jhitchcock@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection, contact Jason Hitchcock at (202) 720–4343; facsimile at (202) 720–0857; or electronically at: *jhitchcock@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Children, Youth, and Families at Risk (CYFAR) Year End Report.

OMB Number: 0524–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract: Funding for the Children, Youth, and Families at Risk (CYFAR) New Communities Project (NCP) is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 341 *et seq.*), as amended, and other relevant authorizing legislation, which provides jurisdictional basis for the establishment and operation of Extension educational work for the benefit of youth and families in communities. The CYFAR funding program supports community-based programs serving children, youth, and families in at-risk environments. CYFAR funds are intended to support the development of high quality, effective programs based on research and to document the impact of these programs on intended audiences. The CYFAR Year End Report collects demographic and impact data from each community site which is used by CSREES to conduct impact evaluations of the programs on its intended audience.

The evaluation processes of CYFAR are consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62), the Federal Activities Inventory Reform Act of 1998(FAIR Act) (Pub. L. 105–270), and the Agricultural, Research, Extension and Education Reform Act of 1998 (AREERA) (Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential

Management Agenda initiatives, Budget and Performance Integration, builds on GPRA and earlier efforts to identify program goals and performance measures, and link them to the budget process. The FAIR Act requires the development and implementation of a system to monitor and evaluate agricultural research and extension activities in order to measure the impact and effectiveness of research, extension, and education programs. AREERA requires a performance evaluation to be conducted to determine whether Federally funded agricultural research, extension, and education programs result in public goods that have national or multi-state significance.

The immediate need of this information collection is to provide a means for satisfying accountability requirements. The long term objective is to provide a means to enable the evaluation and assessment of the effectiveness of programs receiving Federal funds and to fully satisfy requirements of performance and accountability legislation in GPRA, the FAIR Act, and AREERA.

Estimate of Burden: There are currently CYFAR projects in 48 States of the United States and 2 territories. Each state and territory is required to electronically submit an annual year end report to CSREES. The year end report includes demographic and impact data on each of the community projects. CSREES estimates the burden of this collection to be 322 hours per response. There are currently 50 respondents, thus making the total annual burden of this collection an estimated 16,100 hours.

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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done in Washington, DC, this 1st day of September 2004.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 04–21753 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Establish an Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to establish an information collection for the 4–H Youth Development Annual Enrollment Report.

DATES: Written comments on this notice must be received by December 3, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice may be mailed to Jason Hitchcock, E-Government Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216 or sent electronically to: *jhitchcock@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection, contact Jason Hitchcock at (202) 720–4343; facsimile at (202) 720–0857; or electronically at: *jhitchcock@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 4–H Youth Development Annual Enrollment Report.

OMB Number: 0524–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract: As early as 1902 USDA Demonstration field staff and progressive educators around the country began to work with groups of young rural boys and girls in practical applications of research knowledge through hands-on agricultural and home economics-related subjects which evolved into 4–H. Over time, 4–H became the largest non-formal youth development program in the country, and has remained so.

4–H is a complex national organization, involving the National 4–H Headquarters, CSREES, USDA, and hundreds of educational curricula, activities, and events for youth K through 12th grade. Programs originate at 105 land-grant universities, and local programs are conducted and managed by some 4,000 professional Extension staff in 3,050 counties, with nearly seven million youth enrolled each year. Nearly 600,000 volunteer leaders work directly with the 4–H youth. The Annual 4–H Enrollment Report is the principal means by which the 4–H movement keeps track of its progress, as well as emerging needs, potential problems and opportunities.

The evaluation processes of 4–H are consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62), the Federal Activities Inventory Reform Act of 1998 (FAIR Act) (Pub. L. 105–270), and the Agricultural, Research, Extension and Education Reform Act of 1998 (AREERA)(Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential Management Agenda initiatives, Budget and Performance Integration, builds on GPRA and earlier efforts to identify program goals and performance measures, and link them to the budget process. The FAIR Act requires the development and implementation of a system to monitor and evaluate agricultural research and extension activities in order to measure the impact and effectiveness of research, extension, and education programs. AREERA requires a performance evaluation to be conducted to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multi-state significance.

All of the information necessary to run the county-level 4–H program is collected by the county from individuals, Clubs, and other Units. It is maintained electronically at the County 4–H offices in cumulative individual and Club electronic records within the County 4–H program management software system. Annually each county sends their State 4–H office an electronic aggregated summary of their 4–H enrollment.

One professional 4–H staff member in each State or Territory annually uses their program management software to electronically aggregate the 4–H enrollment for their State or Territory into a standardized format in a database flat file. Only certain categories from the flat file are forwarded to CSREES. None of the aggregated summary information

collected by CSREES contains sensitive information of an individual nature.

Estimate of Burden: Each year, the State 4–H office aggregates all electronic County 4–H enrollment reports into the State 4–H enrollment report, and transmits it electronically to CSREES. The applicable Territories similarly transmit aggregated information. This requirement constitutes the Federal burden CSREES imposes on the States and Territories and is the only burden measured and accounted for in this estimate. CSREES estimates that it takes one State or Territory 31 hours to aggregate the local level information and transmit the summary information to CSREES. There are a total of 57 responses annually, thus constituting a total annual estimated burden of 1,767 hours for this information collection.

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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done in Washington, DC, this 1st day of September, 2004.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 04–21754 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–030N]

Codex Alimentarius: Meeting of the Codex Committee on Residues of Veterinary Drugs in Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: This notice informs the public that the Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), are sponsoring a public meeting on Tuesday, September 28, 2004, to provide information and receive public comments on agenda items that will be discussed at the Fifteenth Session of the Codex Committee on Residues in Veterinary Drugs in Foods, which will be held in Alexandria, VA, October 26–29, 2004. The Under Secretary and CVM recognize the importance of providing interested parties with information about the Codex Committee on Residues of Veterinary Drugs in Foods of the Codex Alimentarius Commission and to address items on the Agenda for the 15th Session of the Committee.

DATES: The public meeting is scheduled for Tuesday, September 28 from 10 a.m. to 1 p.m.

ADDRESSES: The public meeting will be held at the Best Western Washington Gateway Hotel, 1251 West Montgomery Avenue, Rockville, MD., 20850 (Main Ballroom). (The Hotel will provide shuttle service from the Rockville Metro Stop to the Hotel at 9:30 a.m.)

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, USDA, FSIS, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC, 20250.

All submissions received must include the Agency name and docket number 04–030N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

Research and background information will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net.*

FOR FURTHER INFORMATION CONTACT: Edith E. Kennard, Staff Officer, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC, 20250, Phone: (202) 720–5261, Fax: (202) 720–3157, E-mail: *edith.kennard@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization facilitating fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency manage and carry out U.S. Codex activities.

The Codex Committee on Residues of Veterinary Drugs in Foods was established in 1985 by the 16th Session of the Codex Alimentarius Commission to determine priorities for the consideration of residues of veterinary drugs in foods and to recommend maximum levels of such substances; to develop codes of practice as may be required; and to consider methods of sampling and analysis for the determination of veterinary drug residues in foods. The Committee is chaired by the United States.

Issues To Be Discussed at the Public Meeting

Provisional agenda items:

1. Draft Maximum Residue Limits (MRLs) for Veterinary Drugs (Flumequine, neomycin, dicyclanil, carbodox, melengestrol acetate and trichlorforn (metrifonate), phoxim, cyalothrin, and cefuroxime).
2. Proposed Draft Maximum Residue Limits for Veterinary Drugs (Cypermethrin, alpha-cypermethrin, imidocarb, flumequine, pirlimycin, cypermethrin/alpha cypermethrin, doramectin, and ractopamine).
3. Proposed Draft Code of Practice to Minimize and Contain Antimicrobial Resistance.
4. Proposed Draft Revised Guidelines for the Establishment of a Regulatory Program for the Control of Veterinary Drug Residues in Foods.
5. Proposed Draft Revised Part II "General Consideration on Analytical Methods for Residue Control" of the Codex Guidelines for the Establishment of a Regulatory Program for the Control of Veterinary Drug Residues in Foods.
6. Discussion Paper on Risk Management Methodologies, Including Risk Assessment Policies, in the Codex Committee of Veterinary Drugs in Foods.
7. Review of Performance-based Criteria for Methods of Analysis.
8. Consideration of the Priority List of Veterinary Drugs Requiring Evaluation or Re-evaluation.

9. Discussion Paper on Rounding of Acceptable Daily Intakes for Veterinary Drugs prior to Setting of MRLs.

Public Meeting

At the September 28th public meeting, the agenda items will be described and discussed, and the U.S. draft positions will be presented. Attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) (#04–030N).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done at Washington, DC on September 23, 2004.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 04–21774 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Seek Approval to Reinstatement of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Census of Agriculture Content Test.

DATES: Comments on this notice must be received by December 3, 2004, to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024, or *gmcbride@nass.usda.gov* or faxed to (202) 720–6396.

FOR FURTHER INFORMATION OR COMMENTS CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Census of Agriculture Content Test.

OMB Control Number: 0535–0243.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The census of agriculture conducted every five years is the primary source of statistics concerning the nation's agricultural industry and provides the only basis of consistent, comparable data. The Census of Agriculture is required by law under the Census of Agriculture Act of 1997, Pub. L. 105–113, 7 U.S.C. 2204(g). The 2002 census is available on the Web at *http://www.nass.usda.gov/census.*

The purpose of this content test is to evaluate factors impacting the census program: questionnaire format and design, new items, changes to question wording and location, respondent burden, ease of completion, and processing methodology such as edit and summary. Results will be studied in preparation for the 2007 Census of Agriculture. Development of the test questionnaire version will come from evaluation of the 2002 Census of Agriculture, testing panels, and focus groups. NASS will also meet with other USDA and Federal agencies and selected State Departments of Agriculture to glean information on data uses and justification for county data.

The test will be nation-wide, excluding Alaska and Hawaii. A random sample of 30,000 will be mailed questionnaires; half will get the old version for control and half will get the test format. Non-respondents will receive a follow-up contact. Summarization of findings will be presented to the Advisory Committee on Agricultural Statistics.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 60 minutes per positive response, 10 minutes per screen-out, and 2 minutes per refusal.

Respondents: Farm and ranch operators.

Estimated Number of Respondents: 30,000.

Estimated Total Annual Burden on Respondents: 30,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720–5778.

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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, September 1, 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–21772 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–20–P

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 January 13, 2003, 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 October 29, 2004 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 4117 South Building, Washington, DC 20250–2000. In addition, nominations may be mailed electronically to *hq_aa@nass.usda.gov*.

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. In addition to mailed correspondence to the addresses listed above, nominations may also be faxed to (202) 720–9013, OR telephoned to Carol House, Associate Administrator, NASS, at (202) 720–4333. 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 12 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 at Washington, DC, September 14, 2004.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 04–21773 Filed 9–28–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2004]

Foreign-Trade Zone 26—Atlanta, Georgia, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, requesting authority to expand its zone to include additional sites in the Atlanta area, within and adjacent to the Atlanta Customs port of entry. 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 September 22, 2004.

FTZ 26 was approved on January 17, 1977 (Board Order 115, 42 FR 4186, 1/24/77); reorganized on April 18, 1988 (Board Order 381, 53 FR 15254, 4/28/88); and, expanded on April 29, 1996 (Board Order 820, 61 FR 21156, 5/9/96), on March 19, 1999 (Board Order 1033, 64 FR 16421, 4/5/99), and on June 21, 2000 (Board Order 1105, 65 FR 39865, 6/28/00). The general-purpose zone project currently consists of the following sites: *Site 1* (285 acres, 2 parcels)—adjacent to the Hartsfield-Jackson Atlanta International Airport in Clayton and Fulton Counties and jet fuel storage and distribution facilities; *Site 2* (2,472 acres)—Peachtree City Industrial Park, Highway 74 South, Peachtree City; and, *Site 3* (85 acres)—Canton-Cherokee County Business and Industrial Park, Brown Industrial Boulevard, Canton.

The applicant is now requesting authority for a major expansion of the zone as described below. The proposal requests authority to expand the zone to include seven additional sites in the cities of Columbus, Griffin, Buford and McDonough, Georgia.

Proposed Site 4—1,152 acres within the 2,124-acre Muscogee Technology Park, located at the intersection of Georgia Highway 22 and State Route 80, Columbus (Muscogee County);

Proposed Site 5—49 acres at the Corporate Ridge/Columbus East Industrial Park, located at the intersection of Schatulga Road and Cargo Drive, Columbus (Muscogee County);

Proposed Site 6—394 acres within the 411-acre Green Valley Industrial Park, located at the intersection of Green Valley Road and State Route 16, Griffin (Spalding County);

Proposed Site 7—64 acres at the Hudson Industrial Park, located at the

intersections of Hudson Industrial Drive, Green Valley Road and Futral Road, Griffin (Spalding County);

Proposed Site 8—190 acres at the I–75 Industrial Park, located at the intersection of Wallace Road and Jackson Road, Griffin (Spalding County);

Proposed Site 9—321 acres at the Hamilton Mill Business Center, located at the intersection of Hamilton Mill Road and Interstate 985, Buford (Gwinnett County); and,

Proposed Site 10—212 acres at the ProLogis Park Greenwood, located just west of Interstate 75 at the Georgia State Highway 155 "diamond" interchange, McDonough (Henry County).

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW., Washington, DC 20230.

The closing period for their receipt is November 29, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 14, 2004).

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, 285 Peachtree Center Avenue NE., Suite 900, Atlanta, GA 30303–1229.

Dated: September 22, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–21842 Filed 9–28–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–867

Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 29, 2004.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the administrative review of the antidumping duty order on automotive replacement glass windshields from the People's Republic of China. This review covers the period September 19, 2001, through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jon Freed, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3434 and (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2004, the Department published the preliminary results of the administrative review of the antidumping duty order on ARG windshields from the PRC. *See Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004). On August 9, 2004, the Department published a notice extending the time limit for the final results of this administrative review by thirty days until no later than October 4, 2004. *See Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 48197 (August 9, 2004).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120–day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120–day period is not practicable for the following reasons: This review involves certain complex issues which were raised in the briefs after the preliminary results of review including the valuation of water as a separate component of normal value and the appropriate liquidation instruction for Shenzhen CSG Automotive Glass Company, Limited ("Shenzhen CSG"), considering that the Department determined in a changed–circumstances review that Shenzhen CSG is entitled to the same antidumping treatment as Shenzhen Benxun AutoGlass Co., Ltd. See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Automotive Replacement Glass Windshields From the People's Republic of China, 69 FR 43388 (July 20, 2004).

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional ten days until no later than October 14, 2004.

Dated: September 23, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–21841 Filed 9–28–04; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On August 3, 2004, the Department of Commerce (the Department) published the final results of its first administrative review of the antidumping duty order on low enriched uranium (LEU) from France for the period July 13, 2001, through January 31, 2003. *See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 46501 (August 3, 2004). On August 2, 2004, in accordance with 19 CFR 351.224(c)(2), we received a timely filed ministerial error allegation from respondent Eurodif S.A., Compagnie Générale Des Matières

Nucléaires, S.A. and COGEMA, Inc. (collectively, COGEMA/Eurodif). On August 9, 2004, we received rebuttal comments from the petitioners.[1] Based on our analysis of parties' comments, the Department has revised the antidumping duty margin for COGEMA/Eurodif. Accordingly, we are amending our final results.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Constance Handley or James Kemp, at (202) 482–0631 or (202) 482–5346, respectively; AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end-user.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Amended Final Results of Review

On August 2, 2004, COGEMA/Eurodif timely filed, pursuant to 19 CFR 351.224(c)(2), an allegation that the Department made one ministerial error in its final results, in that the constructed value (CV) profit rate was applied to an adjusted cost of production, although the financial statements from which the CV profit rate was derived had not been similarly adjusted. In their August 9, 2004, rebuttal, the petitioners contend the error was not ministerial because the Department's analysis memorandum lacked specificity in that it did not define which adjustments the Department intended to make when calculating CV profit. We agree with COGEMA/Eurodif that its allegation constitutes a ministerial error. For a detailed discussion of this ministerial error, as well as the Department's analysis, see Memorandum from Constance Handley, Program Manager, Office 1 to Jeffrey A. May, Deputy Assistant Secretary re: Ministerial Error Allegation, dated September 21, 2004.

In accordance with 19 CFR 351.224(e), we have amended the final results of the first antidumping duty administrative review of LEU from France, as noted above. As a result of this correction and as stated below, COGEMA/Eurodif's weighted-average margin decreased from 5.43 percent to 4.56 percent.

Producer	Weighted-average margin (percentage)
COGEMA/Eurodif	4.56

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate an importer-specific ad valorem assessment rate for merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review to the total customs value of the sales used to calculate those duties. Where the importer-specific assessment rate is above *de minimis*, we will instruct CBP to assess duties on all appropriate entries of subject merchandise by that importer. This rate will be assessed uniformly on all entries of that particular importer made during the period July 13, 2001, through January 31, 2003. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. The amended cash deposit requirement is effective for all shipments of subject merchandise manufactured by COGEMA/Eurodif entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

These amended final results are issued and published in accordance with section 751(h) of the Tariff Act and 19 CFR 351.224.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–2404 Filed 9–28–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitoners in this case are USEC Inc. and United States Enrichment Corporation.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–583–837)

Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Notice of Amended Final Results of Antidumping Duty Administrative Review and Correction to the Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Tom Martin or Zev Primor at (202) 482–3936 and (202) 482–4114, respectively; Office of AD/CVD Enforcement Office IV, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUMMARY: The Department of Commerce ("the Department") is amending the final results of administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip ("PET film") from Taiwan to reflect the correction of a ministerial error in those final results. The Department is also correcting the incorrect "All Others" rate that was published in the final results. The period of review ("POR") is December 21, 2001, through June 30, 2003.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2004, the Department published the final results of administrative review of the antidumping duty order on PET film from Taiwan. *See Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review*, 69 FR 50166 (August 13, 2004) ("*Final Results*"). On August 12, 2004, the respondent Nan Ya Plastics Corporation, Ltd. ("Nan Ya") submitted comments alleging that the Department made a ministerial error in the *Final Results*, by deducting certain expenses from the calculation of constructed export price. On August 18, 2004, the petitioners[1] filed rebuttal comments.

Scope of the Review

For purposes of this administrative review, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Amended Final Results

After reviewing the allegation and the rebuttal comments, we have determined that the *Final Results* did include a ministerial error, and we have amended our calculations accordingly. The revised final weighted–average dumping margin for Nan Ya, as indicated in the "Amended Final Results" section below, is 1.94 percent. For a detailed discussion of the Department's analysis of the ministerial error allegation, *see* Memorandum from Mark Manning, Acting Program Manager, to Holly A. Kuga, Senior Director, Office 4, "Allegation of Ministerial Error," dated concurrently with this notice.

Additionally, in the *Final Results*, the Department published an incorrect rate for the "All Others" category. Specifically, the Department incorrectly identified the "All Others" rate as 2.56 percent, rather than the correct rate of 2.40 percent. The correct rate of 2.40 percent was calculated in the amended final results of the less–than-fair–value ("LTFV") investigation. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 44174 (July 1, 2002) ("Amended LTFV Final").

Pursuant to section 751(h) of the Tariff Act of 1930, as amended ("the Act"), we have amended the *Final Results* by correcting the ministerial error. Consequently, we will issue amended cash–deposit instructions to U.S. Customs and Border Protection ("CBP") to reflect the amendment of the final results of review. The revised weighted–average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Nan Ya Plastics Corporation, Ltd.	1.94

Assessment

The Department will determine, and CBP will assess, antidumping duties on all appropriate entries. Pursuant to 19 C.F.R. § 351.212(b)(1), we calculated *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. For those sales where the respondent did not report actual entered value, we calculated importer–specific assessment rates based upon the net U.S. price. In accordance with 19 C.F.R. § 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer–specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). To determine whether the per–unit duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 C.F.R. § 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on export prices. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these amended final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of amended final results of administrative review for all shipments of PET film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Nan Ya will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "All Others" rate established in the *Amended LTFV Final*, which is 2.40 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to

[1] The petitioners in this review are DuPont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc. (collectively, the petitioners).

comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these amended final results in accordance with sections 751(h)of the Act and 19 C.F.R. § 351.224.

Dated: September 17, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–21840 Filed 9–28–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Public Meeting on U.S. Technical Participation in the 12th Quadrennial Conference of the International Organization of Legal Metrology (OIML)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Meeting announcement and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a public meeting to discuss U.S. technical participation in the 12th Quadrennial Conference of the International Organization of Legal Metrology (OIML). This pre-conference public meeting is open to all interested parties.

The principal focus will be on 20 OIML Recommendations on legal measuring instruments that will be presented for ratification by the Conference. These Recommendations and OIML-member nations' technical comments on them will be reviewed with interested parties who will be given an opportunity to present their views on the Recommendations and other relevant issues related to the Conference.

Participants with an expressed interest in particular topics may obtain copies of the OIML Conference technical agenda, including copies of the Recommendations to be ratified. Interested parties wishing to schedule an oral presentation at the pre-conference meeting should provide a written summary of comments to the NIST International Legal Metrology Group no later than 5 October 2004. Written comments from parties unable to attend the pre-conference public meeting are welcome at any time.

DATES: Pre-conference meeting at the National Institute of Standards and Technology: Tuesday, 12 October 2004 from 10 a.m. to 12 noon; Twelfth OIML International Conference of Legal Metrology in Berlin, Germany 24–29 October 2004.

ADDRESSES: Pre-conference meeting: National Institute of Standards and Technology (NIST North), Conference Room 152, 820 West Diamond Avenue, Gaithersburg, MD; International Conference: main venue is the Federal Ministry of Economics and Labor Conference Center in Berlin, Germany.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Richter, International Legal Metrology Group, Weights and Measures Division, National Institute of Standards and Technology, Gaithersburg, MD 20899–2600; telephone: (301) 975–4025; fax: (301) 926–0647; e-mail: *ralph.richter@nist.gov.*

SUPPLEMENTARY INFORMATION: The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization in which the United States and 59 other nations are members. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce, for public and worker health and safety, and for monitoring and protecting the environment. The harmonized results promote the international trade of measuring instruments and products affected by measurement.

Twenty Recommendations will be presented for ratification by the Conference in the following two categories: (1) Those already approved by the International Committee of Legal Metrology (CIML) between 2001 and 2003; and (2) those that are expected to be submitted directly to the Conference for ratification. These Recommendations and the OIML-member nations holding the responsible secretariat for their development are listed below:

Category 1

R16 "Non-invasive Sphygmomanometers. Part 1: Mechanical; Part 2: Automated" (revision) (Austria);

R48 "Tungsten ribbon lamps for calibration of radiation thermometers." (revision) (Russia);

R49–2 and R49–3 "Water meters intended for metering cold potable water. Part 2: Test methods. Part 3: Test report format." (new documents) (UK);

R52 "Hexagonal weights, ordinary accuracy class from 100 g to 50 kg." (revision) (US);

R61–1 and R61–2 "Automatic gravimetric filling instruments, Part 1: Metrological and technical requirements—Tests." (revision) "Part 2: Test report format." (new document) (UK);

R75–1 and R75–2 "Heat meters. Part 1: General requirements. Part 2: Pattern approval and initial verification tests." (revision) (Germany);

R84 "Platinum, copper and nickel resistance thermometers (for industrial use)." (revision) (Russia)

R87 "Net content in packages." (revision) (US);

R99 "Instruments for measuring vehicle exhaust emissions (joint publication with ISO 3930)." (amendment to document) (Netherlands);

R133 "Liquid-in-glass thermometers." (new document) (US);

R134 "Automatic instruments for weighing road vehicles in motion. Part A—Total vehicle weighing." (new document) (UK);

R135 "Spectrophotometers for medical laboratories." (new document) (Germany)

Category 2

R51–1 and R51–2 "Automatic catchweighing instruments. Part 1: Metrological requirements—Tests." (revision) "Part 2: Test report format." (new document) (UK)

R111–1 and R111–2 "Weights of classes E_1, E_2, F_1, F_2, M_1, M_{1-2}, M_2, M_{2-3}, and M_3. Part 1: Metrological and Technical Requirements. Part 2: Test Report Format." (revision) (US);

Draft Recommendation "Instruments for measuring the areas of leathers. Part 1: Metrological requirements—Tests." (new document) (UK)

Dated: September 23, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–21761 Filed 9–28–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051704A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Survey in the Gulf of Alaska, Northeastern Pacific Ocean

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys in the Gulf of Alaska (GOA) has been issued to Lamont-Doherty Earth Observatory (L-DEO).

DATES: Effective from August 30, 2004 through August 29, 2005.

ADDRESSES: The application and authorization are available by writing to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here and are also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 19, 2004, NMFS received an application from L-DEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program during a four-week period within a general time window from late July to October 2004. The purpose of the seismic survey is to locate sedimentary records of environmental change in the GOA, including Holocene climate variability, anthropogenic warming and glacier melting of the past century, and dynamics of erosion and deposition associated with glaciation. This research has important implications for understanding long-term variability of North Pacific ecosystems, with relevance towards managing fisheries, marine mammals and other species. Geophysical site survey and safety information will be used to optimally locate coring sites and to understand regional sedimentation patterns. The marine paleoclimatic record in this region has received relatively little study because very few suitable sediment cores have been taken. Nevertheless, enough basic knowledge of fjord sedimentation processes exists to support a strategy of targeting deep-silled basins of fjords with adequate connections to the open ocean, as well as shelf and slope sediments in the open ocean. Fjord basins likely contain a rich array of biogenic and sedimentologic evidence for regional climate change. Regions of turbidite sedimentation (i.e., coarse sediments transported down-slope in turbidity currents) will be documented using shipboard geophysical sensing and sedimentological proxies in recovered sediments and will be avoided during coring. However, if some isolated turbidites are present, this may present an opportunity to examine seismically triggered events that provide useful synchronous stratigraphic markers.

Description of the Activity

The proposed seismic survey will involve one vessel, the *R/V Maurice Ewing* (*Ewing*). The *Ewing* will deploy a pair of low-energy Generator-Injector (GI) airguns as an energy source (each with a discharge volume of 105 in^3). The energy to the airguns will be compressed air supplied by compressors on board the source vessel. Seismic pulses will be emitted at intervals of 6–10 seconds. This spacing corresponds to a shot interval of approximately 16–26 m (52–85 ft). The *Ewing* will also tow a hydrophone streamer that is up to 1500 m (4922 ft) long. As the airguns are operated along the survey lines, the hydrophone receiving system will receive and record the returning acoustic signals. In constrained fjord settings, only part of the streamer may be deployed, or a shorter streamer may be used, to increase the maneuverability of the ship.

The program will consist of approximately 1779 km (960 nm) of surveys, not including transits. Water depths within the seismic survey area are approximately 30 3000 m (98 9843 ft). There will be additional operations associated with airgun testing, start-up, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The GOA research will consist of four different stages of seismic surveys interspersed with coring operations in 4 general areas. The 4 different stages are outlined here in the order that they are currently planned to take place. Transit time between areas and between lines is not included in the estimates of survey time below, because the seismic source will not be operating during transits.

Stage 1–Prince of Wales Island. During this stage, 4 short seismic surveys will be completed in conjunction with 4 coring sites that will be sampled. Each of the 4 surveys, including seismic lines and coring, will take 9–14 hr and cover 17.7- 45.3 nm (32.9–83.8 km), for a total of 229 km (124 nm). All lines will be conducted in water depths less than 100 m (328 ft). A total of 13 lines will be shot around the 4 coring stations. Stage 1 will take approximately 50 hr of survey time over approximately 3 days to complete.

Stage 2–Baranof Island. During this stage, five short seismic surveys will be completed in conjunction with 6 coring sites that will be sampled. Each of the 5 surveys, including seismic lines and coring, will take approximately 6–17 hr and cover 4.1–54.5 nm (7.6–101.0 km), for a total of 109 km (59 nm) of which 25 km (13.5 nm) will be conducted in waters less than 100 m (328 ft) deep and 84 km (45 nm) will be in waters from 100 to 1000 m (328–3281 ft) deep. Stage 2 will take approximately 45 hr of survey time over approximately 4.5 days to complete.

Stage 3–Juneau (Southeast Alaska Inland Waters). During Stage 3, 3 short seismic surveys will be completed in conjunction with four coring sites that will be sampled. Each survey, including seismic lines and coring, will take approximately 8–21 hr and will cover 15.1–104.1 nm (27.7–192.9 km), for a total of 249 km (134 nm) conducted in water 100 m (328 ft) to 1000 m (3281 ft) deep. Stage 3 will take approximately 38 hr of survey time over 2.5 days to complete.

Stage 4–Glacier Bay, Yakutat Bay, Icy Bay, Prince William Sound, and GOA During Stage 4, 14 seismic surveys will be conducted in conjunction with 16 coring sites that will be sampled. Surveys during Stage 4, including seismic lines and coring, will range in length from 5.3 - 111.2 nm (9.8–205.9 km), for a total of 1192 km (644 nm) of which 382 km (206 nm) will be conducted in waters less than 100 m (328 ft) deep, 453 km (245 nm) will be in waters from 100 to 1000 m (328 -3281 ft) deep and 357 km (187 nm) will be in waters deeper than 1000 m (3281 ft). Stage 4 will take approximately 72 hrs of survey time over approximately 13 days to complete.

In the event that one or more of the planned sites are unavailable due to poor weather conditions, ice conditions, unsuitable geology (shallow sediments), or other reasons, contingency sites (alternative seismic survey and coring locations) will be substituted. Alternative research sites (see Fig. 6 in the L-DEO application) will only be undertaken by L-DEO as replacements for the planned sites, and their use will not substantially change the total length or duration of the proposed seismic surveys. Seismic survey lines have not been selected or plotted by L-DEO for some contingency core sites. However, L-DEO anticipates that each contingency core site would require approximately 40 km (22 nm) of seismic surveying to locate optimal coring locations. It is highly unlikely that all contingency sites will be used. To the extent that contingency sites are used, a similar number of "primary" sites will be dropped from the project.

General-Injector Airguns

Two GI-airguns will be used from the *Ewing* during the proposed program. These 2 GI-airguns have a zero to peak (peak) source output of 237 dB re 1 microPascal-m (7.2 bar-m) and a peak-to-peak (pk-pk) level of 243 dB (14.0 bar-m). However, these downward-directed source levels do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined airguns in the array. The actual received level at any location in the water near the airguns will not exceed the source level of the strongest individual source. In this case, that will be about 231 dB re 1 microPa-m peak, or 237 dB re 1 microPa-m pk-pk. Actual levels experienced by any organism more than 1 m (3.3 ft) from either GI gun will be significantly lower.

Further, the root mean square (rms) received levels that are used by biologists as impact criteria for marine mammals (see Richardson et al., 1995) are not directly comparable to these peak or pk-pk values that are normally used by acousticians to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. For example, a measured received level of 160 decibels rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a pk-pk measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley et al. 1998, 2000). The precise difference between rms and peak or pk-pk values depends on the frequency, content, and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sources are towed has a major impact on the maximum near-field output, because the energy output is constrained by ambient pressure. The normal tow depth of the sources to be used in this project is 3 m (9.8 ft), where the ambient pressure is 3 decibars. This also limits output, as the 3 decibars of confining pressure cannot fully constrain the source output, with the result that there is loss of energy at the sea surface. Additional discussion of the characteristics of airgun pulses was provided in the notice of proposed authorization to L-DEO for this activity (see 69 FR 34996, June 23, 2004) and is not repeated here. Reviewers are encouraged to read this earlier document for additional information.

For the 2 GI-airguns, the sound pressure field has been modeled by L-DEO in relation to distance and direction from the airguns, and in relation to depth. Table 1 shows the maximum distances from the airguns where sound levels of 190-, 180-, 170- and 160–dB re 1 microPa (rms) are predicted to be received. Empirical data concerning the 180, 170 and 160 dB distances have been acquired based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (Tolstoy et al., 2004). Although the results are limited, the data showed that radii around the airguns where the received level would be 180 dB re 1 microPa (rms), NMFS' current injury threshold safety criterion applicable to cetaceans (NMFS, 2000), varies with water depth. Similar depth-related variation is likely in both the 190–dB distances applicable to pinnipeds and the 160–dB distance where NMFS' criteria consider Level B (behavioral harassment) to occur. The proposed L-DEO study area will occur in water approximately 30 3000 m (98 9843 ft).

The empirical data indicate that, for deep water (>1000 m (3281 ft)), the L-DEO model tends to overestimate the received sound levels at a given distance (Tolstoy et al., 2004). However, to be precautionary pending acquisition of additional empirical data, safety radii during airgun operations in deep water will be the values predicted by L DEO's model (see Table 1). The 180- and 190–dB radii were not measured for the 2 GI-airguns operating in shallow water (<100 m (328 ft)). However, the measured 180 dB radius for the 6–airgun array operating in shallow water was 6.8x that predicted by L-DEO's model for operation of the 6–airgun array in deep water. This conservative correction factor is, therefore, applied to the model estimates to predict the radii for the 2 GI guns in shallow water. Empirical measurements were not conducted for intermediate depths (100–1000 m (328–3281 ft)). On the expectation that results will be intermediate between those from shallow and deep water, a 1.5x correction factor is applied to the estimates provided by the model for deep water situations. This is the same factor that was applied to the model estimates during L-DEO cruises in 2003.

TABLE 1. ESTIMATED DISTANCES TO WHICH SOUND LEVELS ≥190, 180, 170 AND 160 DB RE 1 μPA (RMS) MIGHT BE RECEIVED FROM TWO 105 IN³ GI GUNS THAT WILL BE USED DURING THE SEISMIC SURVEY IN THE GOA DURING 2004. DISTANCE ESTIMATES ARE GIVEN FOR OPERATIONS IN DEEP, INTERMEDIATE, AND SHALLOW WATER. THE 180- AND 190-DB DISTANCES ARE THE SAFETY RADII TO BE USED DURING THE SURVEY.

Water depth	Estimated Distances at Received Levels (m)			
	190 dB	180 dB	170 dB	160 dB
>1000 m	17	54	175	510
100-1000 m	26	81	263	765
<100 m	250	400	750	1500

Bathymetric Sonar, Sub-bottom Profiler, and Pinger

In addition to the 2 GI-airguns, a multibeam bathymetric sonar and a low-energy 3.5–kHz sub-bottom profiler will be used during the seismic profiling and continuously when underway. While on station for coring, a 12–kHz pinger will be used to monitor the depth of coring devices relative to the sea floor.

Bathymetric Sonar-Atlas Hydrosweep- The 15.5–kHz Atlas Hydrosweep sonar is mounted on the hull of the *Ewing*, and operates in three modes, depending on the water depth. There is one shallow-water mode and two deep-water modes: an Omni mode (similar to the shallow-water mode but with a source output of 220 dB (rms)) and a Rotational Directional Transmission (RDT) mode. The RDT mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends less than 3 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with small (much less than 1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the "ping" including all five successive segments, varies with water depth, but is 1 millisec in water depths less than 500 m (1640.5 ft) and 10 millisec in the deepest water. For each segment, ping duration is ⅕ of these values or ⅖ for a receiver in the overlap area ensonified by two beam segments. The "ping" interval during RDT operations depends on water depth and varies from once per second in less than 500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water. During the proposed project, the Atlas Hydrosweep is planned to be used in waters greater than 800 m (2624.7 ft), but whenever water depths are less than 400 m (1312 ft) the source output is 210 dB re 1 microPa-m (rms) and a single 1–ms pulse or "ping" per second is transmitted.

Bathymetric Sonar-EM1002 Portable Sonar - The EM1002 is a compact high-resolution multibeam echo sounder that operates at a frequency of 92 to 98 kHz in water depths from 10 to 800 m (33 2625 ft). The EM1002 will be used instead of the Atlas Hydrosweep in waters less than 800 m (2625 ft) deep. The EM1002 will be pole mounted on the *Ewing*, either over the side of the vessel or through a well inside the ship. The system operates with one of three different pulselengths: 0.2, 0.7 and 2 ms. Pulselength increases with increased water depth. Overall angular coverage of the transmitted beam is 3 degrees along the fore-aft axis and 150 degrees (7.4 times the water depth) along the cross-track axis when operating in the shallowest mode. Maximum ping rate is 10/sec (in shallow water) with the ping rate decreasing with increasing water depth. Maximum output using long pulses in 800 m (2624.7 ft) water depth is 226 dB re 1 microPa, although operations in shallower depths, including most of the work in these surveys, will use significantly lower output levels.

Sub-bottom Profilers - The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the EDO Corporation's (EDO) sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Ewing*. The output varies with water depth from 50 watts (W) in shallow water to 800 W in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30° and is directed downward. Maximum source output level is 204 dB re 1 microPa (rms) (800 W) and a nominal source output is 200 dB re 1 microPa (500 W). Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

An ODEC Bathy 2000P "chirp" sonar may be used instead of the EDO sub-bottom profiler. This sonar transmits a 50–ms pulse during which the frequency is swept from 4 to 7 kHz. The transmission rate is variable from 1 to 10 seconds, and the maximum output power is 2 kW. This sonar uses a transducer array very similar to that used by the 3.5 kHz sub-bottom profiler.

Although the sound levels have not been measured directly for the sub-bottom profilers used by the *Ewing*, Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a sub-bottom profiler similar to the EDO unit with similar source output (i.e., 205 dB re 1 microPa m). For that profiler, the 160 and 180 dB re 1 microPa (rms) radii in the horizontal direction were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft) respectively, assuming spherical spreading. Thus the received level for the EDO sub-bottom profiler would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (300 beamwidth) and the measurements of Burgess and Lawson (2000).

12 kHz Pinger - A 12–kHz pinger will be used only during coring operations, to monitor the depth of the coring apparatus relative to the sea floor. The pinger is a battery-powered acoustic beacon that is attached to a wire just above the corehead. The pinger produces an omnidirectional 12 kHz signal with a source output of 193 dB re 1 microPa-m. The pinger produces a 2–ms pulse every second.

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on June 23, 2004 (69 FR 34996). During the 30–day public comment period, comments were received from the Center for Biological Diversity (CBD).

Marine Mammal Concerns

Comment 1: The CBD believes NMFS has not demonstrated that the LDEO project will take only small numbers of marine mammals.

Response: NMFS believes that the small numbers requirement has been satisfied. The U.S. District Court for the Northern District of California held in *NRDC* v. *Evans* that NMFS' regulatory definition of "small numbers" improperly conflates it with the "negligible impact" definition. Even if that is the case, in the proposed IHA notice and in this document, NMFS has made a separate determination that the takes of the affected marine mammal species will be small. The species most likely to be harassed during the seismic survey is the Dall's porpoise, with a "best estimate" of 3354 animals being exposed to sound levels of 160 dB or greater. Although it may be argued that the absolute number of Dall's porpoise behavioral harassment numbers may not be small, it is relatively small, representing less than 1 percent of the regional population of that species. Moreover, this does not mean that 3354 Dall's porpoises will be taken by Level B harassment. Dall's porpoise have their best hearing at high frequencies, not the low frequencies used by seismic and may not even hear seismic sounds. If in fact, some Dall's porpoise cannot hear the low-frequency seismic sounds, then no taking of this species will occur. Finally, we note that during this project, only the humpback whale stock exceeds 1 percent of its stock being potentially subject to Level B harassment with a best estimate of about 67 animals being exposed to low-frequency noise.

Comment 2: The CBD believes that the proposed authorization and L-DEO application neglect to provide sufficient analysis of the additional impacts to marine mammals resulting from the project's nearshore and inland location.

Response: NMFS believes that the L-DEO application and the National Science Foundation's (NSF) Environmental Assessment (EA) provide the necessary information and analyses needed for NMFS to make a determination on whether or not the proposed incidental harassment takings will be small and have no more than a negligible impact on marine mammals. These documents provide detailed analyses on the impacts on the affected marine mammal species including when they are in the nearshore environment and calculate conservative estimates for sound source ranges due to sound attenuation rates for the seismic source in shallow water.

The LDEO application describes how seismic sounds can be received in the ocean. This is important for estimating impacts. Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection form the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sound propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. These variations in travel time have the effect of lengthening the duration of the received pulse, reducing the potential for impacting marine mammals.

As mentioned in the L-DEO application, received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983; Richardson et al., 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs 9 m (29.5 ft) or 18 m (59 ft) have shown that received levels are typically several decibels lower at 3 m (Greene and Richardson, 1988). This results in lowered SPLs at the surface than at depth, essentially providing protection for surface-inhabiting marine species. However, when establishing 180–dB and 190–dB safety zones, NMFS and L-DEO calculated safety zones by using the greatest 180/190 dB SPL distance at depth from the source. This results in higher (more conservative) estimates of take since most marine mammals, such as the dolphins, are expected to be in the near-surface zone of the ocean most of the time.

During a 2003 study in the northern Gulf of Mexico, LDEO obtained measurements of received sound levels as a function of distance from LDEO's airgun arrays. The calibration measurements indicate that received levels in shallow water (30 m) diminish less rapidly, as noted previously in this document. This is what would be expected in inland waters and has been taken into consideration when establishing conservative safety zones to protect marine mammals from injury. Further discussion on this subject will be presented in response to comment (RTC) 9 later in this document.

Comment 3: The CBD believes that NMFS' analyses of small numbers and negligible impact are flawed, because NMFS uses "North Pacific Ocean" to define the geographical limits of the "regional" populations that form the basis of its analyses instead of providing an analysis of impacts on stocks or more localized populations that overlap with the project area. The CBD believes that the appropriate geographic scale should be populations and stocks inhabiting the survey area and not the entire North Pacific.

Response: NMFS agrees that impacts should be assessed on the population or stock unit whenever possible. L-DEO's application (see especially Table 3) provides information on stock abundance in Alaska (when available) and larger water bodies (such as the North Pacific Ocean). The data source for each stock estimate is provided. NMFS believes that these data are the best scientific information available for estimating impacts on marine mammal species and stocks. However, information on marine mammal stock abundance may not always be satisfactory. When information is lacking to define a particular population or stock of marine mammals then impacts are assessed with respect to the species as a whole (54 FR 40338, September 29, 1989).

Comment 4: The CBD believes that the appropriate geographical scale is particularly critical for species, such as the Northern Resident, Gulf of Alaska Transient, and the "depleted" AT1 stocks of the killer whale. NMFS does not even mention the impacts of the proposed authorization on these stocks of killer whales in the proposed authorization, rendering the analysis wholly useless. The take of even one killer whale from these stocks will have more than a negligible impact on the stock and the species.

Response: Information on the killer whale stocks was provided on pages 20 and 21 of the L-DEO application and in NMFS' proposed authorization (see 69 FR 34996 (June 23, 2004) especially Table 2). It was not separated out for additional discussion in NMFS' notice since, as noted later, the killer whale is less likely to be impacted than most other species and, therefore, did not warrant additional analysis. For clarification in calculating killer whale density, L-DEO used the survey data of Waite (2003). This estimate is based on eight killer whale sightings during 2242 km (1210.6 nm) of survey effort. In calculating density an allowance is given for prorating some unidentified animals to killer whales based on the ratio of identified animals of the same grouping, which includes small whales or any less precise grouping which

includes small whales, such as unidentified whale. The final density in the table of 0.0136/sq km has been adjusted upward from the raw density of 0.0125 based on only the 8 killer whale sightings.

Referencing Agliss and Lodge (2002), L-DEO notes that the best scientific information currently available indicates that the minimum population size of killer whales in Alaskan waters is 1069, which includes minimum population (P_{min}) estimates of 723 Eastern North Pacific (ENP) Resident and 346 ENP Transient killer whales. A P_{min} estimate is considered to be conservative. On June 3, 2004 (69 FR 31321), NMFS published a final rule designating the AT1 killer whale group as a depleted stock under the MMPA. This group currently has 9 or fewer whales and was part of the ENP Transient stock prior to this designation.

Since there is insufficient information to indicate which of these stocks, if any, might be within the relatively small impact area at the same time the *Ewing* is conducting seismic, the proper method is either to combine these population stock estimates or divide the estimated incidents of harassment between the current three stocks. Since this species is unlikely to be in the vicinity of the *Ewing* at the time seismic is operating (L-DEO, 2004), and is highly visible to observers, no killer whales will be injured or killed (i.e., no removals from the species or stock) as a result of the *Ewing's* seismic operations. Therefore, the only potential taking might be by Level B harassment. As indicated in Table 2 in this document, L-DEO estimates that approximately 42 killer whales might be within the 160–dB (rms) isopleth and, therefore, presumed to be harassed. This is 0.2 percent of the regional killer whale population. If subdivided according to stock size, NMFS estimates that about 28 ENP Resident, 13 ENP Transient and significantly less than 1 AT1 animal would be within the 160 dB isopleth. Moreover, since the killer whale's optimum hearing range is not in the low frequency used by seismic sources, this number should not be interpreted as the number being "taken" by Level B harassment, only the number that might be exposed to that noise. Therefore, NMFS does not believe that the effect of any taking will be more than negligible.

Comment 5: The CBD states, furthermore, that while some 16 other pods inhabit or visit SE Alaskan waters and Prince William Sound, they are not formally recognized as "stocks." Scientifically many of these pods warrant recognition as such and must be analyzed under both the MMPA and the National Environmental Policy Act (NEPA).

Response: L-DEO has used the best scientific information available regarding killer whale stock structure (and the stock structure for other species). For killer whales and other species, NMFS and L-DEO used stock structure information provided in Angliss and Lodge (2002) and other documents referenced in the L-DEO application and NSF EA. Since the CBD has not provided additional information that indicates this information is invalid, NMFS must base its determinations on this information.

Comment 6: The CBD states that the proposed authorization notice neglects to explain how the population estimates provided in L-DEO's application and NSF's EA correspond to populations or stocks or how L-DEO/NMFS use this information for take estimates. For example, the application and EA estimate the SE Alaskan population of humpback whales to be 404 individuals. However, the proposed authorization states that 67 individuals will be exposed to sound levels greater than 160 dB, which it concludes represents only 1.1 percent of the "regional population." However, 67 individuals represents 17 percent of the SE Alaskan population, which is the proper geographic scope of the take analysis.

Response: L-DEO clearly states that it uses the "regional population estimates" that are given in Table 3 of the EA and corresponding table of the IHA application, not the "local population estimates" which CBD suggests are "the appropriate numbers to use". In some cases, L-DEO/NSF can sum the estimates for specific stocks but in most cases there is no specific stock information for the survey area. In situations where there is specific information for the survey area there is rarely information for all adjacent survey areas. Including this point, there are a several additional points that apply to most L-DEO projects.

1. The stocks (local populations) considered by NMFS for management purposes (involving lethal takes or removals from the population by commercial fishing or other activities) often do not include all of the animals that inhabit that area over the year, or even during the same season or year. Local stock estimates frequently include only the animals that are present at the time of a particular marine mammal survey and thus substantially underestimate the number that use the area over a longer time period. For example, the Oregon stock of Pacific white-sided dolphins (see 69 FR 31792, June 7, 2004) includes animals that can be found in California at one time of year and perhaps British Columbia or SE Alaska at another time, and the number of different animals that are found in Oregon waters over the year is many times the number that occur there at any one time. Thus, in most cases, estimates of stock size for local populations are minimum estimates with no realistic estimate of the upper bound of the population size.

2. For many species there is a great deal of year-to-year movement by marine mammals to take advantage of resources. Animals that normally inhabit one area are not restricted to that area. When, for example, food is scarce in an area animals will temporarily move into other areas to take advantage of abundant food in those areas. Definitions of local stocks do not consider this flexibility.

3. Telemetry and photo-id studies reveal that there is interchange between what are considered to be discrete stocks. There are many examples of between-stock movements of humpback and southern right whales. Most recently large numbers of right whales seen off of southern Brazil appear to be immigrants from Peninsula Vades, Argentina (Groch et al., 2004), which until recently was thought to be a separate stock. Local stocks are thus overly conservative and a low estimate of the populations that use an area. While these estimates may be warranted when considering limits on lethal takes, in order to ensure that populations continue to grow, they are overly conservative when considering effects of behavioral disturbance, which are not expected to have any demographic consequences to the populations.

Therefore, in SE Alaska, NMFS and L-DEO believe there are no good "local" population estimates for any cetacean species in SE Alaska, perhaps with the exception of harbor porpoises and Pacific white-sided dolphins. The surveys that provided the density estimates (Waite, 2003) were conducted in the GOA (which is only partially relevant to SE Alaska) and only a few surveys of harbor porpoises and Pacific white-sided dolphins have actually been conduced in SE Alaska.

In regard to the humpback whale, although there are estimated to be greater than 6000 humpback whales in the North Pacific, only about 1200 are accounted for by estimates of numbers in the feeding areas because all surveys of summering areas are incomplete. Thus Straley et al.'s (1995) estimate of the 404 humpbacks using SE Alaska waters is some unknown fraction of the total number there. Therefore, NMFS

and L-DEO believe that, until more complete data are obtained, the North Pacific humpback whale estimate is the best data available for use here.

Comment 7: The CBD states that surveys should be conducted prior to authorizing the IHA for those species for which the Alaskan marine mammal populations are not known, asserting that any analysis of small numbers and negligible impact cannot be conducted independently of this more detailed information.

Response: NMFS disagrees. As noted previously, when information is unavailable on a local population size, NMFS uses either stock or species information on abundance. Since NMFS uses the best information that is available, estimating impacts on marine mammals in this manner is appropriate. Therefore, additional surveys are unnecessary.

Comment 8: CBD states that there is insufficient disclosure of the compounded impact of the 2 GI-airgun array's seismic output along with the other data acquisition systems, the bathymetric sonar, sub-bottom profiler and pinger. Despite the fact that the sonar and pinger will be operating continuously during the voyage, NMFS assumes there will be no additional take from the sonar, profiler, and pinger individually or from all three sources collectively. Therefore, NMFS must address instances when all sources may not be operating simultaneously and also provide a substantiated explanation why it assumes there is no enhanced impact of multiple acoustic sources operating together.

Response: This information is provided in detail in the L-DEO application and NSF EA. The multibeam sonars and sub-bottom profilers have anticipated radii of influence significantly less than that for the airgun array. NMFS has stated previously that marine mammals close enough to be affected by the multibeam sonar or sub-bottom profiler would already be affected by the airguns when they are both working. Since NMFS considers all marine mammals to be affected equally by underwater sound and does not determine which species are low-frequency hearing specialists and therefore more affected by seismic (a low-frequency source) and which species are mid- or high-frequency specialists and therefore more likely to be affected by the sonars, NMFS does not consider it is necessary to conduct an analysis on the enhancement of effects for animals that might be affected by these sonars. In other words, the acoustic source with the largest zone of influence is used to determine [illegible] incidental take levels.

Also, estimates of incidental take by harassment for times when the multibeam sonar and/or sub-bottom profiler are operated without airguns are not necessary because the 160–dB and 180–dB isopleths of the sub-bottom profiler and multibeam are either too small or the acoustic beams are very narrow, making the duration of the exposure and the potential for taking marine mammals by harassment small to non-existent. As provided in the L-DEO application, the 160–dB and 180–dB radii in the horizontal direction for the sub-bottom profiler are estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively. In the vertical direction, the 160–dB and 180–dB radii are 160 m (525 ft) and 16 m (52 ft) directly below the hull-mounted transducer. With the *Ewing's* beam at 14.1 m (46.25 ft) little noise is, therefore, likely to exist at the water surface beyond the immediate vicinity of the *Ewing* from this hull-mounted sonar. As a result, it is unlikely that marine mammals would be affected by sub-bottom profiler signals whether operating alone or in conjunction with other acoustic devices since the animals would need to be swimming immediately adjacent to the vessel or directly under the vessel. This is unlikely to occur during the *Ewing* cruise since the vessel is likely to be in transit mode when not coring or towing seismic, and will therefore be traveling at about 10–11 knots (18.5–20.4 km/hr) at the time.

For the Hydrosweep there is minimal horizontal propagation, as these signals project downward and obliquely to the side at angles up to approximately 70 degrees from the vertical, but not horizontally. For the deep-water mode, under the *Ewing* these 160- and 180–dB zones are estimated to extend to 3200 m (10500 ft) and 610 m (2000 ft), respectively. However, the beam width of the Hydrosweep signal is only 2.67 degrees fore and aft of the moving vessel, meaning that a marine mammal diving (not on the surface) could receive at most 1 to 2 signals from the Hydrosweep. Also, because NMFS treats behavioral harassment or injury from pulsed sound as a function of total energy received, the actual harassment or injury threshold for Hydrosweep signals (approximately 10 millisec in duration) would be at a much higher dB level than that for longer duration pulses such as seismic or military sonar signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multibeam sonar or the Hydrosweep sonar due to the short duration and only 1 to 2 pulses received. In addition, at 95–kHz, the sounds from the EM1002 bathymetric sonar would not even be audible to pinnipeds and baleen whales.

Finally, the 12–kHz pinger has a weak signal compared to other acoustic sources (at 193 dB its signal is weaker than even most off-the-shelf commercial (e.g., fish-finder) sonars used by recreational and commercial boaters) and will be used only when on-station for coring to monitor the depth of the apparatus relative to the sea floor. Therefore, the 12–kHz pinger is unlikely to be used in conjunction with other acoustic devices. Since the vessel is stationary at the time of coring, a marine mammal would need to approach the *Ewing* on its own and essentially swim under the vessel to be exposed to sound levels greater than 160 dB. As a result, NMFS does not believe that incidental takings will occur from this acoustic device.

Mitigation Concerns

Comment 9: The CBD believes that NMFS' discussion of measures to ensure the least practicable impact is lacking. For example, NMFS provides no analysis of why larger safety radii were not practicable or why additional correction factors were not provided for nearshore and inland water locations of the seismic activities and the possible enhanced impacts these locations could produce.

Response: Safety zones were established and are monitored closely to ensure, to the greatest extent practicable, that no marine mammals would be injured by the proposed activity. While extending safety zones to reduce Level B behavioral harassment would, in theory, result in reducing "takes" further, monitoring larger safety zones results in lower effort directed to the area of greatest concern, the area for potential injury. This lower effort might result in missed animals. For that reason, NMFS has determined that safety zones should be established and monitoring at 180 dB for cetaceans and 190 dB (rms) for pinnipeds.

Additional correction factors for calculating safety zones are necessary based on attenuation due to water depth, not because of distance to shore (although in most cases the two are related). Underwater seismic sounds are subject to spherical spreading to a distance approximately 1.5 times water depth. This is essentially what occurred in the Gulf of Mexico seismic study (see RTC 2 in this document). These additional correction factors were applied for L-DEO seismic activities taking place in water depths less than 1000 m (3281 ft) as described elsewhere

in this document. However, NMFS has some concerns regarding propagation in very shallow water and has determined that for water depths less than 100 m (328 ft), L-DEO will establish a safety zone at 170 dB as shown in Table 1.

Comment 10: The CBD states that NMFS has not provided an acceptable justification for allowing L-DEO to abandon use of passive acoustic monitoring (PAM). They assert that despite any alleged limitations of PAM on their voyage, it still constitutes a meaningful mitigation measure that is necessary to ensure least practicable impacts to marine mammals and this must be required.

Response: It must be noted that the 180–dB safety radius for the 2–GI airgun array is 54 m (177 ft) in deep water, 81 m (266 ft) in intermediate-depth waters; the 170–dB safety zone in shallow water is 750 m (2461 ft). Because of the relatively small safety zones in intermediate and deep water, locating vocalizing marine mammals to determine presence within the safety zone is not possible. Also, while detecting vocalizing marine mammals to determine presence simply alerts observers to their presence and does not initiate shutdown because the PAM cannot determine distance to the vocalizing animal, at these short distances and slow vessel speed, a trained marine mammal observer should not have difficulty locating them visually without the PAM. Of the 1776 km (959 nm) of seismic lines for this survey, the major portion (1143 km (617 nm)) will be in intermediate or deep water where the safety zones are small. In shallow water, where the safety zone will be larger, the PAM has proven inefficient due to signal propagation loss and reflection characteristics in shallow water. For these reasons, NMFS is not requiring L-DEO to use the PAM during the GOA research program.

Comment 11: The CBD states that NMFS' analysis of mitigation measures to ensure least practicable impact is flawed because the notice fails to require dedicated observers at night.

Response: Unlike most seismic surveys, the GOA work will involve about 29 separate surveys with each one followed by 9–14 hours of coring operations and transit times to the next coring/seismic station. These periods will allow the observers onboard the *Ewing* to rest and/or sleep. However, for this operation NMFS is also requiring use of either the *Ewing* during its return to the coring site or its small boat during coring (if safety concerns can be met) to look for marine mammals on the vessel track. This will require one observer to be available during the coring operation, but leave two observers time to rest. In addition, to the maximum extent possible, NMFS is requiring seismic work to be conducted during daytime when in the fjords so night-time seismic work will be very limited (essentially to those times when darkness arrives at the end of a seismic leg). Therefore, due to the shortness of each seismic leg, for this research cruise observers will be available to conduct night-time observations when working in offshore waters and crew members will only assist the observers.

Comment 12: The CBD states that there is no discussion or consideration of additional monitoring or mitigation measures, such as aerial surveys during operations to search for animals that may be affected, as well as to search nearby remote beaches for possible stranded animals. Without requiring such additonal measures, or at a minimum discussing why they are not practical, NMFS cannot lawfully issue the requested authorization.

Response: Prior to issuing an IHA, NMFS thoroughly investigates all measures that might be practical to reduce the incidental taking of marine mammals by an activity to the lowest level practicable. Some of these mitigation measures were summarized in RTC 11. Additional mitigation measures are discussed later in this document (see Mitigation). Mitigation measures, such as aerial overflights or support vessels to look for marine mammals prior to an animal entering a safety zone, are generally given consideration if the safety zone cannot be adequately monitored from the source vessel. Additional consideration must be given, however, to aircraft/vessel availability and access to nearby airfields and aircraft flight duration. There are serious safety issues regarding aircraft flights over water that must be considered prior to requiring aerial overflights. Additional consideration must be given to the potential for aircraft to also result in Level B harassment since a plane or helicopter would need to fly at low altitudes to be effective. Because the safety zones for this proposed activity are small and can be easily monitored from the *Ewing*, use of aircraft for mitigation purposes is not warranted.

If aircraft are not necessary or feasible to monitor a safety zone, then one needs to see if aircraft might be needed to monitor shorelines (presumably for strandings related to the activity). NMFS has carefully weighed the suggestion of aerial monitoring of beaches and shorelines for standings and has determined that for this GOA survey, using the *Ewing's* small boat or the *Ewing* itself would be more effective in locating marine mammals in and near the *Ewing's* track than would an aircraft. An aircraft would be seriously constrained by altitude and a lack of ability to determine whether the mammal had been affected by seismic or was a natural stranding. That the stranding is related to the activity requires verification and verification can only be done in this area by a vessel or a land-based team. Verification is important because marine mammal stranding is a phenomenon that precedes the introduction of anthropogenic noises into the oceans and the vast majority of all strandings world-wide are unrelated to anthropogenic noise. Considering the topography, inaccessibility of the shoreline and the short-duration of each coring leg, a land-based team is not practical, leaving only the *Ewing* or its boat for verification. This is the alternative chosen by NMFS.

Endangered Species Act (ESA) Concerns

Comment 13: The CBD states that L-DEO's proposed project may affect 9 species listed as endangered under the ESA. As a result, consultation under section 7 of the ESA must occur prior to authorization of the project. NMFS has not yet complied with its (ESA) duties, and thus may not issue a small take authorization for the LDEO project.

Response: NMFS has completed consultation under section 7 of the ESA for both NMFS and the U.S. Fish and Wildlife Service (FWS) species. The biological opinion resulting from that consultation concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

NEPA Concerns

Comment 14: The CBD believes that the EA is insufficient and that an Environmental Impact Statement(EIS) is required. The CBD states that NSF and NMFS have never prepared a comprehensive EIS that fully analyzes the environmental impacts of its seismic surveys, either individually or collectively, as well as provide the public with the critical opportunity to participate in the decision making process as required by NEPA for actions of this magnitude. The CBD believes that NMFS must prepare an EIS prior to approving this project.

Response: NMFS disagrees. In its review of NSF's EA for this action and previous L-DEO actions that were analyzed under individual EAs, NMFS has determined that the proposed L-DEO actions are dispersed

geographically (Bermuda, Norway, Mid-Atlantic, Gulf of Mexico, Caribbean Sea, Eastern Pacific) and/or time-wise (Hess Deep, 2003 and Blanco Fracture, 2004). As a result, there are no cumulative effects because there are no removals from any marine mammal population, Level B harassment would only affect widely disbursed marine mammal populations and those affects would not impact animals at the population level and, therefore, would be negligible. Also, NMFS announced the availability of this NSF EA on June 23, 2004 (69 FR 34996), as it does all NSF EAs.

Comment 15: Prior to approving this project, NMFS must prepare an EIS. An EIS is required if "substantial questions are raised as to whether a project...may cause significant degradation of some human environmental factor." (*Idaho Sporting Congress* v. *Thomas*, 137 F.3d 1146, 1149–50 (9th Circ. 1998) citing *Greenpeace Action* v. *Franklin*, 14 F.3d 1146, 1149–1150 (9th Cir. 1998). The CBD states that one need not show that significant effects will in fact occur; rather, raising substantial questions whether a project may have a significant environmental effect is sufficient. In this case, an EIS is required because substantial questions have been raised as to each of the factors found in 40 CFR 1508.27(b)), a few of which are discussed in greater detail (see RTCs 16–20).

Response: NMFS believes that the NSF EA provides an in-depth discussion on aspects of the impacts of seismic and sonar sounds on marine life, particularly marine mammals and sea turtles. For example, it discusses and analyzes impacts on, and the relationship between, military sonar and marine mammal strandings, in addition to the potential interaction between marine mammals and seismic operations. In conclusion, and as shown in the RTCs that follow, NMFS has determined that this project, as described in the NSF EA, does not raise substantial issues requiring an EIS.

Comment 16: The CBD states it cannot be disputed that there are "uncertain impacts or unknown risks" associated with this project and other similar seismic surveys and geophysical activities undertaken by L-DEO and NSF and authorized by NMFS. There exist large data gaps regarding the impacts of acoustics on marine life. Given the many stranding events that have been linked to underwater acoustics, including the melon-headed whale stranding near Hanalei Bay, Hawaii, a more detailed analysis in the form of a full EIS is more than warranted.

Response: While NMFS agrees that there are some unknown risks and uncertain impacts associated with this project for which NMFS has implemented precautionary mitigation measures, the major issue is in regard to the biological mechanism that is causing some strandings related to sound to occur. Also, it is recognized by many scientists that there are data gaps because of the difficulty of obtaining data in a humane manner from many of the species for which we do not have data. In those cases, surrogate species are used and conservative measures taken to ensure that injury or mortality to these animals does not occur. This current state of knowledge has been fully described in the NSF EA and no additional information or analyses would be available for use in an EIS. Finally, NMFS would like to clarify that the melon-headed whale stranding near Hanalei Bay was not caused by seismic survey work.

Comment 17: The CBD states there is significant controversy over the impacts of underwater seismic activity on the environment. For example, there are extremely divergent views on how substantial a change in behavior or activity is required before an animal should be deemed to be harassed or impacted, what received sound levels can be considered "safe," what mitigation measures are effective, and, in general, how to proceed in the face of existing scientific uncertainty on these and other issues.

Response: These issues relate more to interpretation and application of the MMPA than to impacts on the human environment; in this case, principally impacts on marine mammals. While organizations such as the National Research Council recommend other interpretations, as detailed in the L-DEO application and the NSF EA, calculations for Level B harassment used here are based upon conservative assumptions of distance from the source for impact and do not make a distinction as to whether the harassment is biologically significant. Since the majority of the marine mammal species likely to be impacted by this action are pinnipeds or members of the Delphinidae family, which have their best hearing at frequencies much greater than the predominant seismic frequencies, establishing a Level B harassment at 160 dB is considered conservative. Also, while there is currently a debate as to what mitigation measures are effective, it should be noted that in the L-DEO application, estimates of take (mortality, injury, or harassment) are made without consideration that mitigation is effective. There is also no significant controversy over whether or not to issue incidental take authorizations in the face of scientific uncertainty. While some members of the public recommend NMFS deny almost all authorizations under section 101(a)(5) of the MMPA, NMFS is charged to determine whether takings should be allowed based upon the best scientific information currently available. When some portion of that information is unavailable, NMFS proceeds in a precautionary manner ensuring that such takings are small, negligible and at the lowest level practicable.

Finally, it should be understood that NMFS and other federal agencies have issued EAs in the past for seismic activities, such as in Southern California (NMFS, 1997), the Beaufort Sea (NMFS, 1998, 1999) and the Gulf of Mexico (Minerals Management Service, 2004). All these documents used similar criteria for determining impacts to marine mammals from seismic sources.

Comment 18: The CBD states that L-DEO, NSF, and numerous private seismic vessels may have as yet unanalyzed cumulatively significant effects on the environment. Cumulative impacts include the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future significant actions. While NSF identifies fishing, shipping and vessel noise, hunting, and marine tourism as cumulative effects on the environment, it only provides a general description of each activity and never analyzes their individual or combined impact on the marine environment. It also neglects to analyze the cumulative impacts to individuals of repeated exposures from the proposed project. The CBD claims that the EA turns the findings in *Neighbors of Cuddy Mountain* v. *U.S. Forest Service* 137 F.3d 1372, 1379 (9th Circ. 1998) on its head and concludes that "[i]mpacts of the L-DEO's proposed survey in SE Alaska and the GOA are expected to be no more than a very minor (and short-term) increment when viewed in light of other human activities within the study area." NMFS must conduct its own cumulative impacts analysis to remedy this deficiency.

Response: The NSF EA adequately addresses the cumulative impacts of a short-term, low-intensity seismic airgun survey in relation to long-term noise and taking events, such as shipping, fishing, and marine tourism. These latter events are long-term activities over which neither NSF nor NMFS can affect by NMFS' decision on this action. Therefore, greater in-depth analyses of these activities are not needed for the decision-making process here.

In regard to the CBD comment on repeated exposures, such an event is discussed in the NSF EA and in the L-DEO application. This information was summarized in Table 6 of the application and in Table 2 in both the notice of proposed IHA and in this document. Comparing the number of exposures calculated versus the number of individuals that may be exposed indicates that few mammals would likely be taken by Level B harassment more than a single time. This is due to the 23–29 different survey sites for this research, the short-time at each site and the unlikely chance that a single mammal would be found in more than a single location during the month-long survey.

Comment 19: The CBD states that the proposed project and other activities in the area have the potential to impact species listed under the ESA, including sperm, humpback, sei, fin, blue, and North Pacific right whales, the Steller sea lion, and the leatherback and green sea turtles. Therefore, it believes and EIS is required.

Response: Impacts on marine species listed under the ESA have been addressed in NMFS' Biological Opinion on the proposed action of conducting a marine seismic survey in the GOA under an authorization for the harassment of marine mammals incidental to conducting that activity. The finding of that biological opinion is that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. No listed species are expected to be killed or seriously injured, all impacts will be short-term resulting in no more than minor behavioral harassment, and no critical habitat will be destroyed. The L-DEO action does not rise to a level of significance requiring preparation of an EIS.

Comment 20: The CBD states that the project is slated for a geographically unique and highly productive ecosystem containing critically important ecological resources, including Steller sea lion rookeries and haul-outs, critical stocks and populations of species, as well as a complex system of de-glaciated fjords that complicates estimating the environmental impacts of acoustic research. The presence of these and other significance factors clearly triggers the need for an EIS.

Response: As noted in the EA and in the L-DEO application, the proposed seismic survey will not result in any permanent impact on habitats used by marine mammals or to the food resources they (and other species) utilize. The main impact associated with the seismic survey activity will be temporarily elevated noise levels that affect marine mammals and other species as detailed in the EA. The EA also addresses propagation of sounds in inshore waters and accommodates the complex nature of fjords by incorporating conservative mitigation measures, such as an increased safety zone size, to ensure that marine mammals are not injured.

Comment 21: The CBD states that the EA lacks the required environmental baseline data and adequate analysis of impacts and mitigation measures as discussed previously. Mere conclusions does not satisfy NEPA (ref: *Blue Mountain Biodiversity Project* v. *Blackwood* 161 F.3d 1208, 1213 (9th Cir. 1998), cert denied, 527 U.S. 1003 (1999)).

Response: NMFS disagrees. NMFS believes that the EA provides a level of detail not usually found in many Environmental Assessments. The EA provides a step-by-step analysis on how impacts were assessed, starting with (and citing) the best scientific information available on marine mammal and sea turtle distribution and abundance and using those data to make conservative estimates on levels of take by harassment and reasonable assumptions on why no marine mammals are likely to be injured or killed by this survey. A discussion on addressing the mitigation measures as alternatives to the proposed action is provided in the next response.

Comment 22: The CBD states that the EA does not evaluate a reasonable range of alternatives. The EA does not analyze any alternative that incorporated more mitigation or otherwise lessened the impacts of the seismic operations on the marine environment. The EA only analyzes the Proposed Action alternative, the No Action alternative, and a generic Another Time alternative. NSF and L-DEO's unilateral decision to commit resources to a particular (ship) schedule cannot excuse them from full compliance with NEPA or be used to restrict the alternatives analysis of the EA.

Response: NMFS has reviewed the range of alternatives addressed in NSF's EA and agrees that the alternatives can be expanded by providing additional analysis of the mitigation measures that were considered for use during seismic surveys (but not necessarily practicable for each and every survey). For reader convenience that discussion has been provided in this document and in NMFS' Finding of No Significant Impact (FONSI) determination (see NEPA later in this document).

Comment 23: The CBD states that the EA is also grossly deficient in its discussion of potential impacts to fish species. While the EA briefly describes various fisheries in the area, it concludes without analysis that "It is not expected that L-DEO's operations will have significant impact on commercial fisheries in the GOA."

Response: That is not totally correct. The EA states that "fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson et al., 1992; Skalski et al., 1992)." NMFS believes that significant changes in behavior would mean that these fish might be unavailable to line and gillnet fisheries (but not necessarily trawl fisheries) for some period of time. The rms value for a given airgun pulse is typically about 10 dB lower than the peak level, so this fish impact zone extends to approximately the 170 dB (rms) isopleth around the vessel. As indicated in Table 1, the 170–dB rms isopleth radius will range from 175 to 750 m (574 to 2461 ft), depending upon water depth. It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. Since L-DEO notes in the EA that they will avoid areas of fishing activity, and as fishing vessels will likely avoid seismic vessels simply because of the potential to entangle fishing gear with seismic gear, NMFS is confident that the EA has provided the level of information necessary to determine that the *Ewing* survey in the GOA will not have a significant effect on fish or fisheries.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the GOA area and its associated marine mammals can be found in the L-DEO application and a number of documents referenced in the L-DEO application, and is not repeated here. A total of 18 cetacean species, 3 species of pinnipeds, and the sea otter are known to or may occur in SE Alaska (Rice, 1998; Angliss and Lodge, 2002). The marine mammals that occur in the proposed survey area belong to four taxonomic groups: odontocetes (sperm whales* (*Physeter macrocephalus*), beaked whales (Cuvier's* (*Ziphius cavirostris*), Baird's* (*Berardius bairdii*), and Stejneger's (*Mesoplodon stejnegeri*)), beluga

(*Delphinapterus leucas*), Pacific white-sided dolphin* (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), killer whale* (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), harbor porpoise* (*Phocoena phocoena*), and Dall's porpopise* (*Phocoenoides dalli*)), mysticetes (North Pacific right whales (*Eubalaena japonica*), gray whales (*Eschrichtius robustus*), humpback whales* (*Megaptera novaeangliae*), minke whales* (*Balaenoptera acutorostrata*), sei whales (*Balaenoptera borealis*), fin whales* (*Balaenoptera physalus*), and blue whales ((*Balaenoptera musculus*)), pinnipeds (Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina*) and northern fur seal (*Callorhinus ursinus*)). Of the 18 cetacean species in the area, several (designated by an *) are commonly found in the activity area and may be affected by the proposed acitivty. Of the three species of pinnipeds that could potentially occur in SE Alaska, only the Steller sea lion and harbor seal are likely to be present. The northern fur seal inhabits the Bering Sea during the summer and is generally found in SE Alaska in low numbers during the winter, and during the northward migration in spring. Sea otters generally inhabit coastal waters within the 40–m (131–ft) depth contour (Riedman and Estes, 1990) and may be encountered in coastal areas of the study area. More detailed information on these species is contained in the L-DEO application and additional information is contained in Angliss and Lodge, 2002 which are available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*, and *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*, respectively.

Potential Effects on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The L-DEO application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by L-DEO. The types of effects considered here are (1) masking, (2) disturbance, and (3) potential hearing impairment and other physical effects. Additional discussion on species specific effects can be found in the L-DEO application.

Masking

Masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data on this. Seismic sounds are short pulses generally occurring for less than 1 sec every 20 or 60–90 sec during this project. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multibeam sonar as received at any one location would actually be only 1/5 or at most 2/5 of 1–10 msec, given the segmented nature of the pulses.) Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (Richardson et al., 1986; McDonald et al., 1995, Greene et al., 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles et al., 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen et al., 2002). Given the small source planned for use during this survey, there is even less potential for masking of sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the airguns to be used in the GOA. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These frequencies are mainly used by mysticetes, but not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the cetacean signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals vs. airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage et al., 1999; Terhune, 1999; as

reviewed in Richardson et al., 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing, pre-adaptation to tolerate some masking by natural sounds (Richardson et al., 1995) and the relatively low-power acoustic sources being used in this survey, would all reduce the importance of masking marine mammal vocalizations.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. However, there are difficulties in defining which marine mammals should be counted as "taken by harassment". For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of a disruption of a behavioral pattern. However, if a sound source would displace marine mammals from an important feeding or breeding area for a prolonged period, such a disturbance would constitute Level B harassment. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals may be present within a particular distance of industrial activities or exposed to a particular level of industrial sound. This likely overestimates the numbers of marine mammals that are affected in some biologically meaningful manner.

The sound criteria used to estimate how many marine mammals might be harassed behaviorally by the seismic survey are based on behavioral observations during studies of several species. However, information is lacking for many species. More detailed information on potential disturbance effects on baleen whales, toothed whales, and pinnipeds can be found on pages 36–38 and Appendix A in L-DEO's application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy precautionarily sets impulsive sounds equal to or greater than 180 and 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment for cetaceans and pinnipeds, respectively (NMFS, 2000). Those criteria have been used in defining the safety (shut-down) radii for seismic surveys. However, those criteria were established before there were any data on the minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in the L-DEO application and summarized here,

1. The 180 dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

Given the small size of the GI airguns, along with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause even the mildest (and reversible) form of hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the 2 GI-airguns (and multibeam bathymetric sonar), and to avoid exposing them to sound pulses that might cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, L-DEO and NMFS believe that it is especially unlikely that any of these non-auditory effects would occur during the proposed survey given the small size of the sound sources, the brief duration of exposure of any given mammal, and the planned mitigation and monitoring measures. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson et al. (1995) notes that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran et al., 2002). Given the available data, the received level of a single seismic pulse might need to be on the order of 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Finneran et al., 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a zone of no more than 100 m (328 ft) around a seismic vessel operating a large array of airguns. Such sound levels would be limited to distances within a few meters of the small airgun source to be used during this project.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. However, TTS is not expected to occur during this survey given the small

size of the source, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured, although exposures up to 183 db re 1 microPa (rms) have been shown to be insufficient to induce TTS in California sea lions (Finneran et al., 2003). However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak et al., 1999; Ketten et al., 2001; Au et al., 2000).

A marine mammal within a zone of ≤100 m (≤ 328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. Also, around smaller arrays, such as the 2 GI-airgun proposed for use during this survey, a marine mammal would need to be even closer to the source to be exposed to levels ≥205 dB, at least in waters greater than 100 m (328 ft) deep. However, as noted previously, most cetacean species tend to avoid operating airguns, although not all individuals do so. In addition, ramping up airgun arrays, which is standard operational protocol for L-DEO and other seismic operators, should allow cetaceans to move away from the seismic source and avoid being exposed to the full acoustic output of the airgun array. It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. However, TTS would be more likely in any odontocetes that bow-ride or otherwise linger near the airguns. Odontocetes would be at or above the surface while bow-riding, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. If some cetaceans did incur TTS through exposure to airgun sounds, this would very likely be a temporary and reversible phenomenon.

NMFS currently believes that, whenever possible to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB received-level distances for the airgun arrays operated by L-DEO during this activity are summarized elsewhere in this document. These sound levels are not considered to be the levels at or above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS (at a time before TTS measurements for marine mammals started to become available), one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As noted here, TTS data that are now available imply that, at least for dolphins, TTS is unlikely to occur unless the dolphins are exposed to airgun pulses substantially stronger that 180 dB re 1 microPa (rms).

It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, as mentioned previously, ramping up the 2 GI-airgun array, which has become standard operational protocol for many seismic operators including L-DEO, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the GI airguns.

Permanent Threshold Shift (PTS)

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak et al., 1999; Schlundt et al., 2000; Finneran et al., 2002; Nachtigall et al., 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson et al., 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. Rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) in odontocetes, then the PTS threshold might be about 240

dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson et al., 1995; Caldwell and Dragoset, 2000). However, it is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. In summary, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient period of time) to cause permanent hearing impairment during this project. In the proposed project, marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS and because of the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. This is due to the fact that even sound levels immediately adjacent to the 2 GI-airguns may not be sufficient to induce PTS because the mammal would not be exposed to more than one strong pulse unless it swam alongside an airgun for a period of time.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten et al., 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times than underwater detonations. While there is no documented evidence that airgun arrays can cause serious injury, death, or stranding, the association of mass strandings of beaked whales with naval exercises and, recently, an L-DEO seismic survey have raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channels of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN, 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN, 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or -56 hull-mounted active sonars for a period of 16 hours. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (-53C), and 6.8 to 8.2 kHz (-56). The respective source levels were usually 235 and 223 dB re 1 μ Pa, but the -53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or perhaps died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of beaked whales (15 whales) happened on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place in the area. Jepson et al. (2003) concluded that cetaceans might be subject to decompression injury in some situations. If so, this might occur if the mammals ascend unusually quickly when exposed to aversive sounds. Previously, it was widely assumed that diving marine mammals are not subject to decompression injury (the bends or air embolism).

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can in special circumstances lead to hearing damage and, indirectly, to mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a September, 2002 stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the *Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing's* 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this event plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound might include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the

health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of broad-scale seismic surveys where the tracklines are generally not as closely spaced as in many oil and gas industry seismic surveys.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed), 1999; Houser et al., 2001). In 2002, NMFS held a workshop (Gentry (ed.) 2002) to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2 (15.5–kHz) or Simrad EM1002 (95 kHz)) and a sub-bottom profiler will be operated from the source vessel essentially continuously during the planned survey. Details about these sonars were provided previously in this document.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally (1) are more powerful than the Atlas Hydrosweep or EM1002 sonars, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Atlas Hydrosweep and EM1002). The area of possible influence for the *Ewing's* sonars is much smaller - a narrow band below the source vessel. For the Hydrosweep there is no horizontal propagation as these signals project at an angle of approximately 45 degrees from the ship. For the deep-water mode, under the ship the 160- and 180–dB zones are estimated to be 3200 m (10500 ft) and 610 m (2000 ft), respectively. However, the beam width of the Hydrosweep signal is only 2.67 degrees fore and aft of the vessel, meaning that a marine mammal diving could receive at most 1–2 signals from the Hydrosweep and a marine mammal on the surface would be unaffected. Marine mammals that do encounter the bathymetric sonars at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses and vessel speed. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for the bathymetric sonar signals (approximately 10 ms) would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multibeam sonar.

Masking by Mid-frequency Sonar Signals

Marine mammal communications will not be masked appreciably by the multibeam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals from the Hydrosweep sonar do not overlap with the predominant frequencies in the calls, which would avoid significant masking. The 95–kHz pulses from the EM1002 sonar will be inaudible to baleen whales and pinnipeds.

For the sub-bottom profiler and 12–kHz pinger, marine mammal communications will not be masked appreciably because of their relatively low power output, low duty cycle, directionality (for the profiler), and the brief period when an individual mammal may be within the sonar's beam. In the case of most odonotocetes, the sonar signals from the profiler do not overlap with the predominant frequencies of their calls. In the case of mysticetes, the pulses from the pinger do not overlap with their predominant frequencies.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins et al., 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the L-DEO multibeam sonar, and a given mammal would have received many pulses from the naval sonars. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by L-DEO and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt et al., 2000; Finneran et al., 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case

the test sounds were quite different from a bathymetric sonar in either duration or bandwidth.

L-DEO and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 15.5 kHz frequency of the *Ewing's* multibeam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals. As mentioned, the 95–kHz sounds from the EM1002 will be inaudible to pinnipeds and to baleen whales, so it will have no disturbance effects on those groups of mammals. The pulsed signals from the sub-bottom profiler and pinger are much weaker than those from the airgun array and the multibeam sonar. Therefore, significant behavioral responses are not expected.

Hearing Impairment and Other Physical Effects from Mid-Frequency Sonar Signals

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys). However, the multi-beam sonars proposed for use by L-DEO are quite different than sonars used for navy operations. Pulse duration of the bathymetric sonars is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for a very limited time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy. Therefore, hearing impairment by multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar. Sound levels from a sub-bottom profiler similar to the one on the *Ewing* were estimated to decrease to 180 dB re 1 microPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson, 2000), and at approximately 18 m downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier discussion). Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

The 12–kHz pinger is unlikely to cause hearing impairment or physical injuries even in an animal that is in a position near the source because is does not produce strong pulse levels.

Estimates of Take by Harassment for the GOA Seismic Survey

Although information contained in this document indicates that injury to marine mammals from seismic sounds potentially occurs at sound pressure levels significantly higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is typically about 10 dB less than its peak level and about 16 dB less than its pk-pk level (Greene, 1997; McCauley et al., 1998; 2000a). The criterion for Level B harassment onset is 160 dB.

Given the required mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The required mitigation measures will minimize or eliminate the possibility of Level A harassment or mortality. L-DEO has calculated the "best estimates" for the numbers of animals that could be taken by Level B harassment during the proposed GOA seismic survey using data on marine mammal density and abundance from marine mammal surveys in the region, and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1).

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 2 GI-gun array planned to be used for this project. The anticipated zone of influence of the multi-beam sonar is less than that for the airguns, so it is assumed that any marine mammals close enough to be affected by the multi-beam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar.

Table 2 explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB. A detailed description on the methodology used by L-DEO to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in L-DEO's IHA application for the GOA survey.

TABLE 2. Estimates of the possible numbers of marine mammal exposures to the different sound levels, and the numbers of different individuals that might be exposed, during L-DEO's proposed seismic program in SE Alaska in late summer/autumn 2004. The proposed sound source consists of 2 GI airguns. Received levels of airgun sounds are expressed in dB re 1 μPa (rms, averaged over pulse duration). Species in italics are listed under the ESA as endangered or threatened. The column of numbers in boldface shows the numbers of "takes" for which authorization is requested.[a]

	Number of Exposures to Sound Levels ≥160 dB		Number of Individuals Exposed to Sound Levels ≥160 dB			
			Best Estimate			
Species	Best Estimate	Maximum Estimate	Number	% of Regional Pop'n[b]	Maximum Estimate	Requested Take Authorization
Physeteridae						
Sperm whale	*3*	*4*	*2*	*0.0*	*3*	***5***
Ziphiidae						
Cuvier's beaked whale	18	26	11	0.1	17	**26**
Baird's beaked whale	4	6	3	0.0	4	**6**
Stejneger's beaked whale	0	0	0	0.0	0	**5**
Monodontidae						
Beluga	0	0	0	0.0	0	**5**
Delphinidae						
Pacific white-sided dolphin	161	329	103	0.1	211	**329**
Risso's dolphin	0	0	0	0.0	0	**5**
Killer whale	65	97	42	0.2	62	**97**
Short-finned pilot whale	0	0	0	0.0	0	**10**
Phocoenidae						
Harbor porpoise	187	230	120	0.4	148	**230**
Dall's porpoise	5218	7828	3354	0.8	5031	**7828**
Balaenopteridae						
North Pacific right whale	*0*	*0*	0	*0.0*	*0*	***2***
Gray whale	0	0	0	0.0	0	**15**
Humpback whale	*105*	*157*	67	*1.1*	*101*	***157***
Minke whale	2	3	1	*0.0*	2	**8**
Fin whale	*144*	*216*	93	*0.8*	*139*	***216***
Blue whale	*0*	*0*	0	*0.0*	*0*	***5***
Pinnipeds						
Northern fur seal [c]			0		0	**5**
Harbor seal [c]			1498	4.0		**1498**
Steller sea lion	*712*		*458*	*1.0*		***458***
Fissipeds						
Sea Otter [d]			68	0.3	123	**123**

[a] Best estimate and maximum estimates of density are from Table 5 in L-DEO (2004)..

[b] Regional population size estimates are from Table 2 in L-DEO (2004)..

[c] Estimates for fur and harbor seals are not based on direct calculations from density data (see text for explanation).

[d] Estimates for the sea otter are based on the encounter rate per linear kilometer, not densities.

Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. However, reactions at the longer distances appear to be atypical of most species and situations, particular when feeding whales are involved. Many of the mysticetes that will be encountered in SE Alaska at the time of the proposed seismic survey will be feeding. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers that may be harassed. The estimated 160–dB radii used here are probably overestimates of the actual 160–dB radii at water depths ≥100 m (328 ft) based on the few calibration data obtained in deep water (Tolstoy et al., 2004).

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small size and the relatively low sound output of the 2 GI-guns to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds ≥160 dB re 1 microPa (rms) represent 0 to 1.1 percent of the populations of each species in the North Pacific Ocean (Table 2). For species listed as endangered under the ESA, this includes no North Pacific right whales or blue whales; ≤0.01 percent of the Northeast Pacific population of sperm whales; 1.1 percent of the humpback whale population; and 0.8 percent of the fin whale population (Table 2). In the cases of belugas, beaked whales, and sperm whales, these potential reactions are expected to involve no more than very small numbers (0 to 11) of individual cetaceans. Humpback and fin whales are the endangered cetacean species that are most likely to be exposed and their Northeast Pacific populations are approximately 6000 (Caretta et al., 2002) and 10970 (Ohsumi and Wada, 1974), respectively.

It is highly unlikely that any North Pacific right whales will be exposed to seismic sounds ≥160 dB re 1 microPa (rms). This conclusion is based on the rarity of this species in SE Alaska and in the Northeast Pacific (less than 100, Carretta et al., 2002), and that the remnant population of this species apparently migrates to more northerly areas during the summer. However, L-DEO has requested an authorization to expose up to two North Pacific right whales to ≥160 dB, given the possibility (however unlikely) of encountering one or more of this endangered species. If a right whale is sighted by the vessel-based observers, the 2 GI-airguns will be shut down (not just powered down) regardless of the distance of the whale from the airguns.

Substantial numbers of phocoenids and delphinids may be exposed to airgun sounds during the proposed seismic studies, but the population sizes of species likely to occur in the operating area are large, and the numbers potentially affected are small relative to the population sizes (Table 2). The best estimates of the numbers of individual Dall's and harbor porpoises that might be exposed to ≥160 dB represent 0.8 percent and 0.4 percent of their Northeast Pacific populations. The best estimates of the numbers of individual delphinids that might be exposed to sounds ≥170 dB re 1 μPa (rms) represents much less than 0.01 percent of the approximately 600,000 dolphins estimated to occur in the Northeast Pacific, and 0 to 0.2 percent of the populations of each species occurring there (Table 2).

Varying estimates of the numbers of marine mammals that might be exposed to sounds from the 2 GI-airguns during the 2004 seismic surveys off SW Alaska have been presented, depending on the specific exposure criteria, calculation procedures (exposures vs. individuals), and density criteria used (best vs. maximum). The requested "take authorization" for each species is based on the estimated maximum number of exposures to ≥160 dB re 1 microPa (rms). That figure likely overestimates (in most cases by a large margin) the actual number of animals that will be exposed to these sounds; the reasons for this have been discussed previously and in L-DEO's application. Even so, the estimates for the proposed surveys are quite low percentages of the population sizes. Also, these relatively short-term exposures are unlikely to result in any long-term negative consequences for the individuals or their populations.

Mitigation measures such as controlled speed, course alteration, observers, ramp ups, and shut downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions, and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence. In light of the type of take expected and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals.

Effects on Pinnipeds

Two pinniped species, the Steller sea lion and the harbor seal, are likely to be encountered in the study area. In addition, it is possible (although unlikely) that a small number of northern fur seals may be encountered. An estimated 1498 harbor seals and 195 Steller sea lions (or 1 percent of the Northeast Pacific population) may be exposed to airgun sounds during the seismic survey. It is unknown how many of these would actually be disturbed, but most likely it would only be a small percentage of that population. Similar to cetaceans, the short-term exposures to airgun and sonar sounds are not expected to result in any long-term negative consequences for the individuals or their populations.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals. The actual area that will be affected by coring operations will be a very small fraction of the marine mammal habitat and the habitat of their food species in the area; thus, any effects are expected to be highly localized and insignificant. Coring operations would result in no more than a negligible and highly localized short-term disturbance to sediments and benthic organisms. The area that might be disturbed is a very small fraction of the overall area occupied by a fish or marine mammal species.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur to somewhat greater distances than previously thought (McCauley et al., 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that might otherwise be within the potential zone of injury are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the passing seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson et al., 1992; Skalski et al., 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish. Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's impulse. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

The proposed seismic project could potentially impact the availability of marine mammals for subsistence harvests in a very small area immediately around the *Ewing*, and for a very short time period while conducting seismic activities. However, considering the limited time and locations for the planned surveys, the proposed survey is not expected to have an unmitigable adverse impact on the availability of Steller sea lions, harbor seals or northern sea otters for subsistence harvests. Nevertheless, L-DEO plans to coordinate its activities with local subsistence communities so that seismic activities will be conducted outside subsistence hunting areas and times, if possible.

Mitigation

For the subject seismic survey in the GOA, L-DEO will deploy 2 GI-airguns as an energy source, with a total discharge volume of 210 in^3. The energy from the airguns will be directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

Safety Radii

Received sound levels have been modeled by L-DEO for the 2 GI-airguns, in relation to distance and direction from the airguns. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the model, the distances from the 2 G-airguns where sound levels of 190 dB, 180 dB, 170 dB, and 160 dB re 1 microPa (rms) are predicted to be received are shown in the >1000 m (3281 ft) line of Table 1.

Empirical data concerning these safety radii have been acquired based on measurements during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (see 68 FR 32460, May 30, 2003). Although the results are limited, L-DEO's analysis of the acoustic data from that study (Tolstoy et al., 2004) indicate that the radii around the airguns where the received level would be 180 dB re 1 microPa (rms), the safety zone applicable to cetaceans, vary with water depth.

The proposed study area will occur in water approximately 30–3000 m (98–9843 ft) deep. In deep water (>1000 m (3281 ft)), the safety radii during airgun operations will be the values predicted by L-DEO's model (Table 1). Therefore, the assumed 180- and 190–dB radii are 54 m (177 ft) and 17 m (56 ft), respectively. In intermediate water depths (100–1000 m (328–3281 ft)), L-DEO has applied a 1.5x correction factor to the estimates provided by the model for deep water situations. The assumed 180- and 190–dB radii in intermediate-depth water are 81 m (266 ft) and 26 m (85 ft), respectively. For operations in shallow (<100 m (328 ft)) water, L-DEO has applied conservative correction factors to the predicted radii for the 2 GI-airgun array. The 180- and 190–dB radii in shallow water are assumed to be 400 m (1312 ft) and 250 m (820 ft), respectively. However, NMFS has some concerns regarding propagation in very shallow water and has determined that for water depths less than 100 m (328 ft), L-DEO will establish a safety zone for marine mammals and other endangered marine species at 170 dB. As indicated in Table 1, the 170–dB rms isopleth for shallow water will be 750 m (2461 ft). The 2–GI airgun array will be immediately shutdown when cetaceans or pinnipeds are detected within or about to enter the appropriate 170-, 180-, or 190–dB zone.

Additional Mitigation Measures

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) shut-down and ramp-up procedures; (3) conducting inshore seismic from upstream and proceeding towards the sea whenever possible to avoid trapping marine mammals; (4)

scheduling seismic operations in inshore waters during daylight and coring operations during nighttime whenever possible; (5) a prohibition on conducting seismic operations in water depths less than 30 m (98 ft); and (6) avoid encroaching upon critical habitat around Steller sea lion rookeries and haulouts. As discussed elsewhere in this document, special mitigation measures will be implemented for the North Pacific right whale.

Although a "power-down" procedure is often applied by L-DEO during seismic surveys with larger arrays of airguns, NMFS is not requiring power down to a single gun during this project. Powering down from two guns to one gun would make only a small difference in the 180- or 190–dB zone, which is not enough distance to allow one-gun to continue operations if a mammal came within the safety zone for two guns.

At night, vessel lights and/or night-vision devices (NVDs) could be useful in sighting some marine mammals at the surface within a short distance from the ship (within the safety radii for the 2–GI guns in deep and intermediate waters). Thus, start up of the airguns may be possible at night in deep and intermediate waters, in situations when the entire safety zone is visible with vessel lights and NVDs. However, due to the limitation on conducting nighttime seismic in shallow water, nighttime start ups of the airguns are not authorized.

Speed and Course Alteration

If a marine mammal is detected outside the safety zone and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut down of the airguns). In the closely constrained waters of Lynn Canal, Muir Inlet, and Frederick Sound, it is unlikely that significant alterations to the vessel's speed or course could be made. In these circumstances, shut-down procedures would be implemented rather than speed or course changes.

Shut-down Procedures

If a marine mammal is detected outside the safety zone but is likely to enter the safety zone, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety zone, the airguns will be shut down before the mammal is within the safety zone. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be shut down immediately. The airguns will be shut down if a North Pacific right whale is sighted from the vessel, even if it is located outside the safety zone.

Following a shut down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

If the complete safety zone has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime (in offshore waters), airgun operations will not commence. However, if the airgun array has been operational before nightfall, it can remain operational throughout the night, even though the entire safety radius may not be visible. If the entire safety zone is visible at night, using vessel lights and NVDs (as may be the case in deep and intermediate waters), then start up of the airguns may occur at night.

Ramp-up

When airgun operations commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or "ramped up" (also described as a "soft start"). Usually, operations begin with the smallest gun in the array and guns are added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period. However, during this survey, with only 2 GI-guns, ramp-up will be implemented by turning on one airgun, followed 5 minutes later by the second airgun. Throughout the ramp-up procedure, the safety zone will be maintained.

Other Mitigation

Because this seismic survey is being conducted in inshore waters, NMFS has determined that the following mitigation measures are necessary to ensure that no marine mammals are injured and that takings, by Level B harassment, are at the lowest level practicable.

1. L-DEO must conduct inshore seismic from upstream and proceeding towards the sea whenever possible to avoid trapping marine mammals. If mammals are averse to seismic sounds they may move upstream to avoid increasing SPLs. Although NMFS is also prohibiting takes in waters shallower than 30 m (98 ft) to limit sound propagation in very shallow water, this mitigation measure will ensure that these mammals have an opportunity to escape to deeper waters and not have a potential for stranding.

2. L-DEO must limit seismic operations in inshore waters to daylight and coring operations to nighttime whenever possible. This was clarified in RTC 11.

Marine Mammal Monitoring

L-DEO must have at least three visual observers on board the *Ewing*, and at least two must be experienced marine mammal observers that NMFS has approved in advance of the start of the GOA cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime operations and during any night-time airgun operations, although night-time seismic operations are unlikely to be conducted during this survey (see Mitigation). Vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. L-DEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so).

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210 arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance

estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and shut-down, can be implemented. If the airguns are shut down, observers will maintain watch to determine when the animal is outside the safety radius.

In addition to vessel monitoring during seismic operations, observers will also conduct monitoring after the seismic operation has been terminated for that line transect while the array is being pulled from the water and the vessel returns to the selected coring site. In most cases this will mean returning along the survey line. During that time, the observer will look for marine mammals that might have been injured as a result of seismic (although no injuries are expected to occur). Also, during coring operations in inshore waters, when that coring operation occurs during daylight hours (most coring should be conducted during night-time), the ship's captain may authorize the ship's small boat to look for marine mammals on or off the ship's previous track. Because there is a safety concern, the *Ewing's* captain has sole authority in this matter. For safety reasons, the boat must remain in visual or radio contact so it can safely return to the *Ewing* should weather conditions change or if the boat were disabled. At least one trained biological observer will be on this boat.

Passive Acoustic Monitoring (PAM)

Although PAM has been used in previous seismic surveys, L-DEO will not use the PAM system during this research cruise. First, the safety radii are significantly smaller than those found for the larger L-DEO arrays, making the PAM unnecessary for locating marine mammals. Secondly, the effectiveness of the PAM in shallow water is not high and third, because of the coring operations, additional berthing is unavailable for the PAM operators. Making room available for the PAM acoustic technician would require the use of one less marine mammal observer. Again, because of the small safety zone, the recommendation that seismic work be conducted during daylight to the extent possible, and the limited effectiveness of the PAM in shallow water, NMFS has decided that the 3rd observer is more valuable for conducting small boat surveys and to assist in night-time monitoring than the use of the PAM.

Reporting

L-DEO will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during August, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Determinations

NMFS has determined that the impact of conducting the seismic survey in the GOA in the northeastern Pacific Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks. For reasons stated previously in this document, this determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be within 100 m (328 ft) of the vessel even in shallow water; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the required mitigation measures discussed in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not have an unmitigable adverse impact on any subsistence hunts, since seismic operations will not take place in major subsistence whaling and sealing areas and may have only minor Level B harassment impacts on Steller sea lions and harbor seals that might be used for subsistence.

Endangered Species Act (ESA)

NMFS has issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat under the jurisdiction of NMFS. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**). However, sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). L-DEO contacted the USFWS regarding this species. The USFWS determined that sea otters would not be affected by the 2 GI-airgun array being employed in the GOA project.

National Environmental Policy Act (NEPA)

The NSF made a FONSI determination on April 7, 2004, based on information contained within its EA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of NEPA. NSF determined, therefore, that an environmental impact statement would not be prepared. On June 23, 2004 (69 FR 34996), NMFS noted that the NSF had prepared an EA for the GOA surveys and made this EA was available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the NSF EA under 40 CFR 1506.3 and made it's own FONSI. The NMFS FONSI also takes into consideration additional mitigation measures required by the IHA that are not in NSF's EA. Therefore, it is not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to L-DEO for this activity. A copy of the NSF EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Authorization

NMFS has issued an IHA to L-DEO to take marine mammals, by harassment, incidental to conducting seismic

surveys in the Gulf of Alaska for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: September 22, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–21847 Filed 9–28–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090904E]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will separately convene its Mackerel and Reef Fish Advisory Panels (AP).

DATES: The Mackerel AP meeting will be convened by conference call at 3 p.m. EST on Tuesday, October 26, 2004. The Reef Fish AP meeting will be convened by conference call at 3 p.m. EST on Wednesday, October 27, 2004.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of listening stations.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard L. Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Persons wishing to listen to the calls may do so at the following locations:

1. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL, Contact: Gary Fitzhugh at 850–234–6541, extension 214.

2. NMFS Southeast Regional Office, 9721 North Executive Center Drive, St. Petersburg, FL, Contact: Peter Hood at 727–570–5728.

3. NMFS Pascagoula Laboratory, 3209 Frederic Street, Pascagoula, MS, Contact: Cheryl Hinkel at 228–762–4591.

4. NMFS Galveston Laboratory (on 15th only), 4700 Avenue U, Galveston, TX, Contact: Rhonda O'Toole at 409–766–3500.

The Council will separately convene its Mackerel and Reef Fish AP to review public hearing drafts of Amendment 15 to the Coastal Migratory Pelagics Fishery Management Plan (FMP) and Amendment 24 to the Reef Fish FMP. Each of these amendments contain alternatives to allow the existing commercial permit moratoria to expire, extend the moratoria for 5 or 10 years, or replace the moratoria with permanent limited access systems that would, in essence, maintain the cap on the number of permits indefinitely, or until replaced or eliminated by additional actions by the Council.

Although other non-emergency issues not on the agendas may be discussed by the APs, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the APs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council office (see **ADDRESSES**) by September 24, 2004.

Dated: September 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2406 Filed 9–28–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092304B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notification of a proposal for exempted fishing permits to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP may allow for exemptions from the NE multispecies days-at-sea (DAS) effort control program for up to 11 DAS for testing a bycatch reducing gear modification. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before October 14, 2004.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA591@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on UNH Soft Grid Gear Modification EFP Proposal." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Soft Grid Gear Modification EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: Dr. Pingguo He of the University of New Hampshire Cooperative Extension (UNH) submitted an application for an EFP on May 27, 2004. This is a continuation of a project that started in 2002. Due to gear modifications, tank flume tests, and poor weather conditions the sea trails were not completed in the 2003–2004 fishing

year. This EFP would authorize one commercial vessel to conduct sea trials using a soft grid finfish excluder device. The objective of the research is to test gear to separate flatfish from roundfish in trawl nets and to reduce the bycatch of roundfish, particularly cod, when fishing for flatfish. The separation device is designed to exploit behavioral differences that exist between the species.

The design consists of a trawl net with a soft panel, or ramp, that would be positioned in front of a double codend. It would take advantage of the tendency for flatfish to swim toward the ocean bottom after encountering the separation panel and thereby into the lower codend portion of the net. Roundfish, which are not expected to swim toward the sea floor after encountering the panel, would swim into the upper codend portion of the net, which would be left open under normal fishing practices where the vessel was targeting flatfish. However, for the purposes of this experiment both codends will remain closed in order to quantify separation success. The net would also utilize visual stimuli fixed forward of the codend to test changes in swimming behavior in roundfish and flatfish in response to the stimuli. Underwater videography would be employed to observe fish behavior and functioning of the experimental selectivity device.

The sea trials would be conducted in shallow water (30 to 50 fathoms (55 to 91 m)) off the coasts of New Hampshire, southern Maine, and a small portion of northern Massachusetts. UNH researchers would be aboard the vessel at all times during the experimental work. The at-sea portion of the experiment would last no longer than 11 fishing days in the 2004 fishing year. Based upon the catch rates from eight days of fishing in the 2003 fishing year, the following catch is estimated for the 2004 fishing year: Cod 2,846 lb (1,291 kg); American plaice 274 lb (124 kg); witch flounder 1,547 lb (702 kg); haddock 34 lb (15 kg); pollock 11 lb (5 kg); yellowtail flounder 87 lb (40 kg); winter flounder 50 lb (23 kg), and white hake 140 lb (64 kg). All undersized fish would be returned to the sea as quickly as possible. Legal-sized fish that would otherwise have to be discarded would be allowed to be retained and sold within the applicable Gulf of Maine (GOM) possession limits. The participating vessel would be required to report all landings in its Vessel Trip Report.

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

Dated: September 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2403 Filed 9–28–04; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 56748.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Wednesday, September 29, 2004.

CHANGES IN THE MEETING: The Rule Enforcement Review has been cancelled.

CONTACT FOR FURTHER INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21969 Filed 9–27–04; 1:47 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 29, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: September 24, 2004.

Linda C. Tague,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Targeted Teacher Deferments (Teacher Shortage Area).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden: Responses: 59.

Burden Hours: 148.

Abstract: This program has not received funding since 1977. It was originally designed to assist State agencies to provide scholarships to talented and meritorious students who were seeking careers as teaching professionals.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2571. 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_RIMS@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–21833 Filed 9–28–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 29, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing, or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Office of the Chief Information Officer

Type of Review: New.
Title: Gateway to Educational Materials (GEM) Resource Annotation.
Frequency: On occasion.
Affected Public: Individuals or household; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 5,000.
Burden Hours: 600.
Abstract: The Gateway to Educational Materials (GEM) (*http://thegateway.org*) is an electronic catalog of lesson plans and other educational resources available on the Web from more than 500 member organizations. The goal of the catalog is to offer easy access to a range of educational resources, so that educators, parents, and students may quickly find educational resources that may be helpful and relevant to their needs.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov* by selecting the "Browse Pending Collections" link and by clicking on link number 2591. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

September 23, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. E4–2407 Filed 9–28–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

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 proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 29, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

September 23, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Study of Single Sex Schools.
Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,280.

Burden Hours: 1,178.

Abstract: The purpose of the Study of Single Sex Schools is to describe what is currently known about the characteristics and effects of single sex schooling on student achievement and other outcomes, especially for at-risk students. Data collection includes surveys of teachers and principals at all existing single sex schools (n=18) and site visit interviews and observations at a sample of six single sex schools and six matched comparison schools (coeducational).

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 2617. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@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. E4–2408 Filed 9–28–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Advanced Rehabilitation Research Training (ARRT) Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133P.

Applications Available: September 29, 2004.

Deadline for Transmittal of Applications: November 29, 2004.

Eligible Applicants: Institutions of higher education.

Estimated Available Funds: $300,000.

The Administration has requested $300,000 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: Indirect cost reimbursement on a training grant is limited to eight percent of a modified total direct cost base, defined as total direct costs less stipends, tuition, and related fees.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide research training and experience at an advanced level to individuals *with doctorates or similar advanced degrees* who have clinical or other relevant experience. ARRT projects train rehabilitation researchers, including individuals with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act of 1973, as amended (Act), and that improve the effectiveness of services authorized under the Act.

Program Requirements: ARRT projects must carry out all of the following activities: (1) Recruit and select candidates for advanced research training; (2) provide a training program that includes didactic and classroom instruction, is multidisciplinary, emphasizes scientific methodology, and may involve collaboration among institutions; (3) provide research experience, laboratory experience, or its equivalent in a community-based research setting, and a practicum that involves each individual in clinical research and in practical activities with organizations representing individuals with disabilities; (4) provide academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions; and (5) provide opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings, as appropriate for the individual's field of study and level of experience.

It is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed capacity building activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/.*

The ARRT projects are in concert with NIDRR's Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research and development topics. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Program Authority: 29 U.S.C. 762(k).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, and 97, and (b) the regulations for this program in 34 CFR part 350.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $300,000.

The Administration has requested $300,000 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: Indirect cost reimbursement on a training grant is limited to eight percent of a modified total direct cost base, defined as total direct costs less stipends, tuition, and related fees.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Other Submission Requirements

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133P.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times: Applications Available:* September 29, 2004. *Deadline for Transmittal of Applications:* November 29, 2004.

We do not consider an application that does not comply with the deadline requirements.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format my mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to download it and print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an electronic application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133P), 400 Maryland Avenue, SW., Washington, DC 20202–4260. You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is post-marked after the application deadline date, we will not consider your application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must hand deliver the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133P), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays. A person delivering an application must show photo identification to enter the building.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the mailing of your application, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through its annual performance review system, its ARRT grantees to determine the percentage of NIDRR fellows and post-doctoral trainees who authored or co-authored publications in refereed journals based on information and data from NIDRR funding.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APR) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site:

http://www.ed.gov/offices/OUS/PES/planning.html.

Updates on the Government Performance and Results Act (GPRA) indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.cessi.net/pr/grc/index.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: September 24, 2004.

Troy R. Justesen,

Acting Deputy Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–21848 Filed 9–28–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 14, 2004, 6 p.m. to 9 p.m.

ADDRESSES: Broomfield Recreation Center, Lakeshore Room, 280 Lamar Street, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation on Original Landfill Remediation Proposal/Interim Remedial Action Document
2. Presentation on Deer Tissue Sampling Results
3. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4:00 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on September 24, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–21857 Filed 9–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 21, 2004—5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer (DDFO), Department of Energy, Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Review Agenda; Approval of September Minutes
6:30 p.m.—DDFO's Comments
6:35 p.m.—Federal Coordinator Comments
6:40 p.m.—Ex-Officio Comments
6:45 p.m.—Public Comments and Questions
7 p.m.—Task Forces/Presentations
- Waste Disposition
- Water Quality

—Surface Water Operable Unit
- Long Range Strategy/Stewardship

—Review of Chairs Meeting
—Review of Risk-Based End State Workshop
• Community Outreach
—Web Site Design
—Community Survey
8 p.m.—Public Comments and Questions
8:15 p.m.—Break
8:30 p.m.—Administrative Issues
• Review of Work Plan
• Review of Next Agenda
8:40 p.m.—Review of Action Items
8:45 p.m.—Subcommittee Reports
• Executive Committee
—Budget Update
9:00 p.m.—Final Comments
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on September 24, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–21858 Filed 9–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 13, 2004, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy, Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

• Dynamic verification.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on September 24, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–21859 Filed 9–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting cancellation.

On September 15, 2004, the Department of Energy published a notice of open meeting announcing a September 30, 2004, meeting of the National Petroleum Council 69 FR 55629.

Today's notice is announcing the cancellation of that meeting.

Issued in Washington, DC on September 24, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–21860 Filed 9–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–688–000, ER04–689–000, ER04–690–000, and ER04–693–000]

Pacific Gas and Electric Company; Notice of Technical Conference

September 22, 2004.

Parties are invited to attend a technical conference in the above-referenced Pacific Gas and Electric Company (PG&E) proceedings on September 28–29, 2004, at the Commission's Headquarters, 888 First Street, NE., Washington, DC 20426. The technical conference will be held in Conference Room 3M2–A/B on both days. The September 28th technical conference will be held from 9 a.m. until 5 p.m. (EST) The September 29th technical conference will be held from 9 a.m. until 3 p.m.(EST). Arrangements have been made for parties to listen to the technical conference by telephone.

The purpose of the conference is to identify the issues raised in these proceedings, develop information for Commission staff to use in preparing an order on the merits of the arguments raised, and facilitate any possible settlements in these proceedings. The parties will discuss, among other things, the following issues related to the unexecuted agreements filed by PG&E in the above-referenced dockets: (1) The parallel operation agreement between PG&E and Western Area Power Administration (WAPA) (PG&E Original Rate Schedule FERC No. 228); (2) the interconnection agreement; (3) the wholesale distribution tariff service agreement; and (4) related issues to these agreements.

Questions about the conference and the telephone conference call arrangements should be directed to: Julia A. Lake, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370, *Julia.lake@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–2405 Filed 9–28–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7821–7]

Notice of Launch of Children's Environmental Health Awards Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Children's Health Protection at the U.S. Environmental Protection Agency is pleased to announce the First Annual Children's Environmental Health Awards. The awards are designed to increase awareness, stimulate activity, and recognize efforts that protect children from environmental health risks at the local, regional, national, and international level.

Level One Recognition Awards are designed for groups or individuals who have demonstrated a level of commitment to protect children from environmental risks. Applicants must show that they have initiated outreach, education, or intervention activities.

Level Two Excellence Awards are designed to recognize applicants who have demonstrated leadership and a track record in the protection of children from environmental health risks. Outreach, education, and intervention projects or programs must have been in place for at least 6 months.

Applications are due December 15, 2004, and an awards ceremony will be held for the winners in Washington, DC, in March 2005

FOR FURTHER INFORMATION CONTACT: Contact Carolyn Hubbard, Office of Children's Health Protection for more information or copies of the application, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2189, *hubbard.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Children may be more susceptible to environmental hazards than adults. Their nervous, immune, digestive, and other systems are still developing and their ability to metabolize or inactivate toxicants may be different than adults. They eat more food, drink more fluids, and breathe more air in proportion to their weight than adults, and their behavior—such as crawling and placing objects in their mouths—may result in greater exposure to environmental contaminants.

Environmental health hazards that may affect children include: (1) Air pollutants, both indoor and ambient; (2) toxic chemicals such as lead, mercury, arsenic, organochlorines such as polychlorinated biphenyls, and dioxins; (3) endocrine disruptors; (4) environmental tobacco smoke; (5) ultraviolet radiation; (6) water pollution; (7) pesticides; (8) brominated flame retardants; (9) radon; and (10) carbon monoxide. Many environmental health problems can be prevented, managed, and treated. EPA encourages communities, citizens, and organizations to become leaders in protecting our children from environmental health hazards.

Award Levels

Level 1—Recognition Award

Recognition awards are designed for groups or individuals who have demonstrated a level of commitment to protect children from environmental risks. Applicants must show that they have initiated outreach, education, or intervention activities. Winners will receive a certificate of recognition signed by the Director of EPA's Office of Children's Health Protection and use of the children's environmental health awards logo.

Who Should Apply? Individuals, communities, non-profit organizations, schools and universities, and governmental agencies.

Level 2—Excellence Award

Excellence awards are designed to recognize applicants who have demonstrated leadership and a track record in the protection of children from environmental health risks. Outreach, education, and intervention projects or programs must have been in place for at least 6 months.

Applications will be judged based on innovation, effectiveness, ability to measure success, and replication potential. Ten to twenty award winners will be invited to an awards ceremony in Washington, DC in March 2005, where they will receive a plaque. They will also receive use of the children's environmental health awards logo, recognition on EPA's Web site and in a press release, and photos with a senior EPA official.

Who Should Apply? Individuals, communities, non-profit organizations, schools and universities, governmental agencies, and businesses.

Award Activity Descriptions

Outreach

Outreach efforts increase public awareness about children's environmental health issues. Projects may include public awareness campaigns, public service announcements, and events to highlight the importance of protecting children from environmental health risks.

Education

EPA will recognize projects or programs that teach the public about the relationship between their environment and children's health. Education efforts may include instruction on how to improve the environment in order to protect children's health, prevent or reduce exposure to harmful environmental agents, or manage environmentally-related illness.

Intervention

Intervention programs are designed to improve the environment, prevent or reduce exposure to environmental contaminants, or improve the environmental health of children. Programs may include implementing policies that protect children from environmental risks, voluntary efforts, or taking any other action that directly reduces environmental health risks to children.

Dated: September 22, 2004.

William H. Sanders, III,

Acting Director, Office of Children's Health Protection.

[FR Doc. 04–21802 Filed 9–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0098; FRL–7677–8]

National Pesticide Information Center & National Pesticide Medical Monitoring Program; Notice of Funds Availability; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of August 23, 2004, announcing that EPA's Office of Pesticide Programs (OPP) is soliciting proposals from universities and colleges to develop or continue the National Pesticide Information Center (NPIC) and the National Pesticide Medical Monitoring Program (NPMMP). This document is being issued to correct a date error and to remove text that was inadvertently included.

FOR FURTHER INFORMATION CONTACT: Frank L. Davido, Information Resources and Services Divison (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7576; fax number: (703) 305–4646; e-mail address:*davido.frank@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the **Federal Register** notice of August 23, 2004, 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**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) numberOPP–2004–0098. 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.

II. What Does this Correction Do?

In the **Federal Register** of August 23, 2004 (69 FR 51832) (FRL–7365–4) (FR Doc. 04–19232), EPA published a notice soliciting proposals from universities and colleges to develop or continue the NPIC and the NPMMP. The document listed an incorrect date and text was inadvertently included.

The document is corrected as follows:

1. On page 51839, second column, Unit H.1., second line, remove the phrase", double spaced".

2. On page 51839, third column, fourth bullet paragraph, remove the phrase "(not to exceed 10 pages)".

3. On page 51840, first column, Unit I.1., sixth line, change "September 22, 2004" to read "October 7, 2004".

List of Subjects

Environmental protection, Grants, Pesticides, Training.

Dated: September 16, 2004.

Martha Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. 04–21696 Filed 9–28–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7821–9]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Public Law 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held on Tuesday, October 26, 2004, from 8:30 a.m. to 4:45 p.m.; Wednesday, October 27, 2004, from 10 a.m. to 5 p.m.; and Thursday, October 28, 2004, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Hotel Monteleone, 214 Royal Street, New Orleans, LA 70130 (504–523–3341).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: The proposed agenda includes the following topics: Election of CAC Officers; participation in GMP Management Committee Meeting; participation in Comprehensive Meeting of the GMP Focus Teams (Nutrient Enrichment, Habitat, Public Health, Monitoring/Modeling/Research, Communications).

The meeting is open to the public.

Dated: September 22, 2004.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 04–21807 Filed 9–28–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0235; FRL–7680–5]

Fluridone; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide fluridone, and opens a public comment period on this decision, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide fluridone through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–

0235, must be received on or before October 29, 2004

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; fax number: (703) 308–8041; e-mail address: *livingston.wilhelmena@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 ID number OPP–2004–0235. 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 on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0235. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0235. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0235.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0235. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful, if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed the uses of fluridone, reassessed 50 existing tolerances or legal residue limits, and reached a tolerance reassessment decision for this low risk pesticide. The Agency is issuing for comment the resulting report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for fluridone known as a TRED, as well as related risk assessments and technical support documents.

Fluridone is a systemic herbicide that is used to manage aquatic weeds in ponds and lakes. It is particularly useful for the control of hydrilla in the southern states and eurasian milfoil in the northern states. It inhibits carotene syntheses which causes the loss of chlorophyll. It is typically applied to the whole water body because it requires a contact time of 45–days to be effective. Fluridone is not applied to crops or livestock, but treated water may be used to irrigate food and feed crops or fed to livestock. The Agency determined that the dietary, drinking water, and recreational swimmer risks are not of concern and no risk mitigation is required.

EPA developed the fluridone TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the fluridone tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. In conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like fluridone, which pose no risk concerns, and require no risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Fluridone, however, poses no risks that require mitigation. The Agency, therefore, is issuing the Fluridone TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before

the closing date. These comments will become part of the Agency docket for fluridone. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also, will publish an amendment to the TRED in the **Federal Register.** In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 20, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–21585 Filed 9–28–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0314; FRL–7679–2]

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–2004–0314, must be received on or before October 29, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address:*greenway.denise@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0314. 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.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0314. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0314. 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–2004–0314.

3. *By hand delivery or courier.* Deliver your comments to:Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0314. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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

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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*: 70950–G. *Applicant*: AVA Chemical Ventures, L,L.C., 80 Rochester Avenue, Suite 214, Portsmouth, NH 03801. *Product Name*: Avachem Sorbitol Octanoate 90%. Insecticide. *Active ingredient*: Sorbitol Octanoate at 90%. *Proposed classification/Use*: None. An end use

product to be used on all food commodities.

2. *File Symbol*: 70950–U. *Applicant*: AVA Chemical Ventures, L,L.C. *Product Name*: Avachem Sorbitol Octanoate Manufacturing Use Product. Insecticide. *Active ingredient*: Sorbitol Octanoate at 90.35%. *Proposed classification/Use*: None. For manufacturing use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: September 17, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–21805 Filed 9–28–04; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0311; FRL–7679–1]

Sorbitol Octanoate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0311 must be received on or before October 29, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@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**.

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5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 16, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by AVA Chemical Ventures,

L.L.C. 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.

AVA Chemical Ventures, L.L.C.

PP 2E6389

EPA has received a peticide petition (PP 2E6389) from AVA Chemical Ventures, L.L.C., 80 Rochester Avenue, Suite 214, Portsmouth, NH 03801. This petition proposes, 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 tolerances for the residues of the insecticide sorbitol octanoate in or on all food agricultural commodities.

A. Product Name and Proposed Use Practices

Sorbitol octanoate is a fatty acid ester made with sorbitol and caprylic acid derived from edible oils and fats. It is a contact insecticide that is effective against soft-bodied insects and mites. The modes of action are physical, whereby the surfactant effect of sorbitol octanoate either causes rapid suffocation or de-waxes the cuticle of the target insect, causing it to lose body fluids and dessicate.

Sorbitol octanoate is sprayed in a water solution at a rate of 0.5–1.0% volume/volume throughout the growing season to control soft-bodied insects and mites. Treatments may be applied up to the day of harvest.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Sorbitol octanoate is manufactured by the esterification of sorbitol, a food-grade sweetener, and caprylic acid derived from 21 CFR-approved edible oils or fats. Sorbitol is a hexahydric alcohol with about half the sweetness of sucrose that occurs naturally in many plants, including cherries, plums, pears, apples and seaweeds. Caprylic acid (octanoic acid) is obtained from coconut oil or palm kernel oil where it is present in concentrations of 5.8% and 3–4.5%, respectively.

Sorbitol octanoate is chemically similar to certain sorbitan esters which are approved by the Food and Drug Administration (FDA) for direct addition to food for human consumption (21 CFR 172.836, 172.838, 172.840 and 172.842). The only difference between the sorbitan esters and sorbitol octanoate is in the degree that water has been removed from the main sorbitol structure.

Following use as a plant insecticide, sorbitol octanoate hydrolyzes rapidly into its starting ingredients, sorbitol and caprylic acid which biodegrade rapidly in the environment.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Rapid hydrolysis and biodegradation ensure that the residue of sorbitol octanoate at time of harvest will be minor.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable as this petition proposes an exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Sorbitol octanoate is chemically similar to certain sorbitan esters and sucrose fatty acid esters which are approved for use as food emulsifiers and post-harvest protective fruit coatings. Both sorbitan esters and sucrose fatty acid esters have been examined in a number of toxicological studies prepared in connection with their approval by the FDA and other regulatory bodies.

1. *Acute toxicity.* Sorbitan esters, sucrose fatty acid esters and sucroglycerides were evaluated by the World Health Organization (WHO)-for acceptable daily intake (ADI) for man in 1969, 1973, 1976, 1980, and 1982.

WHO Food Additive Series No. 17 (1982), titled, "Sorbitan Monoesters of Palmitic, Stearic, Oleic and Lauric Acids and Triesters of Stearic Acid," examined available animal feeding studies and concluded that a daily intake in the diet of the rat of 50,000 parts per million (ppm) (5%) causes no toxicological effect. This level of intake is equivalent to 2,500 milligrams/kilogram (mg/kg) of body weight (bwt). An estimate of acceptable daily intake in man is 0–25 milligrams/kilogram (mg/kg) of body weight.

WHO Food Additive Series No. 15 (1980), titled, "Toxicological Evaluation of Certain Food Additives," reports on the results of sucrose fatty acid esters administered in short-term feeding studies to dogs and a long-term feeding study of rats. No effects attributable to the ingestion of sucrose fatty acid esters were found in any of the studies. The WHO concluded the ingestion level in rat to be 10,000 ppm (1.0%) in the diet, equivalent to 500 mg/kg of bwt.

The American Chemical Council's Aliphatic Esters Panel evaluated the mammalian toxicity of the sorbitan esters that are approved for food and cosmetic ingredient use. The Panel concluded that metabolism of the sorbitan esters in animals occurs via enzymatic hydrolysis to sorbitan and the corresponding natural fatty acids. These substances in turn metabolize further to either smaller and more polar water-soluble metabolites excretable in the urine or as carbon dioxide exhaled in the lungs.

Primary eye irritation studies were performed on rabbits by AVA Chemical Ventures, L.L.C. with manufacturing use product (MUP) sucrose octanoate fatty acid esters and with MUP sorbitol octanoate. MUP sucrose fatty acid esters were found to be severely irritating to the eye and sorbitol octanoate was found to cause substantial but temporary eye injury.

Primary skin irritation studies performed on rabbits by AVA Chemical Ventures, L.L.C. with MUP and end use product (EUP) sucrose octanoate fatty acid esters were submitted to EPA in connection with the registration of that compound as a pesticide active ingredient. Both the MUP and the EUP were found to be slightly irritating to the skin.

The Cosmetic Ingredient Review Expert Panel published a comprehensive review of sorbitan fatty acid esters titled, "Final Report on the Safety Assessment of Sorbitan Caprylate, Sorbitan Cocoate, Sorbitan Diiostearate, Sorbitan Dioleate, Sorbitan Distearate, Sorbitan Isostearate, Sorbitan Olivate, Sorbitan Sesquiiostearate, Sorbitan Sesquistearate and Sorbitan Triiostearate," International Journal of Toxicology. (2002). The study concluded that the sorbitan fatty acid esters were generally minimal to mild skin irritants in various animal studies and were generally not ocular irritants. The Expert Panel concluded that the sorbitan fatty acid esters are safe as used in cosmetic formulations at concentrations of up to 20%.

2. *Genotoxicity.* The components of sorbitol octanoate (sorbitol and caprylic acid) already have regulatory approval and are commonly consumed in foods. Caprylic acid (octanoic acid) is approved by the FDA as a generally recognized as safe (GRAS) substance and direct food additive. (21 CFR 184.1025 and 21 CFR 172.860). Sorbitol has been affirmed as GRAS by the FDA and is widely used as a sweetener in foods (21 CFR 184.1835).

3. *Reproductive and developmental toxicity.* Sorbitol octanoate is chemically similar to sucrose fatty acid esters. In 1976, in WHO Food Additive Series No. 10, the WHO reported on the results of a reproduction study over three generations of rats using sucrose

fatty acid esters at 0 and 1% of the diet for control and test groups, respectively. Mean litter size, physical appearance and growth of litter were comparable among test and control groups.

A 1986 study concluded that sorbitol administered in the diet to three successive generations of rats at levels up to 10% had no adverse effect on growth or reproductive performance in either sex.

4. *Subchronic toxicity.* WHO Food Additive Series No. 15 (1980) reports the findings of a study in which sucrose fatty acid esters made from beef tallow were fed to beagle dogs at concentrations of 3,000, 10,000, or 30,000 ppm for 26 weeks. A control group was fed an identical diet with the exception of the sucrose fatty acid esters. Body weight changes, food intake, and water consumption were not affected by the administration of the esters. The opthalmic and haemotologic examinations, urinalysis, organ weights, and macroscopic examinations revealed no adverse effects which could be attributed to the intake of the sucrose fatty acid esters. The blood chemistry studies showed that the majority of parameters measured were within acceptable limits.

5. *Chronic toxicity.* An unpublished paper titled "Study of Chronic Toxicity of a Sucrose Ester of Fatty Acids" (undated) was submitted to the FDA in connection with the registration of sucrose fatty acid esters as food additives. For up to 76, weeks mice and rats were fed standard feed to which had been added up to 3.0% sucrose fatty acid esters. Animals were examined for body weight, feed consumption, hematological findings, organ weights, and histopathology of organs. No particular changes resulting from administration of sucrose fatty acid esters were found.

6. *Animal metabolism.* Sorbitol octanoate is manufactured from fatty acids produced from 21 CFR-approved edible fats and oils.

7. *Metabolite toxicology.* The components of sorbitol octanoate (sorbitol and caprylic acid) already have regulatory approval and are commonly used in foods. Caprylic acid (octanoic acid) is obtained from coconut oil or palm kernel oil where it is present at concentrations of 5.8% and 3.0–4.5%, respectively. Caprylic acid (octanoic acid) is approved by the FDA as a GRAS substance and direct food additive (21 CFR 184.1025 and 21 CFR 172.860).

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Sorbitol octanoate is chemically similar to certain sorbitan esters which are FDA-approved for direct addition to food for human consumption (21 CFR 172.842, 172 836, 172.838, 172.840) and to sucrose fatty acid esters which are FDA-approved as food emulsifiers and as coatings for certain fruits (21 CFR 172.859).

The FAO/WHO Joint Expert Committee on Food Additives has evaluated sorbitan monoesters of palmitic, stearic, oleic and lauric acids, and triesters of stearic acids and has established an acceptable ADI of 0–25 mg/kg bwt/day. The FAO/WHO has established an acceptable ADI of 10 mg/kg of bwt for sucrose fatty acid esters.

Current world consumption of sucrose fatty acid esters in food applications is estimated to be 7,000 metric tons and consumption of sorbitan esters in food applications is estimated to be 50,000 metric tons. Pesticide use of sorbitol octanoate and sucrose fatty acid esters would increase usage by approximately 2,000 metric tons. As the ester bond is one of the weakest in nature, the sorbitol octanoate applied to crops will hydrolyze into its constituent ingredients which will themselves biodegrade prior to consumption of the crops to which it is applied.

ii. *Drinking water.* No drinking water exposure is anticipated as sorbitol octanoate is not soluble in water and biodegrades rapidly following use.

2. *Non-dietary exposure.* Non-occupational, non-dietary exposure is highly unlikely given that inhalation or dermal absorption of sorbitol octanoate are not feasible.

E. Cumulative Exposure

Sorbitol octanoate is a non-toxic material made from edible starting materials (sorbitol and caprylic acid), which are commonly consumed in foods. Sorbitol octanoate biodegrades rapidly following use. A cumulative risk assessment is therefore not necessary.

F. Safety Determination

1. *U.S. population.* Sorbitol octanoate is manufactured from raw materials (sorbitol and caprylic acid) that are affirmed as GRAS and are commonly used in foods. Sorbitol octanoate is chemically similar to sorbitan esters which are FDA-approved under 21 CFR 172.842, 172.836, 172.838, and 172.840 for direct addition to food for human consumption and to sucrose fatty acid esters which are approved as food emulsifiers and fruit coatings under 21 CFR 172.859 and to certain sorbitan esters which are approved under 21 CFR 172.842, 172.836, 172.838, and 172.840 for direct addition to food for human consumption. Based on these materials' low-risk profiles, there is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to sorbitol octanoate used as an insecticide.

2. *Infants and children.* Sorbitol octanoate is manufactured from edible raw materials that are widely used in foods. Sorbitol octanoate is chemically similar to sorbitan esters which are approved for direct addition to food for human consumption and to sucrose fatty acid esters that are approved for use as food emulsifiers and as protective coatings applied to fruits. Due to the extensive data base documenting the low toxicity of the sorbitan esters and the sucrose fatty acid esters, AVA Chemical Ventures, L.L.C. does not believe a safety factor analysis is necessary in assessing the risk of sorbitol octanoate used as an insecticide. For the same reason, AVA Chemical Ventures, L.L.C. believes an additional safety factor analysis is unnecessary.

G. Effects on the Immune and Endocrine Systems

Sorbitol octanoate is not derived from nor contains any compounds which are known to be, or suspected to be, endocrine disruptors.

H. Existing Tolerances

Sorbitol octanoate esters are chemically similar to sorbitan esters which are approved for direct addition to food for human consumption and to sucrose fatty acid esters which are approved for use as food emulsifiers and as protective fruit coatings under 21 CFR 172.859 and to certain sorbitan esters which are approved under 21 CFR 172.842, 172.836, 172.838, and 172.840 for direct addition to food for human consumption.

An exemption from the requirement of a tolerance has been established for residues of sucrose octanoate esters in or on all food commodities when used in accordance with good agricultural practies. (40 CFR 180.1222).

I. International Tolerances

Sorbitol octanoate esters are chemically similar to sorbitan esters and to sucrose fatty acid esters. Sucrose fatty acid esters are approved for use as food emulsifiers in Europe under E–470 and by the Joint FAO Expert Committee on Food Additives at an ADI of 10 mg/kg bwt/day. Sorbitan esters are approved in Europe for use as food emulsifiers under various E numbers and are also approved by the joint FAO/WHO Expert Committee on Food Additives at an ADI of up to 25 mg/kg bwt/day.

There are no CODEX maximum residue levels established for residues of sorbitol octanoate.

[FR Doc. 04–21588 Filed 9–28–04; 8:45 am]
BILLING CODE 6560–50–S

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.: 008493–024.
Title: Trans-Pacific American Flag Berth Operators Agreement.
Parties: American President Lines, Ltd., and A.P. Moller-Maersk A/S.
Filing Party: Howard A. Levy, Esq.; 120 Wall Street, Suite 2020; New York, NY 10005–4001.
Synopsis: The amendment updates Maersk's corporate name.

Agreement No.: 010714–037.
Title: Trans-Atlantic American Flag Liner Operators Agreement.
Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; Farrell Lines Incorporated; Lykes Lines Limited, LLC; and P&O Nedlloyd Limited.
Filing Party: Howard A. Levy, Esq.; 120 Wall Street, Suite 2020; New York, NY 10005–4001.
Synopsis: The amendment updates Maersk's corporate name.

Agreement No.: 011117–034.
Title: United States/Australasia Discussion Agreement.
Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; CMA CGM, S.A.; Compagnie Maritime Marfret, S.A.; Fesco Ocean Management Limited; Hamburg-Sud; Lykes Lines Limited, LLC; P&O Nedlloyd Limited; Safmarine Container Lines NV; and Wallenius Wilhelmsen Lines AS.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment adds Safmarine as a party to the agreement and clarifies that Maersk and Safmarine will act as a single party under the agreement.

Agreement No.: 011223–029.
Title: Transpacific Stabilization Agreement
Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; CMA CGM, S.A.; COSCO Container Lines Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; and Yangming Marine Transport Corp.
Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment deletes A.P. Moller-Maersk A/S as a party to the agreement.

Agreement No.: 011275–016.
Title: Australia/United States Discussion Agreement
Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; FESCO Ocean Management Inc.; Hamburg-Sud; LauritzenCool AB; Lykes Lines Limited, LLC; P&O Nedlloyd Limited; Safmarine Container Lines NV; and Seatrade Group NV.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment adds Safmarine as a party to the agreement and clarifies that Maersk and Safmarine will act as a single party under the agreement.

Agreement No.: 011427–002.
Title: Japanese-U.S. Carrier Discussion Agreement.
Parties: Kawasaki Kisen Kaisha, Ltd; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; and American President Lines, Ltd.
Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036 and Charles F. Warren, Esq.; Warren & Associates, P.C.; 1100 Connecticut Avenue, NW.; Washington, DC 20036.
Synopsis: The amendment deletes A.P. Moller-Maersk Sealand as a party to the agreement.

Agreement No.: 011515–010.
Title: Steamship Line Cooperative Chassis Pool.
Parties: Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company, Ltd.; CMA CGM, S.A.; Compania Sud Americana de Vapores, S.A.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Safmarine Container Lines, NV; Yangming Marine Transport Corporation; and Zim Integrated Shipping Services, Ltd.
Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.
Synopsis: The amendment deletes American President Lines, Ltd. and adds Evergreen Marine Corp. (Taiwan) Ltd. as parties to the agreement; updates Zim's corporate name; and deletes unnecessarily repetitive language.

Agreement No.: 011527–009.
Title: East Coast Americas Service.
Parties: Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Zim Integrated Shipping Services Ltd.
Filing Party: Howard A. Levy, Esq.; 120 Wall Street, Suite 2020; New York, NY 10005–4001.
Synopsis: The amendment reflects Zim's new corporate name.

Agreement No.: 011660–003.
Title: Administrative Housekeeping Agreement.
Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carriers, LLC; and Farrell Lines Incorporated; and P&O Nedlloyd Limited.
Filing Party: Howard A. Levy, Esq.; 120 Wall Street, Suite 2020; New York, NY 10005–4001.
Synopsis: The amendment updates Maersk's corporate name, indicates that P&O Nedlloyd and Farrell Lines are acting as one party, and adds American Roll-On Roll-Off Carriers.

Agreement No.: 011710–001.
Title: TAAFC/USSEC Housekeeping Services Agreement.
Parties: A.P. Moller-Maersk A/S and P&O Nedlloyd Limited, as parties to the U.S. South Europe Conference, and Trans-Atlantic Associated Conferences (London).
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment updates Maersk's corporate name.

Agreement No.: 011810–001.
Title: GUMEX-Brasil Cooperative Working Agreement.
Parties: CMA CGM, S.A. and Hapag-Lloyd Container Linie GmbH.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment deletes authority for the parties to discuss and agree on rates.

Agreement No.: 011852–011.
Title: Maritime Security Discussion Agreement.
Parties: Australia-New Zealand Direct Line; China Shipping Container Lines, Co., Ltd.; Canada Maritime; CMA CGM, S.A.; Contship Container Lines; COSCO Container Lines Company, Ltd.; CP

Ships (UK) Limited; Evergreen Marine Corp.; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited, LLC; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; TMM Lines Limited, LLC; Yang Ming Marine Transport Corp.; Zim Israel Navigation Co., Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority; Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Universal Maritime Service Corp.; Virginia International Terminals; and Yusen Terminals, Inc.

Filing Parties: Carol N. Lambos; Lambos & Junge; 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 American President Lines, Ltd., APL Co. Pte Ltd., and Mitsui O.S.K. Lines, Ltd. as parties to the agreement.

Agreement No.: 011890.

Title: SCM Lines Ltd./Seaboard Marine Ltd. Space Charter Agreement.

Parties: SCM Lines, Ltd. and Seaboard Marine, Ltd.

Filing Party: Maria E. Yordan; Director of Marketing; SCM Lines USA, LLC; 7205 Corporate Center Drive, Suite 404; Miami, FL 33126.

Synopsis: The proposed agreement would authorize SCM Lines to charter space to Seaboard Marine between U.S. East and Gulf Coast ports and Guanta, Venezuela.

By Order of the Federal Maritime Commission.

Dated: September 24, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–21836 Filed 9–28–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License no.	Name/address	Date reissued
018342F	Louisiana Forwarder LLC, 664 Eight Street, Slidell, LA 70458	July 9, 2004.
018380N	MCS Cargo Systems, Inc., dba Expedite America Express, 2688 Coyle Lane, Elk Grove Village, IL 60007.	August 18, 2004.
018620N	Motherlines, Inc., 11 Sunrise Plaza, Suite 301, Valley Stream, NY 11580	August 23, 2004.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 04–21834 Filed 9–28–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to sections 14 and 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, 46 CFR part 515.

License no.	Name/address
002355NF	Pro-Service Forwarding Co., Inc., 8915 S. La Cienega Blvd., Inglewood, CA 90301

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 04–21835 Filed 9–28–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities: Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, without revision, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non–U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non–U.S.) Bank (FFIEC 002S), which are currently approved information collections. The Board is publishing this proposal on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the reports. The Board will then submit the reports to OMB for review and approval.

DATES: Comments must be submitted on or before November 29, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies. You may submit comments, identified by FFIEC 002 (7100–0032) or FFIEC 002S (7100–0273), by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E–mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202–452–3819 or 202–452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collections may be requested from Cindy Ayouch, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved collections of information:

1. Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Form Number: FFIEC 002
OMB Number: 7100–0032
Frequency of Response: Quarterly
Affected Public: U.S. branches and agencies of foreign banks
Estimated Number of Respondents: 281
Estimated Time per Response: 22.75 hours
Estimated Total Annual Burden: 25,571 hours
General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment [5 U.S.C. 552(b)(8)].

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

2. Report Title: Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non–U.S.) Bank
Form Number: FFIEC 002S
OMB Number: 7100–0273
Frequency of Response: Quarterly
Affected Public: U.S. branches and agencies of foreign banks
Estimated Number of Respondents: 76
Estimated Time per Response: 6 hours
Estimated Total Annual Burden: 1,824 hours
General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b) and is given confidential treatment [5 U.S.C. 552(b)(8)].

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file detailed schedules of their assets and liabilities in the form FFIEC 002. The FFIEC 002S is a separate supplement to the FFIEC 002 that collects information on assets and liabilities of any non–U.S. branch that is "managed or controlled" by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non–U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch's or agency's FFIEC 002.

The data are used for: (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks, which often are managed jointly with these branches.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, September 24, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–21854 Filed 9–28–04; 8:45 am]

BILLING CODE: 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 13, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marlene D. Huls, Gifford, Illinois; to retain voting shares of Illini Corporation, Springfield, Illinois, and thereby indirectly retain voting shares of Illini Bank, Springfield, Illinois.

Board of Governors of the Federal Reserve System, October 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21856 Filed 9–28–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 2004.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

Sky Financial Group, Inc., Bowling Green, Ohio; to merge with Prospect Bancshares, Worthington, Ohio, and thereby indirectly acquire voting shares of Prospect Bank, Columbus, Ohio.

Board of Governors of the Federal Reserve System, September 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21784 Filed 9–28–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Citigroup, Inc., New York, New York; to acquire 100 percent of the voting shares of Citibank Texas, National Association, Bryan, Texas, following its conversion from a state savings bank (currently known as First American Bank, SSB) to a national bank.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Enterprise Banking Company, Inc., Stockbridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Dorsey State Bank, Abbeville, Georgia.

Board of Governors of the Federal Reserve System, September 24, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21855 Filed 9–28–04; 8:45 am]

BILLING CODE 6210–01–S

GOVERNMENT ACCOUNTABILITY OFFICE

[Document No. JFMIP–SR–03–04]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft entitled "Property Management System Requirements," dated September 2004. The draft is a revision to the first Federal Financial Management System Requirements (FFMSR) document to address property systems. The document is intended to assist agencies when developing, improving or evaluating property management systems. It provides the baseline functionality that agency systems must have to support agency missions and comply with laws and regulations. When issued in final, the document will augment the existing body of FFMSR's that define financial system functional requirements which are used in evaluating compliance with the Federal Financial Management Improvement Act (FFMIA) of 1996.

DATES: Comments are due by November 12, 2004.

ADDRESSES: Copies of the exposure draft have been mailed to senior financial officials, chief information officers, and property executives, together with a transmittal memo listing items of interest for which JFMIP is soliciting feedback. The Exposure Draft and comment response matrix are available on the JFMIP Web site *http://www.jfmip.gov*. Responses should be addressed to JFMIP, 1990 K Street, NW., Suite 430, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Bruce Turner, (202) 219–0533 or *bruce.turner@gsa.gov*.

SUPPLEMENTARY INFORMATION: The FFMIA of 1996 mandated that agencies implement and maintain systems that comply substantially with FFMSR, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA. To support the provisions outlined in FFMIA, the JFMIP is updating obsolete requirements documents and publishing additional requirements documents. Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final document will be mailed to agency financial officials, procurement executives, chief information officers, and others, and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 04–21850 Filed 9–28–04; 8:45 am]

BILLING CODE 1610–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included with this notice.

DATE AND TIME: October 19, 2004, from 8:30 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Melissa Johnson, Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established originally by Executive Order 10673, dated July 16, 1956. PCPFS was established by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe. Authorization to continue Council operations was given at appropriate intervals by subsequent Executive Orders. The Council has undergone two name changes and several reorganizations. Presently, the PCPFS is a program office located organizationally in the Office of Public Health and Science within the Office of the Secretary in the U.S. Department of Health and Human Services.

On June 6, 2002, President Bush signed Executive Order 13256 to reestablish the PCPFS. Executive Order 13256 was established to expand the focus of the Council. This directive instructed the Secretary to develop and coordinate a national program to enhance physical activity and sports participation. The Council currently operates under the stipulations of the new directive. The primary functions of the Council include: (1) To advise the President, through the Secretary, on the progress made in carrying out the provisions of the enacted directive and recommend actions to accelerate progress; (2) to advise the Secretary on ways and means to enhance opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national, state, and local levels; and (4) to monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council and advise the Secretary, as necessary, concerning such needs.

The PCPFS holds at a minimum, one meeting in the calendar year to: (1) Assess ongoing Council activities and; (2) discuss and plan future projects and programs.

Dated: September 24, 2004.

Melissa Johnson,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 04–21808 Filed 9–28–04; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report.

OMB No.: 0970–0106.

Description: The LIHEAP statute and regulations require LIHEAP grantees to report certain information to HHS concerning funds forwarded and funds subject to reallotment. The 1993 reauthorization of the LIHEAP statute, the Human Service Amendments of 1994 (Pub. L. 103–252), requires that the Carryover and Reallotment Report for one fiscal year be submitted to HHS by the grantee before the allotment for the next fiscal year may be awarded.

We are requesting no changes in the collection of data with the Carryover and Reallotment Report for FY 20__, a form for the collection of data, and the Simplified Instructions for Timely Obligations of FY 20__ LIHEAP Funds and Reporting Funds for Carryover and Reallotment. The form clarifies the information being requested and ensures the submission of all the required information. The form facilitates our response to numerous queries each year concerning the amounts of obligated funds. Use of the form is voluntary. Grantees have the option to use another format.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Carryover and Reallotment	177	1	3	531

Estimated Total Annual Burden Hours: 531.

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 Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. e-mail: *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: September 23, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–21787 Filed 9–28–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Guidance for the Tribal Temporary Assistance for Needy Families (TANF) Program.

OMB No.: 0970-0157.

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act) requires each Indian tribe that elects to administer and operate a TANF program to submit a TANF Tribal Plan. The TANF Tribal Plan is a mandatory statement submitted to the Secretary by the Indian tribe, which consists of an outline of how the Indian tribe's TANF program will be administered and operated. It is used by the Secretary to determine whether the plan is approvable and to determine that the Indian tribe is eligible to receive a TANF assistance grant. It is also made available to the public.

Respondents: Indian Tribes applying to operate a TANF program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for State Data Needed to Determine the Amount of a Tribal Family Assistance Grant	20	1	60	1200

Estimated Total Annual Burden Hours: 1200

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: September 22, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–21788 Filed 9–28–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0565]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Generic Food and Drug Administration Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Generic Food and Drug Administration Rapid Response Surveys" has been

approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 2004, (69 FR 25404), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0500. The approval expires on February 28, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: September 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21748 Filed 9–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0017]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Adverse Event Pilot Program for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adverse Event Pilot Program for Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 14, 2004 (69 FR 33034), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0471. The approval expires on September 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: September 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21750 Filed 9–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0033]

Determination of Regulatory Review Period for Purposes of Patent Extension; DERMAGRAFT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DERMAGRAFT 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/docket/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For 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 recently approved for marketing the medical device DERMAGRAFT. DERMAGRAFT is indicated for use in the treatment of full-thickness diabetic foot ulcers greater than 6–weeks duration, which extend through the dermis, but without tendon, muscle, joint capsule, or bone exposure. DERMAGRAFT should be used in conjunction with standard wound care regimens and in patients that have adequate blood supply to the involved foot. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Dermagraft (U.S. Patent No. 4,963,489) from Advanced Tissue Sciences, 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 March 10, 2003, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of DERMAGRAFT 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 DERMAGRAFT is 4,050 days. Of this time, 3,650 days occurred during the testing phase of the regulatory review period, while 400 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*: August 29, 1990. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act for human tests to begin became effective on September 2, 1992. FDA records confirm that one IDE for this medical device did become effective on September 2, 1992. However, FDA records also indicate that another IDE for this medical device was determined substantially complete for clinical studies to have begun on August 29, 1990, which represents the IDE effective date. Although this IDE was for a different indication, it is material to the approval of DERMAGRAFT. FDA considers all investigational exemptions for a particular product to be material to the approval of the product regardless of any difference between the indications studied and those ultimately approved.

2. T*he date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: August 25, 2000. The applicant claims August 24, 2000, as the date the premarket approval application (PMA) for DERMAGRAFT (PMA P00036) was initially submitted. However, FDA records indicate that PMA P00036 was submitted on August 25, 2000.

3. *The date the application was approved*: September 28, 2001. FDA has verified the applicant's claim that PMA P00036 was approved on September 28, 2001.

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 5 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 28, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy and comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–21749 Filed 9–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Request OMB Emergency Approval: Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian; Form I–363.

The Department of Homeland Security (DHS), Citizenship and Immigration Services (CIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The DHS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by October 31, 2004.

If granted, the emergency approval is only valid for 90 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725–17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–5806.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the DHS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until November 29, 2004. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, as well as requests to obtain a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–616–7600, Director, Regulatory Management Division, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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 information collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–363. Citizenship and Immigration Services (CIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to determine whether an Affidavit of Financial Support and Intent to Petition for Legal Custody requires enforcement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Regulatory Management Division, Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: September 24, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Citizenship and Immigration Services.

[FR Doc. 04–21791 Filed 9–28–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Request OMB Emergency Approval; Petition for Nonimmigrant Worker; Form I–129

The Department of Homeland Security, Citizenship and Immigration Services (CIS) has submitted the following information collection request (ICR) utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (1)(2)(iii) of the Paperwork Reduction Act of 1995. The DHS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue. Therefore, OMB approval has been requested by October 31, 2004.

If grant, the emergency approval is only valid for 90 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725—17th Street, NW., Suite 10235, Washington, DC 20503, 202–395–5806.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the DHS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for sixty days until November 29, 2004. During the 60-day regular review. ALL comments and suggestions, or questions regarding additional information, as well as requests to obtain a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–616–7600, Director, Regulatory Management Division, Citizenship and Immigration, U.S. Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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 previously approved information collection.*

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129, Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. This form is used by an employer to petition for aliens to come to the U.S. temporarily to perform services, labor, training or to request extensions of stay or changes in nonimmigrant status for nonimmigrant workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2.75 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 998,357 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Regulatory Management Division, U.S. Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: September 24, 2004.

Richard A. Sloan,

Departmental Clearance Officer, U.S. Department of Homeland Security, Citizenship and Immigrant Services.

[FR Doc. 04–21792 Filed 9–28–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0111; Summary Information for Ranking National Coastal Wetlands Grant Program Proposals, 50 CFR Part 84

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Fish and Wildlife Service (We) has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. If

you wish to obtain copies of the proposed information collection requirement, the related form, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before October 29, 2004.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22203; (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or the related form, contact Hope Grey by phone at (703) 358–2482, or by e-mail at *hope_grey@fws.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We have submitted a request to OMB to renew approval of the collection of information included on FWS Form 3–2179 (Summary Information for Ranking of National Coastal Wetlands Grant Program Proposals). This form is approved under OMB control number 1018–0111, which expires on September 30, 2004. We are requesting a 3-year term of approval for this information collection activity. OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days. To ensure consideration, send your comments to OMB by the date listed in the **DATES** section near the beginning of this Notice.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On May 14, 2004, we published in the **Federal Register** (69 FR 26877) a notice announcing that we planned to submit a request to renew this information collection to OMB for approval under the Paperwork Reduction Act of 1995. In that notice, we solicited public comments for 60 days, ending July 13, 2004. By that date, we received one comment, which was editorial in nature. The commenter expressed concern that more land needs to be conserved but did not comment on the merits of this information collection. As such, we have not made any changes to our information collection at this time.

We administer the National Coastal Wetlands Conservation Grant program authorized by the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951–3956). We use the information collected on FWS Form 3–2179 to evaluate proposals under this program. The information collected includes summarized information on habitat, coastal barriers, levels of conservation, watershed management, threatened and/or endangered species potentially involved, benefits of the restoration proposed, partners, cost sharing, education/outreach impact, impact on wildlife-oriented recreation, and other benefits. Because grant applicants complete the summary information, the information is a thorough and accurate summary of the proposal. This summary information allows easy ranking of proposals in a short period of time.

Title: Summary Information for Ranking National Coastal Wetlands Conservation Grant Program Proposals, 50 CFR 84.

OMB Control Number: 1018–0111.

Form Number: 3–2179.

Frequency of Collection: Annual.

Description of Respondents: Coastal States and territories, as follows:

States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin); Most States bordering the Atlantic, Gulf, and Pacific coasts (Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington); and Territories of American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands.

(Please note that Louisiana is not included in this program because it has its own wetlands conservation program authorized by the Coastal Wetlands Planning, Protection and Restoration Act and implemented by the Corps of Engineers with assistance from the State of Louisiana, the Environmental Protection Agency, and the Departments of the Interior, Agriculture, and Commerce.)

Total Annual Burden Responses: 35.

Total Annual Burden Hours: 18.

Form name	Completion time per form	Annual number of responses	Annual hour burden
3–2179	½ hour	35	17.5

We again invite comments on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 17, 2004.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–21849 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 29, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–727416.

The applicant requests renewal of their permit to import multiple shipments of biological samples from wild, captive-held, or captive-born endangered species for the purpose of Scientific Research. No animals can be intentionally killed for the purpose of collecting specimens. Any invasively collected samples can only be collected by trained personnel. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Felix G. Stavinoha, Schulenburg, TX; PRT–093431.

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (Cervus duvauceli) from his captive herd for the purpose of enhancement of the survival of the species.

Applicant: Morris Animal Foundation, Englewood, CO; PRT–772163.

The applicant requests renewal of their permit for the import of multiple shipments of biological samples from wild gorillas (*Gorilla gorilla*) from Rwanda, Uganda, and the Democratic Republic of the Congo for the purpose of scientific research of animal health concerns. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Roger J. Wendel, Vancouver, WA; PRT–093180.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: September 17, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–21782 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before October 29, 2004.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No.: TE–022514

Applicant: Patrick Tennant, Costa Mesa, California.

The permittee requests an amendment to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and to take (locate and monitor nests) the least Bell's vireo (*Vireo pusillus bellii*) in conjunction with surveys in Orange, Riverside, San Diego, Los Angeles, Ventura, Imperial, and San Bernardino Counties, California, for the purpose of enhancing their survival.

Permit No.: TE–091987

Applicant: Zachary Principe, Murrieta, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout southern California for the purpose of enhancing their survival.

Permit No.: TE–092163

Applicant: Shelby Howard, Costa Mesa, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in San Diego and Los Angeles Counties, California, for the purpose of enhancing its survival.

Permit No.: TE–092162

Applicant: Andrew Borcher, Santee, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No.: TE–092176

Applicant: Susan Ingram, Camarillo, California.

The applicant requests a permit to take (survey by pursuit) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in Los Angeles, San Bernardino, Inyo, Kern, and Santa Barbara Counties, California, for the purpose of enhancing its survival.

Permit No.: TE–092476

Applicant: Scott Quinnell, Yucaipa, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No.: TE–091462

Applicant: Karen Drewe, Irvine, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No.: TE–090990

Applicant: The Catalina Island Conservancy, Avalon, California.

The applicant requests a permit to take (harass by survey, capture, handle, measure, sex, insert passive integrated transponder tags, radio-collar, vaccinate, administer veterinary medical treatments, captive propagate, collect blood and fecal samples, transport, and release) the Santa Catalina Island fox (*Urocyon littoralis catalinae; fox*) in conjunction with scientific research on the fox and feral cats, and feral goat and pig removal on Santa Catalina Island, California, for the purpose of enhancing its survival.

Permit No.: TE–093151

Applicant: Richard Rivas, Fair Oaks, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout California for the purpose of enhancing their survival.

Permit No.: TE–092469

Applicant: Ingrid Chlup, Santa Ana, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys in southern California for the purpose of enhancing their survival.

Permit No.: TE–093150

Applicant: Melissa Olson, Murrieta, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No.: TE–093149

Applicant: Dean Blinn, Flagstaff, Arizona.

The applicant requests a permit to take (collect) the Amargosa pupfish (*Cyprinodon nevadensis*) in conjunction with research in Nye County, Nevada, for the purpose of enhancing its survival.

Permit No.: TE–080774

Applicant: U.S. Mendocino National Forest, Arcata, California.

The permittee requests an amendment to take (collect tissue, use video cameras in burrows, and excavate burrows to locate dead beavers) the Point Arena Mountain Beaver (*Aplodontia rufa nigra*) in conjunction with scientific research in Mendocino County, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: September 15, 2004.

John Engbring,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 04–21823 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Document for Issuance of an Incidental Take Permit Associated With a Habitat Conservation Plan at the Fort Ord Military Installation, Monterey County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), the U.S. Fish and Wildlife Service (Service) advises the public that we intend to perform a scoping process to gather information necessary to help develop a NEPA document and determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) on the proposed Habitat Conservation Plan (HCP) for the former Fort Ord Federal military installation in Monterey County, California. The decision to prepare an EIS or EA is, in part, contingent upon the complexity of issues identified during and following the scoping phase of the NEPA process. The proposed Fort Ord HCP is being prepared in compliance with the Federal Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*).

The HCP is meant to support the issuance of incidental take permits to the Fort Ord Reuse Authority (FORA), State Parks, University of California at Santa Cruz, California State University at Monterey Bay, and the County of Monterey (the Applicants) from the Service under section 10(a)(1)(B) of the ESA and from the California Department of Fish and Game (CDFG) under section 2081 of the California Fish and Game Code in compliance with the California Endangered Species Act (CESA).

We provide this notice to:

(1) Advise other Federal and State agencies, affected tribes, and the public of our intent to prepare an EA or an EIS;

(2) Announce the initiation of a 30-day public scoping period; and

(3) Obtain suggestions and information on the scope of issues and alternatives to be considered in the scoping process.

DATES: Public scoping meetings will be held on: Wednesday, October 13, 2004, from 3:30 p.m. to 5:30 p.m. and 7 p.m. to 9 p.m. Written comments should be received on or before October 29, 2004.

ADDRESSES: The public meeting will be held in the FORA Conference Facility/Bridge Center, 13th Street, Building 2925, Marina, CA 93933. Information, written comments, or questions related to the preparation of the EA or EIS and the NEPA process should be submitted to the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003; or FAX (805) 644–1766.

FOR FURTHER INFORMATION CONTACT: Diane Steeck at the above Ventura address, or at (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Marilyn Bishop of the Ventura Fish and Wildlife Office at 805–644–1766 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

The Former Fort Ord

The former Fort Ord military installation spans 28,000 acres near the cities of Seaside, Sand City, Monterey, Del Rey Oaks and Marina in Monterey County, California. Fort Ord was established in 1917 as a training for infantry troops. It was expanded for use as a maneuver and training ground for field artillery and cavalry troops stationed at the Presidio of Monterey. The 1991 Defense Base Realignment and Closure Commission recommended that Fort Ord be closed. The base was closed in September 1994.

Closure, disposal and reuse of former Fort Ord required consultation between the U.S. Department of the Army (Army) and the Service under section 7 of the ESA because the Army's actions potentially affected several species listed as threatened or endangered or proposed for listing under the ESA. As a result of that consultation, the Service issued a biological opinion on October 19, 1993, and subsequent biological and conference opinions in 1997, 1999, and 2002, finding that no jeopardy to federally listed plant and animal species or plants and animals proposed for listing would result from the Army's actions. A key provision of the Army's project description was the development and implementation of a habitat management plan (HMP) to minimize incidental take of listed species and their habitat and to mitigate for impacts to vegetation and wildlife resources resulting from the Army's actions. In the 1993 biological opinion, the Service also recommended that the Army's HMP consider all proposed and candidate species for Federal listing and other special-status species.

In response to this requirement, the Army developed the HMP with input from Federal, State, and local agencies and organizations concerned with the natural resources and reuse of Fort Ord. The Service, the Bureau of Land Management (BLM), CDFG, the California Department of Parks and Recreation (State Parks), the University of California (UC), the Fort Ord Reuse Authority (FORA) and other members of the local Monterey Bay area community were all active participants in the development of the HMP. The HMP thus describes a cooperative Federal, State, and local conservation program for plant and animal species and habitats of concern known to occur at Fort Ord.

The HMP's conservation program establishes land use categories and habitat management requirements for all lands on the former base. Developable lands and habitats reserve areas are defined along with habitat corridors and restricted development areas. Resources conservation and management requirements are described and responsible parties for each designated habitat area on the former base are identified.

While the conservation program established by the HMP is intended to be a comprehensive program for the former base, it stems form an agreement between the Army and the Service and does not exempt other landowners (existing or future) of transferred property from ESA section 9 prohibitions against take of listed species or from compliance with the provisions of CESA. Under the ESA, the following activities are defined as take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, the HMP was also produced with the intent of benefiting all parties involved in the reuse of the former base by establishing a basis for regulatory compliance for other landowners of transferred property. The HMP was intended to serve as the basis for the proposed HCP and to support the possible issuance of incidental take permits under section 10(a)(1)(B) of the ESA to non-Federal land recipients.

Habitat Conservation Plan (HCP)

The Service has recommended that all non-Federal entities acquiring lands at the former Fort Ord apply for section 10(a)(1)(B) incidental take permits for all species covered in the HMP (Covered Species). In addition, CDFG requires non-Federal entities to obtain incidental take permits pursuant to section 2081 of the California Fish and Game Code if State-listed species will be taken. Seven animal species that are either listed, candidates, or designated species of concern are proposed Covered Species under the HCP, including: Smith's blue butterfly (*Euphilotes enoptes smithi*), California linderiella (*Linderiella occidentalis*), California red-legged frog (*Rana aurora draytoni*), California tiger salamander (*Ambystoma californiense*), California black legless lizard (*Anniella pulchra nigra*), Western snowy plover (*Charadrius alexandrinus nivosus*), and Monterey ornate shrew (*Sorex ornatus salarius*). Eleven plant species that are either listed, candidate, or species of concern are also proposed Covered Species under the HCP, including: Sand gilia (*Gilia tenuiflora* ssp. *arenaria*), Monterey spineflower (*Chorizanthe pungens* var. pungens), Robust spineflower (*Chorizanthe robusta* var. robusta), Seaside bird's-beak (*Cordylanthus rigidus* var. littoralis), Toro manzanita (*Arctostaphylos montereyensis*), Sandmat manzanita (*Arctrostaphylos pumila*), Monterey ceanothus (*Ceanothus cuneatus* var. rigidus), Eastwood's ericameria (*Ericameria fasciculate*), Coast wallflower (*Erysimum ammophilum*), Yadon's piperia (*Piperia yadoni*), and Hooker's manzanita (*Arctostaphylos hookeri*). To apply for such permits, applicants must submit a conservation plan along with their applications. The HCP, integrating key components of the HMP with additional elements required of an HCP (pursuant to 50 CFR 17.22(b)) is being prepared to provide a stand-alone HCP that is satisfactory to the Service and CDFG.

Incidental take of Covered Species is proposed to occur as the former base is redeveloped consistent with the HCP. The proposed activities covered in the draft HCP include rehabilitation and construction of roads, utilities and other infrastructure to support new research/educational, residential, commercial, light industrial, recreational and other development, generating approximately 18,000 jobs. Management activities on non-federal lands such as weed control, fencing, and burning will also be included as proposed covered activities in the HCP. About 12,000 housing units are anticipated to be constructed on the former base supporting a population of about 37,000 people. To accommodate this growth and development, up to 6,000 acres of existing habitat on the former base will be removed. However, the base-wide program for habitat preservation and management of approximately 17,600 acres of lands on former Fort Ord is intended to minimize and fully mitigate losses to Covered Species and their habitats that would result from base redevelopment. The requested permit term is 50 years.

NEPA Document

The EA or EIS will consider the proposed action, the issuance of a section 10(a)(1)(B) permit under the Act, and a reasonable range of alternatives. A detailed description of the impacts of

the proposed action and each alternative will be included in the EA or EIS. Several alternatives, including a No Action Alternative, will be considered and analyzed, representing varying levels of conservation, impacts, and permit area configurations. The No Action alternative means that the Service would not issue a section 10(a)(1)(B) permit.

The EA or EIS will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, economics, and other environmental issues that could occur with the implementation of the Service's proposed actions and alternatives. For all potentially significant impacts, the EA or EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts where feasible, to a level below significance. Where possible, we intend to incorporate by reference applicable sections from existing documents, such as the Army's 1993 EIS and 1996 Supplemental EIS on Fort Ord disposal and reuse.

Review of this project will be conducted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR parts 1500–1508) found at (*http://www.legal.gsa.gov*), other appropriate Federal laws, and Service policies and procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EA or EIS. The primary purpose of the scoping process is to identify important issues raised by the public, related to the proposed action. Written comments from interested parties are welcome to ensure that the full range of issues related to the permit request is identified. Written comments are encouraged, and we will accept written comments at the public meetings. In addition, you may submit written comments by mail or facsimile transmission (*see* **ADDRESSES**). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: September 21, 2004.

Ron Cole,

Deputy Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 04–21813 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
086649	Philip A. Teel	69 FR 30715; May 28, 2004	August 5, 2004
089464	Randy C. Brooks	69 FR 40965; July 7, 2004	September 7, 2004

Dated: September 17, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–21783 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Gulf of Mexico Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Gulf of Mexico Regional Panel will meet from 1 p.m. to 5 p.m. on Monday, November 8, 2004, 8:30 a.m. to 5 p.m. on Tuesday, November 9, 2004, and 8:30 a.m. to 12 p.m. on Wednesday, November 10, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Gulf of Mexico Regional Panel meeting will be held at the Palace Resort and Hotel, 158 Howard Avenue, Biloxi, MS 39530. Phone 228–432–8888. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Ron Lukens, Gulf of Mexico Panel Chair, Assistant Director, Gulf States Marine Fisheries Commission, PO Box 726, Ocean Springs, MS 39566, 228–875–5912, or Everett Wilson, U.S. Fish and Wildlife Service at 703–358–2148.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Gulf of Mexico Regional Panel was established by the ANS Task Force in 1999 and is comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Gulf of Mexico region of the United States that includes: Alabama, Florida, Louisiana,

Mississippi, and Texas. Responsibilities of the Panel include:

a. Identifying priorities for the Gulf of Mexico Region with respect to aquatic nuisance species;

b. Making recommendations to the Task Force regarding actions to carry out aquatic invasive species programs.

c. Assisting the Task Force in coordinating Federal aquatic nuisance species program activities in the Gulf of Mexico region;

d. Coordinating, where possible, aquatic invasive species program activities in the Gulf of Mexico region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

e. Providing advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

f. Submitting an annual report describing activities within the Western region related to aquatic nuisance species prevention, research, and control.

The Gulf of Mexico Regional Panel will discuss several topics at this meeting including: Panel administrative issues, potential new memberships, updates on the status of State ANS management plans, presentations from South Atlantic States, a discussion on the pet industry project, a discussion of the public aquarium project, work group reports, and a discussion of strategic plan development.

Dated: September 10, 2004.

M. A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 04–21781 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Thirteenth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces the tentative U.S. negotiating positions on agenda items, resolutions, and species proposals submitted by other countries and the CITES Secretariat for consideration by the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) at its thirteenth regular meeting (COP13). The meeting will be held in Bangkok, Thailand, October 2–14, 2004. With this notice we also announce a public meeting to be held after the conclusion of COP13 to inform the public of the results of COP13 and invite public input on whether the United States should take a reservation on any of the amendments to the CITES Appendices adopted at the meeting.

DATES: In further developing U.S. negotiating positions on these issues, we will continue to consider information and comments submitted in response to our notice of July 2, 2004 (69 FR 40411). We will also continue to consider information received at the public meeting announced in that notice, which was held on August 12, 2004. The public meeting to be held after COP13 will be held on December 13, 2004, at 1:30 p.m.

ADDRESSES: Please send comments pertaining to resolutions and agenda items to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or via e-mail at: *citescop13@fws.gov*. Please send comments pertaining to species proposals to the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, VA 22203, or via e-mail to: *ScientificAuthority@fws.gov*. Comments and materials that we receive will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Management Authority and the Division of Scientific Authority.

Public Meeting

The post-COP13 public meeting will be held in the Rachel Carson Room, in the Department of the Interior at 18th and C Streets, NW., Washington, DC. Directions to the building may be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, below).

Available Information

Information concerning the results of COP13 will be available after the close of the meeting on the Secretariat's Web site at *http://www.cites.org*, or upon request from the Division of Management Authority, or via our COP13 Web site at *http://international.fws.gov/cop%2013/cop13.htm*. If you wish to contact the U.S. delegation to COP13 during the meeting, you may send an e-mail to the following address: *COP13_daily@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, discussion papers, and agenda items, contact Peter O. Thomas, Ph.D., Chief, Division of Management Authority, U.S. Fish and Wildlife Service, tel. 703–358–2095; fax 703–358–2298; e-mail: *citescop13@fws.gov*. For information pertaining to species proposals, contact Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, tel. 703–358–1708; fax 703–358–2276; e-mail: *ScientificAuthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES or the Convention), is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction due to trade. These species are listed in Appendices to CITES, COPies of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our Web site at *http://international.fws.gov*, or from the official CITES Secretariat (Secretariat) Web site at *http://www.cites.org/*. Currently, 166 countries, including the United States, are Parties to CITES. CITES calls for regular meetings of the Conference of the Parties (COP) to review issues pertaining to CITES implementation, make provisions enabling the CITES Secretariat to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations to improve the effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II (species proposals), resolutions, decisions, discussion papers, and agenda items submitted for consideration by the Conference of the Parties. Accredited nongovernmental organizations may participate in the meeting as approved observers and may speak during sessions when recognized by the meeting Chairman, but they may not vote or submit proposals. COP13 will be held in Bangkok, Thailand, October 2–14, 2004.

This is fourth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of U.S. tentative negotiating positions for COP13. In this notice we announce the tentative U.S. negotiating positions on agenda items, resolutions, and species proposals submitted by other countries and the Secretariat for consideration at COP13. In our first **Federal Register** notice of June 19, 2003 (68 FR 36831), we requested information and recommendations on species proposals, proposed resolutions and decisions, and agenda items for the United States to consider submitting for consideration at COP13. In our second **Federal Register** notice, published on January 12, 2004 (69 FR 1757), we listed each issue that the United States was considering submitting for COP13. In that notice, we also invited public comments and information on these potential proposals, announced a public meeting to discuss them, and provided information on how nongovernmental organizations based in the United States could attend COP13 as observers. At the same time we posted an expanded document on our Web site (*http://international.fws.gov/*) that provided detailed background for proposed resolutions, proposed decisions, and agenda items that the United States was considering submitting for consideration at COP13, as well as for proposed amendments to the Appendices that the United States was considering submitting. On February 5, 2004, we held the public meeting announced in our second **Federal Register** notice; at that meeting, we discussed the issues contained in our January 12 **Federal Register** notice and in our Web site posting on the same topic. In our third **Federal Register** notice, published on July 2, 2004 (69 FR 40411), we announced the provisional agenda for COP13, solicited public comment on items on the provisional agenda, and announced a public meeting to discuss the agenda items. That public meeting was held on August 12, 2004.

You may locate our regulations governing this public process in 50 CFR 23.31–23.39. Pursuant to 50 CFR 23.38 (a), the Director has decided to suspend the procedure for publishing a notice of final negotiating positions in the **Federal Register** because time and resources needed to prepare a **Federal Register** notice would detract from essential preparation for COP13.

Tentative Negotiating Positions

In this notice we summarize the tentative U.S. negotiating positions on agenda items, resolutions, and proposals to amend the Appendices that have been submitted by other countries and the CITES Secretariat. Documents submitted by the United States for consideration of the Parties at COP13 can be found on the Secretariat's Web site at: *http://www.cites.org/eng/COP/13/docs/index.shtml*. Those documents are: COP13 Doc. 41, COP13 Doc. 47, COP13 Doc. 48, COP13 Doc. 49, COP13 Doc. 51, and COP13 Doc. 52. The United States, either alone or as a co-proponent, submitted the following proposals to amend the Appendices I and II: COP13 Prop. 5, COP13 Prop. 10, COP13 Prop. 12, COP13 Prop. 14, COP13 Prop. 16, COP13 Prop. 18, COP13 Prop. 20, COP13 Prop. 21, COP13 Prop. 23, COP13 Prop. 33, COP13 Prop. 47, and COP13 Prop. 48. In this notice, we will not provide any additional explanation of the U.S. negotiating position for documents that the United States submitted. The introduction in the text of each of the documents the United States submitted contains a discussion of the background of the issue and the rationale for submitting the document.

In this notice, numerals next to each agenda item or resolution correspond to the numbers used in the agenda for COP13 and posted on the Secretariat's Web site. When we completed the notice, the Secretariat had not yet made available documents for a number of the agenda items on the COP13 agenda. For several other documents, we are still working with other agencies in the United States and other CITES Parties in negotiating the U.S. position. The documents for which we do not currently have tentative U.S. negotiating positions are: COP13 Doc. 9.2.1, COP13 Doc. 17, COP13 Doc. 29.2, COP13 Doc. 29.3, and COP13 Doc. 56.2.

In the discussion that follows, we have included a brief description of each proposed resolution, agenda item, or species proposal submitted by other countries or the Secretariat, followed by a brief explanation of the tentative U.S. negotiating position for that item. New information that may become available at COP13 could lead to modifications of these positions. The U.S. delegation will fully disclose changes in our negotiating positions and the explanations for those changes during public briefings at COP13. The United States is concerned about the budgetary implications and workload burden that will be placed upon the Parties, the Committees, and the Secretariat and intends to review all suggested changes in view of these concerns.

Agenda (Provisional) [Doc. 3]

Opening Ceremony and Welcoming Addresses

The Secretariat will not prepare a document on these agenda items. According to tradition, as the host country for COP13, Thailand will conduct an opening ceremony and make welcoming remarks.

Strategic and Administrative Matters

1. Rules of Procedure:

1.1 Use of secret ballots (Doc. 1.1). *Tentative U.S. negotiating position:* Support. With Document COP13 Doc. 1.1, the Standing Committee proposes not making any changes to the Rules of Procedure of the Conference of the Parties relating to the use of secret ballots. The United States historically has not supported the use of secret ballots, believing that the process at a COP should be as transparent as possible, and that open voting encourages responsible voting by the Parties. The United States agrees that the Rules of Procedure should not be changed to facilitate the increased use of secret ballots, and would only support changes to decrease their use.

1.2 Adoption of the Rules of Procedure (Doc. 1.2). *Tentative U.S. negotiating position:* Support. The CITES Secretariat prepared document COP13 Doc. 1.2, the draft Rules of Procedure for COP13. The draft contains amendments to Rules 3.2, 3.5, and 15.1, and to the title of Rule 20 agreed to by the Standing Committee at its 50th meeting (SC50) in March 2004. As the concerns raised by the United States to these amendments were addressed by the Standing Committee, and are reflected in document CoP13 Doc. 1.2, the United States supports the draft Rules of Procedure.

2. Election of Chairman and Vice-Chairman of the meeting and of Chairman of Committees I and II (No document). *Tentative U.S. negotiating position:* Undecided. According to tradition, the host country—in this case, Thailand—will provide the Conference Chair. The United States will support the election of Committee Chairs and a Vice-Chair of the Conference who have the required technical knowledge and skills and also reflect the geographic and cultural diversity of the CITES Parties.

3. Adoption of the agenda (Doc. 3). *Tentative U.S. negotiating position:* Support.

4. Adoption of the working programme (Doc. 4). *Tentative U.S.*

negotiating position: Support. Prior to a COP the working programme is provisional and changes may be made to it prior to the start of COP13 or at the beginning of the COP. The United States supports the provisional working programme posted at the time this notice was prepared.

5. Credentials Committee:

5.1 Establishment of the Credentials Committee (No document). *Tentative U.S. negotiating position:* Undecided.

5.2 Report of the Credentials Committee (No document). *Tentative U.S. negotiating position:* Undecided. The United States will follow the work of the Credentials Committee and intervene as appropriate.

6. Admission of observers (Doc. 6). *Tentative U.S. negotiating position:* Undecided. A document for this agenda item is not normally distributed prior to the start of a COP. In accordance with Article XI of the Convention, organizations technically qualified in protection, conservation or management of wild fauna and flora may participate in a COP. After being approved as an observer, a nongovernmental organization (NGO) is admitted to the COP, unless one-third of the Parties object. National NGOs are admitted as observers if their headquarters are located in a CITES Party country and if the national government of that Party approves their attendance at the COP. International NGOs are admitted by approval of the CITES Secretariat. The United States supports admission to the meeting of all technically qualified NGOs, and the United States opposes unreasonable limitations on their full participation as observers at COP13. In addition, the United States supports flexibility and openness in the process for disseminating documents produced by NGOs to Party delegates, which are vital to decision-making and scientific and technical understanding.

7. Matters related to the Standing Committee:

7.1 Report of the Chairman (Doc. 7.1). *Tentative U.S. negotiating position:* Support. The United States, as Chair of the Committee, will prepare this requisite report on the execution of the Committee's responsibilities and its activities between COP12 and COP13.

7.2 Election of new regional and alternate regional members (No document). *Tentative U.S. negotiating position:* Support. The U.S. term as North American regional representative to the Standing Committee will end at the end of COP13. Following consultation with Canada and Mexico, the North American region has reached a consensus decision concerning the Standing Committee representation following COP13. Canada will serve as the North American regional representative, and Mexico will serve as the alternate representative.

8. Financing and budgeting of the Secretariat and of meetings of the Conference of the Parties. *Tentative U.S. negotiating position on Agenda Items 8.1, 8.2, and 8.3:* Undecided. These are comprehensive documents that require extensive review, internal discussion, and analysis of the financial implications for Parties and the impact on the work of the Secretariat and the Committees. The United States will review the documents carefully, bearing in mind the need to balance tasks with available resources. We advocate fiscal responsibility and accountability on the part of the Secretariat and the Conference of the Parties and plan to actively participate in the budget discussions at COP13. We further support a budget that represents zero-growth in Parties' voluntary contributions.

8.4 External funding (Doc. 8.4). *Tentative U.S. negotiating position:* Support. External funding is financial support provided by Parties and NGOs for projects approved as CITES priorities by the Standing Committee. The external funding procedure is designed to avoid conflicts of interest (real or apparent) when approving projects and channeling funds between the provider and the recipient. The United States continues to support the efforts to identify appropriate sources of external funding, with the oversight of the Standing Committee.

9. Committee reports and recommendations—

9.1 Animals Committee:

9.1.1 Report of the Chairman (Doc. 9.1.1). *Tentative U.S. negotiating position:* Support with exceptions. This report is largely a summary of activities conducted by the Animals Committee, or particularly by the Chairman, since COP12. Many of these activities are covered by other COP13 agenda items. There are several recommendations at the end of the report, many of which the United States supports. However, some of these carry financial implications for the Convention. Under his "Recommendations regarding training," the Chairman suggests that the Parties adopt two decisions, one directing the Parties to provide financial support for the CITES Masters Course conducted by the University of Cordoba in Spain, and the second one directing the Standing Committee and the Secretariat to seek external funding to support students for the course from developing countries and countries with economies in transition. The United States believes that this CITES Masters Course is very worthwhile. However, due to current budgetary constraints, it must be clear that any funding for this course must come from sources other than the CITES Trust Fund, such as external sources, including voluntary contributions from Parties.

The final recommendation of the Chairman is to provide US$30,000 annually to assist the Chairman of the Animals Committee, if sufficient financial and technical support is not provided by the Chairman's own government or institution. Due to budget limitations and recent efforts by the Parties to contain costs for the Convention's operations, it is unlikely that a decision can be taken at this time to provide additional funding to support the Chairmen of the two scientific committees (assuming a similar amount should go to each). Based on discussions from the recent meetings of the scientific committees, we realize that this proposal may not be to provide funding for the current Chairman, but for future Chairmen of both committees if they come from developing countries or small institutions without the capability of providing the necessary support for the Chairmen to execute their duties. The United States suggests, therefore, that this issue be included in the review of the scientific committees proposed by Australia (CoP13 Doc. 11.1).

9.1.2 Election of new regional and alternate regional members (No document). *Tentative U.S. negotiating position:* Support. Following consultation with Canada and Mexico, the North American region has reached a consensus decision concerning the Animals Committee representation following COP13. Mr. Rodrigo A. Medellin of Mexico will serve as the North American regional representative, and Mr. Robert R. Gabel of the United States will serve as the alternate representative.

9.2 Plants Committee:

9.2.2 Election of new regional and alternate regional members (No document). *Tentative U.S. negotiating position:* Support. Following consultation with Canada and Mexico, the North American region has reached a consensus decision concerning the Plants Committee representation following COP13. Mr. Robert R. Gabel of the United States will serve as the North American regional representative to the Plants Committee, and Ms. Carolina Caceres of Canada will serve as the alternate representative until April 2005, after which time, Dr. Adrianne Sinclair, also of Canada, will serve as the alternate representative.

9.3 Nomenclature Committee:

9.3.1 Report of the Nomenclature Committee (Doc. 9.3.1). *Tentative U.S. negotiating position:* Undecided. The report contains numerous recommendations regarding the adoption of standard nomenclatural and taxonomic references, and we are still evaluating them and consulting with experts.

9.3.2. Appointment of the members (No document). *Tentative U.S. negotiating position:* Support. With the resignation of one of the two members of the Nomenclature Committee, a new member will have to be appointed. The United States supports the appointment of an individual with the appropriate expertise in the nomenclature of fauna to the Committee.

10. Strategic Vision (Doc. 10). *Tentative U.S. negotiating position:* Support. The Strategic Vision through 2005 presents an overview of the specific aims of the Convention, outlines seven specific goals to meet the Convention's mission, and identifies specific objectives to provide focus to the Parties in their implementation of the Convention, its Committees and the Secretariat, as well as to serve as an effective outreach and educational tool. At SC50, the Committee submitted a draft decision to the Secretariat, for adoption at COP13, to extend the time of validity of the Strategic Vision through 2005 and its Action plan, until the end of 2007. The decision would also establish a Strategic Plan Working Group as a subcommittee of the Standing Committee, which would develop a proposal for submission to COP14 for a Strategic Vision and Action Plan through 2013. The United States supports the proposed extension and the establishment of a Strategic Plan Working Group.

11. Review of permanent committees:

11.1 Review of the scientific committees (Doc. 11.1; Australia). *Tentative U.S. negotiating position:* Support. Australia proposes that the Standing Committee conduct a review to determine whether the current Animals and Plants Committees are the most efficient and effective means of providing scientific advice to the Convention and the Parties. They propose that a working group develop terms of reference to conduct the review. We do not fully agree that the current two scientific committees have not provided information that informs the decisions of the Parties, or that the Parties are not consistent in heeding the recommendations of these committees. Currently, the review of the listing criteria, Significant Trade Review, and the Review of the Appendices are activities of the two technical committees that are anticipated to result in recommendations that will contribute significantly to important decisions and actions by the Parties. However, we agree that the Parties need to seek efficiencies, which should include an objective evaluation of the current committee structure, the overall effectiveness of the committees in dealing with all of the issues referred to them, the workload of each committee, and how the committees conduct their business.

11.2 Improving regional communication and representation (Doc. 11.2; Animals and Plants Committees). *Tentative U.S. negotiating position:* Support. Although this document is not yet available, the United States has attended recent meetings of the Animals and Plants Committee where this issue was discussed. We anticipate that this document will contain a number of recommendations to improve regional communication and more effective representation and participation on the technical committees, particularly in large regions with many developing countries. The United States has supported these discussions and believes any efforts to improve the effectiveness of the Convention should be supported.

11.3 Standard nomenclature and the operation of the Nomenclature Committee (Doc. 11.3; Mexico). *Tentative U.S. negotiating position:* Support with exceptions. Because of recent controversy in the Animals and Plants Committees over nomenclatural changes that have been adopted, as well as a change in how standard references are adopted and incorporated for use by the Parties, Mexico has submitted this document in which it recommends various changes, including possible changes to the terms of reference and makeup of the Nomenclature Committee. We agree that these are important issues that have caused significant concern among the Parties at the meetings of the technical committees. However, we are unsure if all of the recommendations made by Mexico are warranted or may themselves cause additional difficulties. For example, expanding the membership of the Nomenclature Committee may incur more costs for the Convention and make the committee itself more inefficient due to the controversial nature of nomenclature and taxonomy. We note that overall the Nomenclature Committee has served the Parties well. However, the United States shares the concerns of Mexico and other Parties with regard to the change in the way standard references for taxonomy and nomenclature are being handled since COP12, and how changes to standard nomenclature can occur without input or review from the Conference of the Parties.

12. Cooperation with other organizations—

12.1 Synergy between CITES and CBD:

12.1.1 Achieving greater synergy in CITES and CBD implementation (Doc. 12.1.1; Ireland).

Tentative U.S. negotiating position: Oppose with exception. Following an expert workshop on promoting cooperation and synergy between CITES and the Convention on Biological Diversity (CBD), held on the Isle of Vilm, Germany, April 20–24, 2004, the Member States of the European Community endorsed in principle the overall objectives of that workshop and recommended a substantive discussion of its report at COP13 with a view to the adoption of some of the recommendations. While we find the intent behind the Vilm workshop supportive of moving forward a better and practical synergy between the two Conventions, we do not support Ireland's proposal to refer the recommendations of the workshop to the CITES Committees and the CBD Liaison Group. We believe that it is premature at this time to incorporate the findings and recommendations of the workshop into the Work Plan attached to the MOU. The workshop was not an official meeting of either CITES or the CBD, and few Parties had the opportunity to provide information and insight into the recommendations and conclusions. Recognizing the effort that went into this workshop, we suggest that a Standing Committee working group, if financial support can be secured, be formed to report to the Parties at COP14 on improving synergy between the two Conventions as recommended in this workshop report. We recommend that the CBD Secretariat and the CBD Liaison Group be invited to participate in the working group in order to ensure full participation and cooperation by both Conventions and their Parties.

12.1.2 Sustainable use principles and guidelines (Doc. 12.1.2; Namibia). *Tentative U.S. negotiating position:* Undecided. Namibia has submitted a draft resolution to promote collaboration between CITES and the CBD concerning the issue of sustainable use. In particular, the draft resolution asks CITES to adopt the definition of sustainable use contained in the Articles of the CBD, and seeks help from CITES in the dissemination of the CBD's Addis

Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, including their application to making CITES non-detriment findings. We are evaluating the potential implications and relevance of adopting these principles and definitions to CITES operations.

12.2 CITES listing of whale stocks and the International Whaling Commission (Doc. 12.2; Japan). *Tentative U.S. negotiating position:* Undecided. This is a draft resolution that, if adopted, would call on the International Whaling Commission (IWC) to complete a global plan for regulating and managing commercial whaling activities. The IWC has been developing the Revised Management Scheme (RMS) for several years, and the United States continues to advocate its completion. Although we are inclined to support the short operative sentence of Japan's resolution, we disagree with the basic foundation and controversial remarks in the preamble. We plan to work bilaterally with Japan before COP13 to achieve a more neutral document that may be more acceptable to a majority of Parties.

12.3 Revision of Resolution Conf. 12.4 on Cooperation between CITES and the Commission for the Conservation of Antarctic Marine Living Resources regarding trade in toothfish (Doc. 12.3; Australia). *Tentative U.S. negotiating position:* Support. Australia's proposed amendments to Resolution Conf. 12.4 would make reporting by CITES Parties to the CITES Secretariat on their use of CCAMLR *Dissostichus* Catch Documents (DCDs), and the Secretariat's transmission of those reports to CCAMLR, an ongoing effort. They note that the decisions calling for such reports (12.57 and 12.58) applied only to 2003 and they see merit in continuing the practice on an annual basis. The proposal would also change references to "illicit, unregulated and unreported fishing" to "illegal, unreported and unregulated fishing (IUU)" in order to explicitly recognize that IUU fishing poses a threat to toothfish populations. The United States supports continued cooperation between CITES and CCAMLR and Australia's proposed amendments to Resolution Conf. 12.4.

12.4 Cooperation with the Food and Agriculture Organization of the United Nations (Doc. 12.4; Japan). *Tentative U.S. negotiating position:* Oppose. This document was submitted by Japan for consideration in the event that a Memorandum of Understanding (MOU) between CITES and the Food and Agricultural Organization of the United Nations (FAO) has not been signed by COP13. If there is no MOU in place, Japan calls for a brief report from the Chairman of the Standing Committee on the negotiations with FAO and asks the Parties to extend the timeline for this process. The Chairman of the Standing Committee and the CITES Secretariat have developed draft MOU text guided by input from the Parties and discussion with FAO. We strongly support the negotiation of an MOU between CITES and FAO to facilitate cooperation on marine issues. The United States has worked with Japan and other Parties to promote establishment of this MOU. Negotiations between the Chairman of the Standing Committee and FAO to reconcile the two drafts are ongoing under a procedure established by the Standing Committee and we are hopeful that an agreement will be concluded by COP13. However, we find Japan's recommendations unnecessary from a procedural standpoint, since there is a process already under way to conclude the agreement, and we are concerned that taking it back to the Conference of the Parties before it is concluded undermines the intensive work of the Standing Committee.

12.5 Statements of representatives of other conventions and agreements (No document). *Tentative U.S. negotiating position:* Support. The United States supports ongoing dialogue between CITES and other relevant and related conventions and agreements, and believes statements from them can be valuable at a COP.

13. Economic incentives and trade policy (Doc. 13). *Tentative U.S. negotiating position:* Oppose. This document provides a report of activities conducted under Decision 12.22 on Economic Incentives and Trade Policy and recommends further work on National Trade Policy Reviews and a second workshop on how Economic Incentives can be designed to further the specific implementation of CITES. This Secretariat-driven and low priority initiative, as compared to important CITES considerations on capacity-building, legislation development, and technical support to Parties, has rapidly expanded since COP12 and produced a massive output of activities and recommendations that requires the review of the Secretariat, the Parties, and the Committees. The United States opposes this initiative as it has great potential to continue to draw more and more of the already overburdened Secretariat's time and technical expertise away from other much more urgent and high priority needs. We are also concerned that this initiative will compete with high priority needs for limited international funds and the Secretariat's fundraising efforts.

14. Financing of the conservation of and sustainable international trade in species of wild fauna and flora (Doc. 14). *Tentative U.S. negotiating position:* Support with exception. This document describes the analysis and evaluation of information received by the Secretariat in response to Decisions 12.25 and 12.26. The United States supports these efforts and the Secretariat's exploration of the feasibility of a designated financial mechanism for implementation of the Convention, provided that the Secretariat reports its findings to and requests advice from the Standing Committee between COPs.

15. Report of the African elephant dialogue meeting (Doc. 15). *Tentative U.S. negotiating position:* Undecided until document is available for review. The African elephant dialogue meeting is scheduled to be held in Bangkok, Thailand, immediately prior to the start of COP13. When we receive the document, we will review it closely and develop our position. We note, however, that we support the range States dialogue process for debating multi-national species issues, and the United States provided funding for this meeting through a grant under the African Elephant Conservation Act.

Interpretation and Implementation of the Convention

Review of Resolutions and Decisions

16. Review of Resolutions (Doc. 16). *Tentative U.S. negotiating position:* Support with the exceptions noted below.

Review of Resolution Conf. 4.6 (Rev. CoP12). Support. The proposed change would establish the effective date of resolutions adopted by the Conference of the Parties as 90 days after the meeting, rather than the date on which the resolutions are sent to the Parties by the Secretariat. It would set a firm date for implementation of resolutions, and mean that resolutions and species listings generally become effective on the same date.

Review of Resolution Conf. 5.11. Support. The proposed new resolution would resolve confusion surrounding the trade in pre-Convention specimens by recommending that Parties use the date a species was first listed to decide whether to issue a pre-Convention certificate.

Review of Resolution Conf. 9.21. Support. These proposed changes clarify that a Party that wants the Conference of the Parties to either establish or amend an export quota for an Appendix I species must submit a proposal, which includes details of the scientific basis for the proposed quota,

150 days before the meeting at which it is to be considered. These procedures would help Parties make sound decisions on export quotas.

Consolidation of Resolution Conf. 10.6 on control of trade in tourist souvenir specimens and Resolution Conf. 12.9 on personal and household effects. Support. Combining these two resolutions would reduce the number of resolutions and provide one document that addresses the interpretation of personal and household effects. We believe the Parties might want to further consolidate duplicative paragraphs relating to the sale of Appendix I tourist souvenirs at international airports and borders.

Review of Resolutions Conf. 10.16 (Rev.) and Conf. 12.10. Oppose with exception. The goal of the proposed changes is to harmonize the language in two different resolutions. We support the proposed change to the preamble of Resolution Conf. 10.16 (Rev.) on animal species bred in captivity. We oppose the proposal to add a reference to Article III to the definition of the term "bred for non-commercial purposes" in Resolution Conf. 12.10. Article III contains the basic provisions on trade in Appendix I specimens and should not be included in the definition of an exemption under Article VII.

Review of Resolution Conf. 11.11. Support with exception. The proposal is to delete the reference to the no-longer-used annotation °608 on the CITES list and replace it with an example of "see the annotation to Orchidaceae spp * * *" The United States agrees that the reference to annotation °608 needs to be deleted, but believes that the recommendation of the Plants Committee working group (see COP13 Doc 51) to not use an example is a better approach. The use of "Orchidaceae spp." is misleading since the current exclusion from CITES controls applies only to artificially propagated hybrids of *Phalaenopsis* under specific conditions or to a few artificially propagated "supermarket" cacti hybrids.

Review of Resolution Conf. 11.21. Support with exception. We agree that the new format used by the Secretariat to publish the CITES list after COP12 necessitates the revision of this resolution on annotations. We find, however, that the revised language in paragraph b) of the first agrees relating to export quotas to be confusing. Because of the importance of CITES-adopted export quotas, we suggest deleting the reference to export quotas from b)i) and b)ii) and adding a separate subparagraph "and; iii) annotations that specify an export quota;"

Regular and Special Reports

18. Reporting requirements (Doc. 18). *Tentative U.S. negotiating position:* Support. In this document the Secretariat reports on the issues addressed by the Standing Committee's Working Group on Reporting Requirements and endorsed by the Standing Committee, and makes a number of recommendations including that the Parties adopt: the draft biennial report format provided in Annex 4 of the document; the draft revisions of Resolutions Conf. 11.17 (Rev. COP12) and 4.6 (Rev. COP12) provided in Annexes 1 and 2 of the document; and the two draft decisions provided in Annex 3 of the document. The United States supports adoption of the biennial report format and generally supports the other recommendations in this document.

19. Appendix I species subject to export quotas:

19.1 Leopard: export quota for Namibia (Doc. 19.1; Namibia). *Tentative U.S. negotiating position:* Support. Namibia seeks approval for the increase of its leopard export quota from 100 to 250 animals. The proposed new quota represents a take of less than 5% of an estimated 8,038 leopards in the country. Thus, it is unlikely that, if properly managed, the proposed new quota will have a negative impact on the species.

19.2 Leopard: export quota for South Africa (Doc. 19.2; South Africa). *Tentative U.S. negotiating position:* Oppose. South Africa seeks approval for the increase of its leopard export quota from 75 to 150 animals. However, according to the proposal, there is no nationwide leopard population estimate or trend information available. Thus, there is no clear justification for this increase. Unless there is additional information forthcoming from the proponent to support this proposal; the United States cannot support the proposed increase.

19.3 Black rhinoceros: export quota for Namibia (Doc. 19.3; Namibia). *Tentative U.S. negotiating position:* Undecided. Namibia seeks approval for the establishment of an export quota for 5 adult male black rhinoceros (*Diceros bicornis bicornis*) hunting trophies. The proposed quota represents an annual take of less than 0.5% of the estimated current population of 1,134 black rhinos in the country. In addition, the quota would apply only to "surplus" male rhinos, primarily post-reproductive or problem animals, designated by Namibia's Management Authority. Thus, the proposed quota appears to be sustainable, based on an evaluation of the Namibian population. We note that the Namibian black rhino population is categorized as Vulnerable by IUCN (2003), instead of Critically Endangered as for the rest of the species. However, we are also aware that range countries still must take unusual measures to protect black rhinos due to continued poaching and demand for illegal trade. Therefore, we are still evaluating the potential impact that adoption of such a proposal may have on black rhino conservation, particularly as it may affect other range countries. We also note that under the United States Endangered Species Act, the black rhinoceros is listed as endangered. The historic practice under our stricter domestic measure is that the necessary findings to allow such imports into the United States have not been made, and pending any change in practice, the United States would not allow imports of sport hunted trophies.

19.4 Black rhinoceros: export quota for South Africa (Doc. 19.4; South Africa). *Tentative U.S. negotiating position:* Undecided. South Africa seeks approval to establish an export quota for 10 adult male black rhinoceros (*Diceros bicornis minor*) hunting trophies. The proposed quota represents an annual take of approximately 1.0% of the estimated current population of 1,200 black rhinos in the country. However, there are outstanding questions about the overall management program including the initial size of the quota, its effective allocation and monitoring within the private sector, individual trophy selection process, and transparency in the use of revenues generated for *in-situ* black rhino conservation. We also note that under the United States Endangered Species Act, the black rhinoceros is listed as endangered. The historic practice under our stricter domestic measure is that the necessary findings to allow such imports into the United States have not been made, and pending any change in practice, the United States would not allow imports of sport hunted trophies.

20. Trade in vicuña cloth (Doc. 20). *Tentative U.S. negotiating position:* Support. The Secretariat has submitted a report in accordance with Resolution Conf. 11.6 that includes information for each range country on vicuña cloth exports, numbers of animals sheared, and the local populations to which the animals belong. The Secretariat suggests that these trade data should be incorporated into the annual reports instead of reported separately. Therefore, the Secretariat recommends deleting paragraph (b) of Resolution Conf. 11.6, which requires these reports. In addition, because paragraph (a) of Resolution Conf. 11.6 is redundant to

the annotations for Appendix II vicuña populations, the Secretariat recommends the repeal of Resolution Conf. 11.6 entirely.

21. Transport of live specimens (Doc. 21). *Tentative U.S. negotiating position:* Support. The United States is a member of the Transport Working Group and supports the recommendation to encourage exchange of information on transport of live animals and plants between the Animals and Plants Committees, and to broaden the scope of Resolution Conf. 10.21 to include the transportation of live plants, as well as live animals. We also welcome the recommendation to revise requirements regarding the collection, submission and analysis of data on mortality and injury or damage to health during transport of live specimens.

General Compliance Issues

22. National laws for implementation of the Convention (Doc. 22). *Tentative U.S. negotiating position:* Support. The United States supports the proposed decisions, which would continue and expand the current review of national laws. The United States strongly believes that the Convention's effectiveness is undermined when Party States do not have adequate national laws in place for implementing CITES.

23. Enforcement matters (Doc. 23). *Tentative U.S. negotiating position:* Support. The United States supports the proposed decisions, which would improve the flow of enforcement-related information among enforcement officials, and provide needed guidance to the public on how to submit enforcement-related information to the Secretariat.

24. Revision of Resolution Conf. 11.3 on Compliance and enforcement (Doc. 24; Kenya). *Tentative U.S. negotiating position:* Oppose. The United States supports the general issues of compliance and enforcement and supports the proposed decisions concerning these issues presented in Doc. 23. The United States does not support the use of limited Secretariat enforcement staff and resources to restore the creation of the infractions report that at past COPs proved controversial, inaccurate, and of limited use for actual enforcement efforts.

25. Guidelines on compliance with the Convention (Doc. 25; Ireland). *Tentative U.S. negotiating position:* Oppose. The United States does not support the proposal to open discussion on this document. We also oppose the establishment of a Compliance Working Group pending the completion of the process currently underway in the Standing Committee. Pursuant to Decision 12.84, the Standing Committee is currently reviewing draft Guidelines on Compliance with the Convention, through an intersessional working group. The Committee also established a process for the working group to create a document for consideration at SC53. The United States believes this collaborative process should be allowed to continue and considers it premature to bring this issue to COP13.

Species Trade and Conservation Issues

26. Conservation of and trade in great apes (Doc. 26; Ireland). *Tentative U.S. negotiating position:* Support the draft decision with exception, and oppose the draft resolution. Ireland, on behalf of the Member States of the European Community, has submitted a document that includes a draft resolution urging Parties to adopt and implement legislation protecting great apes, including prohibiting all international and internal commercial trade of wild-caught specimens and strengthening enforcement controls, including anti-poaching measures. The draft resolution directs the Secretariat to work with Parties, and as a member of the Great Ape Survival Project (GRASP) partnership, to develop measures to reduce and ultimately eliminate illegal trade in great apes. The document also includes a draft decision directing the Secretariat to prepare a consolidated Resolution concerning the enforcement of trade controls in all Appendix I species, to be considered at COP14.

The United States supports the draft decision and believes a comprehensive process should be developed, possibly through a working group, whereby mechanisms from other processes (*e.g.*, Significant Trade Review, National Legislation Project) might be used to develop a standardized approach for addressing enforcement of trade controls for all Appendix I species. The United States supports the principles and goals of the draft resolution on the conservation of and trade in great apes, but we do not support the draft resolution itself. While we applaud the efforts of GRASP, adopting the draft resolution included in this document would create yet another species-specific resolution. Many of the goals outlined in this draft resolution are already being addressed by the CITES Bushmeat Working Group and we believe that they should be addressed as part of the larger bushmeat issue.

27. Conservation of and trade in bears (Doc. 27). *Tentative U.S. negotiating position:* Support. This report was prepared by the Secretariat in response to Decision 12.27, which required the Parties that did not report to the Secretariat on the progress made in controlling illegal trade in bear specimens to submit the requested reports. The document lists the Parties that have provided reports and describes measures taken in attempting to get reports from those Parties that had not yet responded to Decision 12.27. The Secretariat will report at COP13 on any new reports or additional information relating to bears. The United States supports the Secretariat in its effort to obtain information from Parties relating to the trade in bear specimens and looks forward to the Secretariat's report at COP13. The United States also supports the Irish proposal (COP13 Doc. 26) to develop a holistic, rather than species-specific, approach to eliminate the illegal international commercial trade in all Appendix I specimens and assist Parties in mitigating or eliminating detrimental domestic trade in those same specimens.

28. Conservation of and trade in Asian big cats (Doc. 28). *Tentative U.S. negotiating position:* Support. In this document, the Secretariat presents a progress report on activities regarding conservation of and trade in Asian big cats and non-commercial trade in specimens of Appendix I species. The United States supports continued work on the issues of Asian big cat conservation and is concerned that commercial trade in Appendix I species by professional dealers is continuing. We urge the relevant range States to implement the recommendations arising from the CITES Technical and Political Tiger Missions. The United States also supports the Irish proposal (COP13 Doc. 26) to develop a holistic, rather than species-specific, approach to eliminate the illegal international commercial trade in all Appendix I specimens and assist Parties in mitigating or eliminating detrimental domestic trade in those same specimens.

29. Elephants:

29.1 Trade in elephant specimens (Doc. 29.1). *Tentative U.S. negotiating position:* Undecided, pending outcome of the African elephant dialogue meeting. This document was submitted by the Secretariat to report on work accomplished under Resolution Conf. 10.10 (Rev. COP12) and Decision 12.39. Decision 12.39 directed the Secretariat to assess countries with currently active internal ivory markets. The Secretariat has suggested that it may be more effective to develop sub-regional strategies to work with Parties in west and central Africa, where the majority of illegal ivory appears to originate, than to confine work to the 10 Parties identified in the original Decision 12.39. Toward

that end, a draft work plan was attached as an annex to the report. The United States supports the development of sub-regional strategies and looks forward to the results of the African elephant range States dialogue.

29.4 Illegal ivory trade and control of internal markets (Doc. 29.4; Kenya). *Tentative U.S. negotiating position:* Oppose. This document submitted by Kenya provides background information on domestic ivory markets around the world and notes concerns that illegal ivory trade may present a threat to elephant populations. Kenya supports the Secretariat's draft work plan (SC50 Doc. 21.1, Annex) and proposes that it be incorporated into Resolution Conf. 10.10 (Rev.COP12), except for an exemption for Zimbabwe. It also proposes additional amendments to Resolution Conf. 10.10 (Rev.COP12), including a 20-year moratorium on ivory trade, except for non-commercial trade in hunting trophies, following completion of sales approved at COP12. In addition to the amendments, Kenya has put forward three draft decisions regarding implementation of the amended resolution. While the United States can appreciate Kenya's position relative to conservation efforts for African elephants we believe that this issue is being addressed in a methodical and analytical way through the Standing Committee and the African Range States Dialogue meetings. We look forward to the consideration during the African Elephant Range States Dialogue of a work plan to address domestic trade problem in source range countries.

29.5 Conditions for the export of registered stocks of ivory in the annotation to the Appendix II listing of populations of *Loxodonta africana* in Botswana, Namibia and South Africa (Doc. 29.5; Kenya). *Tentative U.S. negotiating position:* Oppose. Kenya asks that the Parties re-examine the geographical scope and nature of Monitoring of Illegal Killing of Elephants (MIKE) baseline data agreed at SC49 and the mechanism for determining detrimental impacts on elephant populations agreed at SC50. Kenya proposes two draft decisions. The United States supports the decisions of the Standing Committee and is opposed to reopening these discussions at COP13.

29.6 Ivory stocks in Burundi (Doc. 29.4). *Tentative U.S. negotiating position:* Oppose. The United States is sympathetic to the Government of Burundi's position, and will be interested in the outcome of any discussions on this topic at the African Elephant Range States Dialogue meeting. However, for the most part, the options presented in this paper appear either to involve trade in violation of existing resolutions and decisions or scenarios with little real chance for success.

30. Conservation of and trade in rhinoceroses (Doc. 30). *Tentative U.S. negotiating position:* Support. The Secretariat recommends the repeal of Resolution Conf. 9.14 (Rev.) because it believes that the value of the Resolution is doubtful and the administrative burden it places on the Parties is of little benefit. Additionally, as of the report submission deadline of April 2, 2004, the Secretariat had not received any reports from Parties on conservation of and trade in rhinoceroses. We sympathize with the Secretariat's frustration over the poor rate of report submission, and the United States also supports the Irish proposal (CoP13 Doc. 26) to develop a holistic, rather than species-specific, approach to eliminate the illegal international commercial trade in all Appendix I specimens and assist Parties in mitigating or eliminating detrimental domestic trade in those same specimens.

31. Conservation of and control of trade in Tibetan antelope (Doc. 31). *Tentative U.S. negotiating position:* Support. In compliance with Decision 12.40, the Secretariat undertook an enforcement needs mission to China and submitted a report to the Standing Committee (SC50 Doc. 20), and this information will be relayed to COP13. Therefore, the Secretariat is recommending that paragraphs (b) and (c) under "DIRECTS" in Resolution Conf. 11.8 (Rev. COP12) be deleted because the reporting requirements have been met. However, because legislation to prohibit processing and trade in Tibetan antelope wool in the State of Jammu and Kashmir, India, is not being enforced, the Secretariat also recommends that the following wording be inserted in the resolution at the end of paragraph a) under URGES, "and, in particular, that the State of Jammu and Kashmir in India halts the processing of such wool and the manufacture of shahtoosh products."

32. Conservation of *Saiga tatarica* (Doc. 32; Ireland). *Tentative U.S. negotiating position:* Support. This document contains a draft decision that, if adopted, would establish a framework of coordinated actions to be taken by all stakeholders to conserve and protect the saiga antelope. The United States has a longstanding interest in the saiga antelope and previously contributed financial support for the range State workshop on this species in May 2002 in Kalmykia. We also urged the Parties to consider further actions for this species at AC19.

33. Conservation of and trade in tortoises and freshwater turtles (Doc. 33). *Tentative U.S. negotiating position:* Support. This is primarily a report by the Secretariat on activities related to these species since COP12. The document includes information from three range countries, China, Japan, and Malaysia, which was submitted to the Secretariat to comply with Decision 12.41. This information shows that the three range countries have made significant progress in meeting the recommendations of Resolution Conf. 11.9 on Conservation of and trade in tortoises and freshwater turtles. The United States concurs with the Secretariat's recommendations for range countries to continue their efforts for these species; to have the Animals Committee continue to provide scientific guidance to range countries on the conservation and management of these species, especially with regard to the recommendations from the 2002 Kunming workshop on turtle and tortoise trade; and to have Asian range countries for these species continue to report on progress in this area.

34. Conservation of hawksbill turtle (Doc. 34). *Tentative U.S. negotiating position:* Oppose. The CITES Secretariat has raised partial funding for a meeting of the wider Caribbean region on hawksbill conservation and management, as directed under Decision 12.46. However, full funding is not available for such a meeting, and there is currently no proposal to amend the Appendices or to take other actions with regard to this species at COP13. The United States suggests that the funding raised for the Caribbean hawksbill meeting could be redirected to support monitoring activities agreed to by the Parties at COP12 and to promote cooperation among CITES and other relevant bodies and multilateral agreements in the absence of such a regional meeting.

35. Conservation and management of sharks (Doc. 35). *Tentative U.S. negotiating position:* Undecided. Under Decision 12.47, the Chairman of the Animals Committee is to maintain a liaison with the Secretary of the Committee on Fisheries of the FAO to monitor progress in implementation of the International Plan of Action for the Conservation and Management of Sharks. This may be covered in the Report of the Chairman of the Animals Committee (Doc. 9.1.1), which was not available by July 1, 2004. There was also no separate document posted under this agenda item by July 1, 2004.

36. Conservation of and trade in *Dissostichus* species (Doc. 36). *Tentative U.S. negotiating position:* Support. This document represents the Secretariat's report on work performed under three decisions agreed on at COP12 pertaining to toothfish. Decision 12.57 asked Parties to report to the Secretariat on their use of CCAMLR *Dissostichus* Catch Documents. Information was received from 10 Parties, including the United States, and is summarized in this document. Copies of the full submissions were transmitted to CCAMLR, as recommended in Decision 12.58, and the Secretariat attended CCAMLR's 22nd Commission meeting, as called for in Decision 12.59, to promote cooperation between the two organizations. The Secretariat considers that its obligations under these decisions have been met, but recommends that information exchange and cooperation between CITES and CCAMLR should continue under Resolutions Conf. 12.4. The United States agrees that the Secretariat has fulfilled its obligations under Decisions 12.57–12.59 and supports ongoing cooperation and information exchange between CITES and CCAMLR.

37. Sea cucumbers:

37.1 Trade in sea cucumbers in the families Holothuriidae and Stichopodidae (Doc. 37.1; Animals Committee). *Tentative U.S. negotiating position:* Undecided. Under Decision 12.60, the Animals Committee was directed to prepare a discussion paper on the biological and trade status of sea cucumbers to provide guidance on actions needed for their conservation. This paper should be a reflection of recommendations resulting from a workshop on sea cucumber trade and conservation convened by the Secretariat in February 2004 in Malaysia.

37.2 Implementation of Decision 12.60 (Doc. 37.2; Ecuador). *Tentative U.S. negotiating position:* Support. Decision 12.60 directed the Animals Committee to prepare a discussion document on the trade and conservation of sea cucumbers for COP13. Ecuador's paper notes that the Committee was unable to meet the required deadlines and proposes to extend the work until COP14. The United States proposed this work on sea cucumbers at COP12, and is therefore eager to see a meaningful output from the Animals Committee.

38. Trade in stony corals (Doc. 38). *Tentative U.S. negotiating position:* Oppose. This document was prepared by the Animals Committee and should be considered along with Prop. 36 on the amended annotation for fossil corals. The document proposes specific deletions from Resolution Conf. 12.3 to make it consistent with a proposed annotation that exempts several types of coral rock from the provisions of CITES. For reasons described below under Prop. 36, we have serious concerns about the Animals Committee's approach to fossil corals.

39. Conservation of bigleaf mahogany: report of the Working Group (Doc. 39). *Tentative U.S. negotiating position:* Support. The second meeting of the Bigleaf Mahogany Working Group (BMWG) was held October 6–8, 2003, in Belem, Brazil. The recommendations from this meeting were circulated at PC14 (February 2004). The Plants Committee prioritized the recommendations and developed a list of the five most urgent ones. The Secretariat then forwarded these five priority recommendations to the BMWG so that they could be considered in the report to COP13. However, in the report it submitted to COP13 (Annex to CoP13 Doc. 39), the BMWG included the same long list of recommendations that were circulated at PC14, and did not take into consideration the priority list developed by the Plants Committee. In Document CoP13 Doc. 39, the Secretariat recommends that the Parties take note of the report of the BMWG and turn the five priority actions recommended by the Plants Committee into decisions directed to range countries. The Secretariat also recommends that the BMWG not continue after COP13 and that, if the Parties determine that bigleaf mahogany still requires special attention after COP13, such attention should be given under the auspices of the Plants Committee.

The United States tentatively supports the recommendation of the Secretariat that the Parties adopt the five priority actions recommended by the Plants Committee as decisions directed to range countries. The United States believes that special attention should still be given to bigleaf mahogany after COP13, but tentatively supports the Secretariat's recommendation that the BMWG not continue after COP13 but that activities be undertaken under the auspices of the Plants Committee.

40. Evaluation of the Review of Significant Trade (Doc. 40). *Tentative U.S. negotiating position:* Support. This document presents the terms of reference developed by the Animals and Plants Committees for evaluating the process for the Review of Significant Trade. The purpose of this evaluation is to assess the efficacy of the Significant Trade Review process and make possible recommendations for its improvement. The United States has been actively involved in the development of terms of reference for this review, both as a member of a joint working group of the Animals and Plants Committees, and through discussions as an observer at meetings of the two committees. The United States believes an evaluation of the process will assist the Parties and the two scientific committees to ensure that the Review of Significant Trade is effective in improving the implementation of the Convention for Appendix II species traded in significant quantities.

Trade Control and Marking Issues

42. Commercial trade in Appendix I species (Doc. 42; Israel). *Tentative U.S. negotiating position:* Oppose with exception. The United States supports the principle behind this document and appreciates Israel's efforts on this issue. Israel proposes amending Resolution Conf. 5.10 to clarify that when making a determination of whether an import is for "primarily commercial purposes," an importing Party should take into account the nature of the transaction between the exporter and the importer to ensure that a commercial transaction does not underlie the transfer of Appendix I specimens. The United States agrees that there appears to be a loop-hole in implementation of this resolution, and that some Appendix I specimens are being transferred for commercial purposes. This is contrary to the fundamental principles of Article II of the Convention that trade in Appendix I specimens "* * * must only be authorized in exceptional circumstances." To close the apparent loop-hole, we encourage Parties to agree to a broader interpretation of "to be used" for primarily commercial purposes in Article III, paragraphs 3(c) and 5(c), whereby the importing Party would look at both the intended use in the importing country and the nature of the transaction between the exporter and importer. However, we believe that many transfers have some commercial aspects, which does not automatically mean the import is for primarily commercial purposes. Thus, we believe that the importing Party in making its determination should ensure that the commercial transaction is not the primary purpose of the transfer, rather than "ensure that a commercial transaction does not underlie the transfer" as proposed by Israel.

43. Management of annual export quotas (Doc. 43). *Tentative U.S. negotiating position:* Support. At COP12, the United States submitted the document that provided the basis for the formation of the Export Quota Working Group (EQWG). While we are

disappointed that further progress on this issue has not been achieved since COP12, the United States supports the approach outlined by the Secretariat and approved by the Standing Committee. The United States will remain engaged in this important process because export quotas for Appendix II species constitute one of the primary controls on the trade in Appendix II specimens under CITES, and the management and implementation of such quotas needs to be more consistent.

44. Use of CITES certificates with ATA or TIR carnets (Doc. 44). *Tentative U.S. negotiating position:* Support with exception. The United States supports this proposal, if it is amended to clarify that the official who is responsible for validating CITES documents would need to be the official to enter the carnet number on the CITES document at the first point of exit. The proposal would provide the appropriate level of monitoring of trade for CITES-listed sample collections that are being exhibited at trade shows in a number of countries before returning home. The first exporting country retains the responsibility of ensuring that specimens are legal and the trade is not detrimental, while cross-border movement of sample collections is facilitated by the CITES document being accompanied by an ATA carnet.

45. Electronic permitting systems for CITES specimens (Doc. 45; Ireland). *Tentative U.S. negotiating position:* Oppose. Ireland, on behalf of the Member States of the European Community, has submitted a proposed decision for the Secretariat to establish guidelines for an electronic permitting system for the Parties. This system would eventually create a paper-less permitting system that would allow Parties to use IT technology for the submission of applications, issuance of documents, clearance at the port of entry and reporting for all CITES specimens. At SC50, the Working Group on Reporting Requirements recommended that the Standing Committee address this issue in its report to COP13 and instruct the Secretariat, in consultation with UNEP–WCMC and interested Parties, to develop and test software and "internet-based modules" for permit issuance and reporting. The United States welcomes discussion of this issue at COP13, but believes that the majority of recommendations in the document are premature. We believe that the Standing Committee should continue to work on this issue and that a Resolution on this issue is not appropriate at this time.

46. Retrospective issuance of permits (Doc. 46; Ireland). *Tentative U.S. negotiating position:* Oppose. Ireland, on behalf of the Member States of the European Community, has submitted a proposal to amend section XIII of Resolution Conf. 12.3 to expand the language concerning when a retrospectively issued permit or certificate could be accepted by Parties, giving greater leniency in accepting such documents for non-commercial shipments. The United States believes that the current language in section XIII fully addresses this issue and does not need to be expanded.

50. Plant specimens subject to exemptions (Doc. 50; Switzerland). *Tentative U.S. negotiating position:* Support. Several exemptions allow international trade in live plant specimens without CITES permits until circumstances change and the plants no longer qualify for the exemption. For example, a plant grown from an exempt flasked seedling or tissue culture requires a CITES export permit to be traded internationally. The United States supports this proposal, which would help Parties use consistent information on CITES permits and, thus, help in the analysis of trade data.

53. Revision of Resolution Conf. 9.10 (Rev.) on Disposal of illegally traded, confiscated and accumulated specimens (Doc. 53; Kenya). *Tentative U.S. negotiating position:* Support. The United States supports the proposal to replace language from Resolution Conf. 9.10 that was omitted during the consolidation process. The United States does not object to the addition of language on disposal of Appendix III specimens and agrees that Parties have the right to not sell confiscated dead Appendix II and III specimens.

54. Identification Manual (Doc. 54). *Tentative U.S. negotiating position:* Support. This document is a report from the Secretariat on progress in the development of identification materials for listed species.

Exemptions and Special Trade Provisions

55. Personal and household effects. *Tentative U.S. negotiating position on Agenda Items 55.1, 55.2, and 55.3:* Support with the exceptions noted below. The United States supports China's proposal to have the Secretariat maintain a list by country of specific specimens that require an export permit when traded as personal or household effects. Importing Parties would generally assume that an export permit is not required if the exporting Party had not notified the Secretariat of a requirement. Under the Lacey Act, however, the United States would require an export permit if the Party requires an export permit, even if that Party had not notified the Secretariat of the requirement. The United States also supports Ireland's and Australia's proposals to add specimens of certain coral, shells of giant clam, and seahorse to the current list of Appendix II species that do not require CITES permits for personal effects when the quantities do not exceed a specified number. We believe that the coral exemption needs to be discussed to clarify if it includes manufactured products. Both lists could assist enforcement personnel and help facilitate trade in personal and household effects when such trade is not of conservation concern. However, the United States hopes that over time the list of specimens does not become so long as to create a burden to enforcement personnel.

56. Operations that breed Appendix I species in captivity for commercial purposes:

56.1 Evaluation of the process for registration (Doc. 56.1). *Tentative U.S. negotiating position:* Support. This document presents the conclusions and recommendations derived from a review of problems the Parties have experienced in implementing the registration procedures contained in Resolution Conf. 12.10 for commercial captive-breeding operations for Appendix I species. The United States agrees with the Animals Committee that it is too soon to recommend changes to Resolution Conf. 12.10, since this resolution has been revised at both COP11 and COP12. However, the United States also agrees that the Standing Committee should examine the issue of trade in Appendix I species from non-registered commercial breeding operations.

The United States notes that the consultation process contained in the current resolution has been valuable in precluding registration of operations—and preventing trade from them—when they were determined not to be producing specimens that meet the CITES definition of "bred in captivity."

56.3 Relationship between *ex situ* breeding and *in situ* conservation:

56.3.1 Report of the Animals Committee (Doc. 56.3.1). *Tentative U.S. negotiating position:* Oppose. The Animals Committee has spent considerable time and effort on the evaluation of the relationship between *ex situ* captive-breeding operations for Appendix I species and conservation of these species *in situ*. The United States concurs that further deliberation on this issue within the Animals Committee could be time-consuming, with

potentially no clear outcome. We agree that this issue is linked to other topics, such as the relationship between CITES and the Convention on Biological Diversity, but is not strictly related to implementation of the Convention. The United States believes the recommendations contained in the document from Mexico (Doc. 56.3.2) provide reasonable guidance to the Parties on this issue and should preclude the need for further deliberations on this topic. As an alternative, the United States would advocate that the Parties focus more broadly on measures that reduce trade threats to Appendix I species and encourage their conservation, with a goal of eventual downlisting or even delisting from the Appendices.

56.3.2 Relationship between commercial *ex situ* breeding operations and *in situ* conservation of Appendix I species (Doc. 56.3.2; Mexico). *Tentative U.S. negotiating position:* Support. The United States has had a longstanding interest in issues related to the captive breeding of Appendix I animals. We are supportive of efforts to consider how conservation of these species in the wild can be encouraged, including through voluntary partnerships between range countries and captive-breeding operations in non-range countries.

Amendment of the Appendices

57. Criteria for amendments of Appendices I and II (Doc. 57). *Tentative U.S. negotiating position:* Support although the document was not available for review. The United States was an active participant in the process to review and revise the existing criteria, having served as chairman or co-chairman of the listing criteria working groups at PC13 (Geneva, August 2003), AC19 (Geneva, August 2003), and AC20 (Johannesburg, March-April 2004). Thus, we can anticipate the content of the document. The document will reflect a comprehensive evaluation of the applicability of the criteria to a wide range of taxa, which has served as a basis for recommendations to revise Resolution Conf. 9.24.

58. Annotations for medicinal plants in the Appendices (Doc. 58). *Tentative U.S. negotiating position:* Support. This document is a report on the Plants Committee's review of medicinal plant annotations to harmonize the terms used, so that they accurately refer to the parts and derivatives included in a listing and are consistently used across species. The United States has been actively involved in the Plants Committee's review and supports the continuation of this work to its completion.

59. Standard nomenclature:

59.1 Standard nomenclature for birds (Doc. 59.1; Mexico). *Tentative U.S. negotiating position:* Support. Since COP12, at meetings of the Animals Committee, Mexico has raised concerns about the standard reference, *Handbook of the Birds of the World* (del Hoyo *et al.*, eds., 1997, 1999) adopted at COP12 for Psittaciformes (parrots and their relatives) and Trochilidae (hummingbirds). Mexico has raised questions about the scientific rigor behind the taxonomy presented in the new reference, noting that it has also complicated the listing of the yellow-headed amazon parrot (*Amazona ochrocephala*) and its subspecies. Mexico recommends that the Parties should return to using the reference by Sibley and Monroe (1990) as the standard reference for taxonomy and nomenclature for all birds. The United States believes that Mexico's recommendation has merit, to reduce confusion (*i.e.*, by maintaining a single taxonomic reference for birds) and to be conservative with regard to the use of taxonomy that has had longstanding application in CITES.

59.2 Recognition of *Chamaeleo excubitor* as a separate species (Doc. 59.2; Kenya). *Tentative U.S. negotiating position:* Support. Kenya has provided documentation and a rationale for treating this taxon as a separate and distinct taxon from *C. fischeri*, with which it is currently treated as a synonym. Kenya asks that this be considered by the Nomenclature Committee to assist in the regulation and monitoring of trade in this species. We agree that it is entirely appropriate for the Nomenclature Committee to evaluate the situation and provide a recommendation on whether or not to separate these two species of chameleon in the CITES checklist.

60. Proposals to amend Appendices I and II (Doc. 60).

Prop. 1. Exempt from the provisions of the Convention *in vitro* cultivated DNA, cells or cell lines, urine and feces, medicines and other pharmaceutical products, and fossils (Ireland). *Tentative U.S. negotiating position:* Oppose. The proposal stipulates that the exempted DNA, cells or cell lines, and medicines and pharmaceutical products would not contain any part of the original organism from which it was derived. This proposal is similar to the next proposal (Prop. 2), but includes additional types of specimens to be exempted, which were not included in the recommendations of the Standing Committee working group. Furthermore, we have consulted with U.S. geneticists about the terminology used in this proposal and have concluded that the term "*in vitro* cultivated DNA" is not widely used in the scientific community, but that "synthetic DNA," "amplified DNA," or "replicated DNA" would be preferable. The United States also advocates the development of a clear definition of "fossil" so that, if this proposal is adopted, implementation problems can be avoided and so that the term is not interpreted so broadly as to be potentially detrimental to listed species.

Prop. 2. Exempt from the provisions of the Convention *in vitro* cultivated DNA, urine and feces, synthetically produced medicines and other pharmaceutical products, and fossils (Switzerland as the Depositary Government, at the request of the Standing Committee). *Tentative U.S. negotiating position:* Support with exception. A similar proposal was submitted to COP12, but was withdrawn for technical reasons. This proposal stipulates that the exempted DNA as well as medicines and pharmaceutical products would not contain any part of the original organism from which it was derived. The proposal reflects the outcome of deliberations of a working group, established by the Standing Committee, in which the United States participated. The United States already exempts synthetic DNA, feces, and urine from CITES requirements. As with the previous proposal, we have concerns regarding the term "*in vitro* cultivated DNA" and "fossil" (see Prop. 1 above).

Prop. 3. Transfer the Irrawaddy dolphin (*Orcaella brevirostris*) from Appendix II to Appendix I (Thailand). *Tentative U.S. negotiating position:* Undecided. The Irrawaddy dolphin is widely distributed through bays and some rivers from Australia to the Philippines and into eastern India. The Standing Sub-Committee on Small Cetaceans of the Scientific Committee of the International Whaling Commission recently reviewed the status of this species and reported that densities appear to be low in most areas and several populations are believed to be seriously depleted. The Sub-Committee expressed concern about reports of live capture from small populations of the species. Incidental take in fisheries and habitat degradation are also causes of concern. The proposal does not provide much information about the current extent of trade in these dolphins, or why a ban on international commercial trade would help conserve the species (which is protected in most range States). We will continue to investigate the information in the proposal and from other sources, with a view toward

understanding the current level of illegal trade and the vulnerability of the species to extinction in the near term.

Prop. 4. Transfer from Appendix I to Appendix II the Okhotsk Sea—West Pacific stock, the Northeast Atlantic stock, and the North Atlantic Central stock of the northern minke whale (*Balaenoptera acutorostrata*) (Japan). *Tentative U.S. negotiating position:* Oppose. As with past proposals to downlist whales under CITES, the United States opposes this proposal because of the need for IWC–CITES coordination (as repeatedly expressed in CITES Resolutions), the lack of an international management regime under the International Convention for the Regulation of Whaling, the lack of international consensus on tracking whale products with DNA registers, and the stipulations of the CITES downlisting criteria.

Prop. 6. Transfer all Appendix I populations of lion (*Panthera leo*) to Appendix I (Kenya). *Tentative U.S. negotiating position:* Oppose. The African populations of the species are proposed for inclusion in Appendix I (the Asian subspecies, *P.l. persica*, is already listed in Appendix I) on the basis that all are declining, and those of West and Central Africa are fragmented, small, and isolated. Although African lions have experienced declines due to a number of factors, these are primarily related to loss of habitat, reductions in prey populations, and killing of lions as "problem animals." International trade in lion specimens, primarily hunting trophies, is limited, but has the potential to exacerbate population declines if not managed at sustainable levels. We believe that listing of the species in Appendix I may be premature, and a more appropriate action would be to include the species in the Significant Trade Review of the Animals Committee, to review the basis for current trade levels, particularly since the proponent has indicated that hunting quotas could be considered even if the species were to be placed in Appendix I.

Prop. 7. Amendment of the annotation regarding the Namibian population of African elephant (*Loxodonta africana*), listed in Appendix II, to allow an annual export quota of raw ivory, trade in worked ivory for commercial purposes, and trade in leather and hair goods for commercial purposes (Namibia). *Tentative U.S. negotiating position:* Oppose with exception. This and other elephant issues will be discussed at an African Elephant Range States Dialogue meeting just prior to COP13, and the United States intends to await the outcome of deliberations by the range countries. However, we particularly note that no determination has yet been made as to whether conditions have been met for the one-off sale of ivory from Namibia approved by the Conference of the Parties at COP12, so the consideration of additional ivory trade, especially a sustained annual quota, may be premature. The available information suggests that trade in elephant leather and hair products are not linked to poaching, and as such the U.S. has supported such trade in the past.

Prop. 8. Amendment of the annotation regarding the South African population of African elephant (*Loxodonta africana*), listed in Appendix II, to allow trade in leather goods for commercial purposes (South Africa). *Tentative U.S. negotiating position:* Support. At COP12, the proposal by South Africa with regard to its elephant population (COP12 Prop. 8) was to allow, among other things, commercial trade in leather goods. During debate on the proposal and subsequent amendments, this was inadvertently modified to refer to non-commercial trade in leather goods, which was adopted. South Africa has submitted the current proposal to reflect their original intent. This and other elephant issues will be discussed at an African Elephant Range States Dialogue meeting just prior to COP13. The United States intends to await the outcome of deliberations by the range countries and may adjust its final position on this proposal based on the outcome of that meeting.

Prop. 9. Transfer of the Southern white rhinoceros (*Ceratotherium simum simum*) population of Swaziland from Appendix I to Appendix II for the exclusive purpose of allowing trade in live animals and hunting trophies (Swaziland). *Tentative U.S. negotiating position:* Support. We understand that Swaziland has only two small but stable or increasing populations of this species (a total of approximately 60 animals in 2003) in protected areas constituting a small proportion of the country's land area. However, the Southern white rhinos in Swaziland are considered to be part of the South African metapopulation of this subspecies (Swaziland previously having been part of South Africa, with the majority of its current border contiguous with South Africa). Because the South African population of this subspecies has already been downlisted to Appendix II, it makes biological sense to also transfer Swaziland's population to Appendix II. We note that the purpose of this proposal is to allow only limited trade in live animals and trophies, much of which would be allowed even if the species were to be retained in Appendix I, and is therefore precautionary.

Prop. 11. Transfer of the lesser sulphur-crested cockatoo (*Cacatua sulphurea*) from Appendix II to Appendix I (Indonesia). *Tentative U.S. negotiating position:* Support. This species has long been a focus of international concern. The species is considered Critically Endangered by IUCN, and both Germany and the United States have considered submitting proposals for previous COPs to include this species in Appendix I. Illegal trade in the species continues to be a problem, and wild-caught birds may be traded as captive-bred specimens once they leave Indonesia. The species qualifies for Appendix I based on its biological status and the continued threat from trade.

Prop. 13. Transfer of Finsch's amazon parrot (*Amazona finschi*) from Appendix II to Appendix I (Mexico). *Tentative U.S. negotiating position:* Support. This species has experienced significant declines in Mexico, where it is an endemic species. This is a species that has been historically smuggled into the United States in significant numbers, and illegal shipments have also been seized elsewhere. Recent studies in Mexico indicate that the species cannot currently sustain harvest for commercial trade. The United States previously considered proposing this species for inclusion in Appendix I, but deferred to Mexico to take appropriate action.

Prop. 15. Transfer of the spider tortoise (*Pyxis arachnoides*) from Appendix II to Appendix I (Madagascar). *Tentative U.S. negotiating position:* Oppose. This species is endemic to Madagascar and has been subject to increased demand for legal and illegal trade in recent years. Deterioration and loss of habitat are potential threats to this species, but actual relationship of these factors to the status of the species is not well documented in the proposal. The population is estimated at over 10,000 individuals, but the area of distribution and extent of population fragmentation is currently unknown and under discussion. At least through 2000–2001, trade in the species was not well regulated, and seizures of the species and anecdotal information point to ongoing illegal trade. Due to the country-wide review of trade in CITES-listed species, exports of this species from Madagascar may be better managed and regulated than in the past. Because of improvements in trade controls by the range country, combined with the lack of information to indicate an imminent threat to the species, it is

difficult to conclude that this species currently qualifies for Appendix I listing.

Prop. 17. Include the Malayan snail-eating turtle (*Malayemys subtrijuga*) in Appendix II (Indonesia). This proposal is the same as Prop. 16. Due to wording discrepancies, the Secretariat considered this to be a separate proposal from Indonesia, whereas Indonesia had indicated to us that they had submitted a letter indicating their intent to co-sponsor the U.S. proposal. No actual proposal, other than the letter, was submitted by Indonesia.

Prop. 19. Include the Malayan flat-shelled turtle (*Notochelys platynota*) in Appendix I (Indonesia). This proposal is the same as Prop. 18. See discussion in Prop. 17, above.

Prop. 22. Include the Fly River turtle (Carettochelys insculpta) in Appendix II (Indonesia). This proposal is the same as Prop. 21. See discussion in Prop. 17, above.

Prop. 24. Transfer of the Cuban population of the American crocodile (*Crocodylus acutus*) from Appendix I to Appendix II under the ranching provisions of Resolution Conf. 11.16 (Cuba). *Tentative U.S. negotiating position:* Support. Based on 10 years of monitoring, as well as other information demonstrating general compliance with the ranching resolution, the population appears to qualify for downlisting as proposed. The proposal is endorsed by the IUCN Crocodile Specialist Group. We note that under the United States Endangered Species Act, the American crocodile is listed as endangered. The historic practice under our stricter domestic measure is that the necessary findings to allow commercial imports into the United States have not been made, and pending any change in practice, the United States would not allow imports of skins or products originating from ranched populations.

Prop. 25. Transfer of the Namibian population of Nile crocodile (*Crocodylus niloticus*) from Appendix I to Appendix II (Namibia). *Tentative U.S. negotiating position:* Support with exceptions. The population of this species in Namibia is limited in distribution, because of the arid conditions in most of the country, but where it occurs the population is considered to be stable or increasing and not subject to significant harvest pressures or other factors. The proposed downlisting is purported to be primarily to allow trade in hunting trophies, with no other planned exports. The Namibian population of this species may be considered part of the metapopulation of neighboring countries, and their populations are already listed in Appendix II. However, there are concerns that Namibia has not provided actual population information in the proposal, and the IUCN Crocodile Specialist Group has not provided an opinion on the proposal. Both of these may be forthcoming before or at the COP.

Prop. 26. Maintenance of the Zambian population of Nile crocodile (*Crocodylus niloticus*) in Appendix II, with an annual quota of 548 wild specimens (Zambia). *Tentative U.S. negotiating position:* Support. It is the U.S. interpretation of Resolution Conf. 11.16 that such a proposal from Zambia is not necessary, but only that they should consult with the Secretariat when they modify exports of wild-origin specimens from levels established in their original ranching proposal adopted by the Parties. It can be expected that, if a ranching program is successful and results in the improved status of the ranched population, a higher level of sustainable harvest may ultimately be achieved. It is known that one population, that of the Luangwa River, increased by 63% between 1996 and 2003.

Prop. 27. Include all species of leaf-tailed geckos (*Uroplatus* spp.) in Appendix II (Madagascar). *Tentative U.S. negotiating position:* Support. The proposal is to list *U. alluaudi* due to its restricted range and rarity, and the remaining species as look-alikes. U.S. trade data show that thousands have been imported in recent years. We also note that these species continue to be the subject of articles in reptile hobbyist magazines, which promote keeping them and state that they are available as wild-collected specimens.

Prop. 28. Include all species of leaf-nosed snakes (*Langaha* spp.) in Appendix II (Madagascar). *Tentative U.S. negotiating position:* Oppose. The proponent states that these species should be included in the Appendices as a precautionary measure, due to their rarity. Although two of the species (*L. alluaudi* and *L. pseudoalluaudi*) have restricted distributions and all species are found infrequently, the proponent clearly states and documents that trade in the species is very limited. None of the species is listed by the IUCN (2004). Given that this proposal lacks any scientific information on population status or trends, and that there is no evidence of a substantial number of specimens in legal or illegal trade, an Appendix III listing would be more appropriate if Madagascar wishes to regulate and monitor trade in this endemic species.

Prop. 29. Include a tree snake (*Lycodryas* [= *Stenophis*] *citrinus*) in Appendix II (Madagascar). *Tentative U.S. negotiating position:* Oppose. Although *L. citrinus* appears to be restricted to two national parks and nearby areas, the proposal states that "in the wild, the animal is rather plentiful locally." Furthermore, the proponent clearly states and documents that trade in the species is very limited (4 exported in 2001, 15 in 2002, and 0 in 2003). The species is not listed by IUCN (2004). Given that this proposal lacks any scientific information to indicate that the species is significantly affected by trade, an Appendix III listing would be more appropriate if Madagascar wishes to regulate and monitor trade this endemic species.

Prop. 30. Include the Mt. Kenya bush viper (*Atheris desaixi*) in Appendix II (Kenya). *Tentative U.S. negotiating position:* Oppose. This species is only found in Kenya. Despite a lack of any population surveys or monitoring, Kenya assumes the population is in decline due to habitat loss and increased removal of specimens for trade. The species is protected under Kenyan law. There has been illegal trade in the species, as evidenced by a confiscation of 27 specimens destined for the United States between 1999 and 2000. Although there are no data on the number of specimens in the global captive population, the proponent states that the number is presumed to be significant. This species is not listed by IUCN (2004). Given that this proposal lacks any scientific population status information and that there is no evidence of a substantial number of specimens in legal or illegal trade, an Appendix III listing would be more appropriate if Kenya wishes to regulate and monitor trade in this endemic species.

Prop. 31. Inclusion of Kenya horned viper (*Bitis worthingtoni*) in Appendix II (Kenya). *Tentative U.S. negotiating position:* Oppose. This species is endemic to Kenya. Despite the lack of any population surveys or monitoring, Kenya assumes the population is in decline due to habitat loss and increased removal of specimens for trade. The species is protected under Kenyan law. There has been illegal trade in the species, as evidenced by a confiscation of 37 specimens destined for the United States between 1999 and 2000. Germany reported 19 specimens illegally imported between May and October 1999. Although there are no data on the number of specimens in the global captive population, the proponent states that the number is presumed to be significant. This species is not listed by IUCN (2004). Given that this proposal lacks any scientific

population status information, and that there is no evidence of a large amount of specimens in legal or illegal trade, an Appendix III listing would be more appropriate if Kenya wishes to regulate and monitor trade in this endemic species.

Prop. 32. Inclusion of the great white shark *(Carcharodon carcharias)* in Appendix II with a zero quota (Australia, Madagascar). *Tentative U.S. negotiating position:* Support with exception. Australia and the United States unsuccessfully proposed this species for listing in Appendix I at COP11. In March 2004, the CITES Animals Committee evaluated an Australian proposal to list white sharks in Appendix I and determined that the species appeared to qualify for Appendix II. The current proposal provides substantial information about the species' decline in various parts of its range, and presents some compelling reasons to list the species in Appendix II. We are concerned that the zero quota contained in the proposal is more restrictive than an Appendix I listing and would bar any international movement in scientific research samples or other non-commercial, non-detrimental trade. We note that the Fisheries Department of the FAO convened a panel of fisheries experts in July 2004, in part to review this proposal. The panel could not ascertain the global status for the species, but indicated that some regional and national populations appeared threatened by unsustainable catches in recent years. Catches in other regions appeared sustainable, while the status of some populations remained uncertain. Given these results, the expected continued demand for white shark products, the species' vulnerability to overexploitation, and the international scope of trade in its parts, we support the adoption of the proposal with some modification to its zero quota.

Prop. 34. Deletion of the annotation "sensu D'Abrera" from the listings of *Ornithoptera* spp., *Trogonoptera* spp., and *Troides* spp. in Appendix II (Switzerland as Depositary Government, at the request of the Nomenclature Committee). *Tentative U.S. negotiating position:* Support. This deletion would serve to bring this listing in line with the rules adopted by the Nomenclature Committee (*i.e.*, that the choice of nomenclatural standard is not part of the listing process, but is a decision made by the Nomenclature Committee) and would not affect the status of the listed butterflies. More information on this will be presented by the Nomenclature Committee, as part of its report, which is not yet available.

Prop. 35. Inclusion of the European date mussel *(Lithophaga lithophaga)* in Appendix II (Italy, Slovenia, on behalf of the Member States of the European Community). *Tentative U.S. negotiating position:* Support. Listing in Appendix II is proposed to help regulate international trade, document shifting international trade, prevent illegal trade, and promote sustainable harvest methods for the species that will help to conserve coastal limestone rock habitat. The proponents state that trade in the species is shifting from Western Mediterranean countries that limit or ban collection, utilization, and export of the species to northern and eastern European countries, where conservation of the species is limited. Discussions with the proponents indicate that illegal trade has increased, as evidenced by the confiscation of several tons of the species annually in Italy and Slovenia. Current harvest methods are considered unsustainable and destructive to the local habitat, and over-harvest is negatively affecting the population status of this late-maturing species.

Prop. 36. Amendment of the annotation to Helioporidae, Tubiporidae, Scleractinia, Milleporidae, and Stylasteridae to exempt fossils, and specifically coral rock, except for live rock (Switzerland as the Depositary Government, at the request of the Animals Committee). *Tentative U.S. negotiating position:* Oppose. This proposal arose from discussions in the Animals Committee, which could not reach consensus on a scientific and geological definition of fossil corals. It instead endorsed a list of coral products that could be considered fossils, hoping to ease confusion among customs officers and law enforcement personnel about this issue. The list distinguishes "fossil" from "non-fossil" coral rocks by their shipping method, size, and presence or absence of attached invertebrate organisms. The intent of this list is to retain "live rock" (as defined by CITES) in Appendix II while excluding all other coral rock specimens as fossils. Although we originally agreed with the Animals Committee proposal in March 2004, we have since conferred with our law enforcement personnel on this issue. These discussions have raised serious concerns about the precedent, ecological risk, and enforceability of the proposed annotation. U.S. wildlife inspectors indicate that many shipments of coral "live rock" are already packed in ways that would characterize them as fossils and thus exempt them from CITES controls under the proposed definition. Furthermore, inspections of coral rock shipments could become unacceptably burdensome and subjective if officials must decide whether the brief descriptions in the Swiss proposal apply to a given shipping method or a given type of commodity.

Prop. 37. Inclusion of *Hoodia* spp. in Appendix II (with an exemption for certain materials produced by proponent countries that will bear a label stating that export is in compliance with the requirements of the CITES Management Authority) (Submitted by Botswana, Namibia, South Africa). *Tentative U.S. negotiating position:* Oppose. *Hoodia* spp. is native to the proponent states, as well as Angola and possibly Zimbabwe. The proposal discusses the threat of over-harvest of wild populations in light of the recent increased popularity of *H. gordonii,* mainly in Europe and North America, due to its appetite-suppressing qualities in dietary supplements.

Despite legislation in the proponent countries to regulate the harvest and export of *Hoodia* spp., potential, although unquantified, illegal collection may threaten existing wild populations. Species are not clearly enumerated, nor are their ranges. The proposed exemption is problematic, and information from other range countries (*i.e.*, Angola and Zimbabwe) is lacking. If the purpose of the listing is to ensure legal control, then an Appendix III listing would be more appropriate.

Prop. 38. Annotate Euphorbiaceae in Appendix II to exempt artificially propagated specimens of *Euphorbia lactea* from CITES provisions if they are grafted on *Euphorbia neriifolia,* color mutants, or crested-branch forming or fan-shaped (Thailand). *Tentative U.S. negotiating position:* Support with exception. Although the United States agrees in principle with the proposal, as written, we are concerned that the proposal does not exempt the rootstock of *E. neriifolia* from CITES controls. Therefore, the rootstock of the grafted specimens proposed for exemption would still be regulated as an Appendix II species. We are unsure whether the term "color mutant" is adequately descriptive, which may lead to wild specimens traded under the exemption because the species is naturally dark green with whitish-green bands (variegated) along the midrib of the plant. Modifications are needed to improve this proposal before it is adopted. The proponent should revise the proposal before the Parties take a decision on it.

Prop. 39. Annotate Euphorbiaceae in Appendix II to exempt artificially propagated specimens of *Euphorbia milii* from CITES provisions if they are

traded in shipments of 100 or more specimens and are readily recognizable as artificially propagated specimens (Thailand). *Tentative U.S. negotiating position:* Oppose. The proponents state that the proposal is to exempt artificially propagated "poysean" cultivars of *Euphorbia milii*. However, the poysean is a hybrid of *Euphorbia milii* and *Euphorbia lophogona*, and should be referred to as *Euphorbia* x *lomi*. Both species and hybrid are popular ornamental plants. The species are endemic to Madagascar and have been reported to hybridize in the wild. Neither species is listed in the 1997 *IUCN Red List of Threatened Plants*. However, eight forms (varieties and subspecies) of *Euphorbia milii* have recently been assessed by IUCN as Vulnerable and two as Endangered.

We are concerned that the proponent did not include *Euphorbia lophogona* in the proposal, nor any information on trade in wild-collected specimens of these species and their wild forms, and the implications this exemption may have for enforcement and control of trade in wild specimens. Amending the proposal to include *Euphorbia lophogona* would expand the scope of this proposal. Therefore, the proponent should consider withdrawing the proposal to address these deficiencies and submit it to the next meeting of the Plants Committee for a more thorough review and discussion, and possible resubmission for consideration at COP14.

Prop. 40. Annotation of Orchidaceae in Appendix II to exempt all hybrids from the provisions of the Convention (Thailand). *Tentative U.S. negotiating position:* Oppose. This proposal was discussed at the PC14. The United States and other Parties advised Thailand at the time that this proposal was overly broad, could result in enforcement difficulties, and was premature given the lack of experience with the more limited exemption of *Phalaenopsis* adopted at COP12.

Prop. 41. Annotation of Orchidaceae in Appendix II to exempt hybrids of seven genera when they are in flower with at least one fully open flower, and when they are potted and labeled, and professionally processed for commercial retail sale. Exempt specimens must also exhibit the characteristics of artificially propagated plants (Switzerland). *Tentative U.S. negotiating position:* Support. This proposal was discussed at PC14, where the Parties advised that such a proposal could be considered at COP13 if identification materials were provided with the proposal so that they would be available before the exemption would go into effect. The proponent has provided as an annex to the proposal extensive color images of the various types of hybrids that would be exempted. This proposal is similar to the original proposal submitted by the United States for COP12 (CoP12 Prop. 51) and includes most of the same genera, but includes a further requirement that the plants must be in flower, which would aid greatly in identification.

Prop. 42. Amendment of the current annotation of Orchidaceae in Appendix II so that shipments of *Phalaenopsis* hybrids may qualify for an exemption to the provisions of the Convention when shipments contain a minimum of 20 rather than 100 specimens per container, with the other requirements remaining unchanged (Switzerland as the Depositary Government, at the request of the Plants Committee). *Tentative U.S. negotiating position:* Support. At PC14 the United States reported that an informal survey of orchid importing and exporting countries, including the United States, had indicated that the annotation adopted at COP12 to exempt *Phalaenopsis* hybrids was not being applied, partly because the minimum number of plants per container, 100, was too high to be practical. It was agreed by the Plants Committee to have a proposal submitted to COP13 to reduce this number to 20, which is still a sufficient number to judge uniformity and consistency to evaluate whether the plants are artificially propagated.

Prop. 43. Transfer the Christmas orchid *(Cattleya trianei)* from Appendix I to Appendix II (Colombia). *Tentative U.S. negotiating position:* Oppose. This orchid species was included in Appendix I in 1975; all other species of the genus *Cattleya* are listed in Appendix II. It is an epiphyte endemic to the Colombian Andes. In the late 19th and early 20th Centuries, the species was severely over-collected to near extinction. It is currently listed as Indeterminate (yet to be determined as Vulnerable or Endangered) in the 1997 *IUCN Red List of Threatened Plants*. The information provided in the proposal appears to represent preliminary findings on the current status of the species, but indicates that the majority of historically documented subpopulations have not been studied. The proposal to transfer the species to Appendix II is based on presumptions that the species will recover, not that it has recovered, and also on the fact that current trade consists of artificially propagated specimens that are well regulated. No recent illegal trade has been documented. The proposal does not provide sufficient information about the current status of the wild population to determine whether or not the species continues to meet the biological criteria for Appendix I, and therefore such a proposal seems premature.

Prop. 44. Transfer the blue vanda orchid *(Vanda coerulea)* from Appendix I to Appendix II (Thailand). *Tentative U.S. negotiating position:* Oppose. This orchid was severely depleted in portions of its range due to over-collection in the past, although, the proponent states that most range countries' populations are believed to have recovered and that export of wild-collected specimens is prohibited in all range countries by domestic legislation. The preferred specimens for trade in this species are artificially propagated specimens of select clones and hybrids, which are vastly superior in color and form to wild-collected specimens. This species is listed as Rare in the 1997 *IUCN Red List of Threatened Plants*, although currently the main threat to the species is forest conversion and not collection from the wild for international trade. There is still concern, however, that this species continues to be collected from the wild, particularly in India and Myanmar.

Prop. 45. Annotation of *Cistanche deserticola* to include all parts and derivatives except seeds, spores, and pollen; flasked seedlings and tissue cultures; and cut flowers from artificially propagated plants (China). *Tentative U.S. negotiating position:* Support. Since its inclusion in Appendix II at COP11, there has been confusion and problems with properly annotating the listing to ensure that the correct parts are regulated. This proposal is intended to correct this longstanding problem.

Prop. 46. Transfer *Dypsis decipiens* (syn. *Chrysalidocarpus decipiens*) from Appendix II to Appendix I (Madagascar). *Tentative U.S. negotiating position:* Support. In 1995, the wild population of this slow-growing endemic palm species was estimated at 200 individuals. Because seed was excluded from the 1975 Appendix II listing, unchecked trade in wild seed continues. The proponents believe that uplisting is necessary to save this species from extinction. Biologically, this species qualifies for inclusion in Appendix I, although seeds of this species cannot be readily distinguished from other palms. Still, listing in Appendix I may prove useful by requiring non-range countries to clearly demonstrate the origin of seed used to grow artificially propagated plants. This will be especially important if the recommended changes to Resolution Conf. 11.11 are adopted (see agenda

item 51), since plants grown from exempt parts (*e.g.*, seeds) would be treated as artificially propagated. An alternative to the current proposal would be to annotate the current listing so that seeds are included and no longer exempt.

Prop. 49. Inclusion of *Aquilaria* spp. and *Gyrinops* spp. in Appendix II (except *A. malaccensis,* which is already listed) (Indonesia). *Tentative U.S. negotiating position:* Oppose. Immediately after listing of *A. malaccensis* Appendix II at COP9, the Parties recognized that several other genera in the family Thymelaeaceae (up to seven genera, all of which have species native to Indonesia) produce the resinous heartwood, known as agarwood, which is the commodity in trade. It is unclear why only two of these genera are included in this proposal and how the expansion of this listing (which does not propose including parts and derivatives) would improve the control of trade in agarwood. Trade in agarwood has been studied by the Plants Committee, which has not yet developed final recommendations for achieving sustainability in the harvest and trade of agarwood, or advised whether additional agarwood-producing species should be listed. Therefore, the proposal from Indonesia may be premature.

Prop. 50. Inclusion of ramin (*Gonystylus* spp.) in Appendix II with an annotation to include all parts and derivatives except seeds, spores, and pollen; flasked seedlings and tissue cultures; and cut flowers from artificially propagated plants (Indonesia). *Tentative U.S. negotiating position:* Undecided. The genus *Gonystylus* consists of 29–40 species of tropical hardwoods, the vast majority of which are found on Borneo. All species have declined throughout their ranges, with 15 species listed as vulnerable in the 1997 *IUCN Red List of Threatened Plants.* Of the six species known to be commercially valuable, *G. bancanus* is the dominant species traded as ramin wood. *Gonystylus bancanus* occurs in peat-swamp, lowland freshwater swamp, and coastal peat-swamp forests of Indonesia and Malaysia. The vast majority of ramin in trade is from Indonesia (Kalimantan) with smaller amounts from Malaysia (Sarawak and Sabah). However, most of the ramin stocks in Indonesia and Malaysia have been depleted over the last 30 years. At COP8 and COP9, the Netherlands proposed *Gonystylus bancanus* for listing in Appendix II, only to withdraw the proposals at those meetings. In 2001, Indonesia included all *Gonystylus* species in Appendix III with annotation #1 (same annotation as this proposal), and subsequently prohibited the export of all ramin logs and saw timber. In 2002, Malaysia imposed a complete ban on the import of all ramin logs from Indonesia. Despite these measures, illegal logging of ramin for the international market still occurs in Indonesia and has resulted in deforestation in many of the country's national parks. We understand that Indonesia and Malaysia continue to negotiate over this proposal and which parts and products might be included if it is adopted. We are not certain of the position of other range countries, including Malaysia, on inclusion of these species in Appendix II and what such a listing might practically accomplish beyond the current Appendix III listing by Indonesia. We are consulting with the range countries, as well as experts and other importing countries to clarify that range of support for, and the anticipated effect of, this proposal.

61. Inclusion of species in Appendix III (Doc. 61; Switzerland, the Secretariat). *Tentative U.S. negotiating position:* Support. In 1994, the Parties adopted criteria for inclusion of species in Appendix III in Resolution Conf. 9.25 (Rev.), which was later amended at COP10. If a proposal to amend the Appendices I or II is adopted at COP13 that includes an annotation to exempt certain types of specimens (*e.g.*, feces), this document then proposes to revise the criteria for inclusion of species in Appendix III to include the same annotation unless otherwise noted by the listing Party. Additionally, this document calls for the repeal of Resolution Conf. 1.5 (Rev. COP12) since a species cannot be included in more than one Appendix. The United States supports the view that general exemptions that apply to species included in Appendices I and II also apply to species included in Appendix III. The United States also supports repealing Resolution Conf 1.5, since a species cannot be included in more than one Appendix.

Other Themes and Issues

62. Bushmeat:

62.1 Bushmeat Working Group (Doc. 62.1). *Tentative U.S. negotiating position:* Support the adoption of the draft resolution but oppose the adoption of the two draft decisions. This document reports on the progress of the Working Group since its establishment at COP11. It contains a draft resolution that incorporates the lessons learned to date and identifies issues the Group believes must be addressed in order to regulate bushmeat in a sustainable manner and combat illegal trade. The document also contains two draft decisions. The first draft decision encourages the Working Group, which it suggests be renamed the Central African Bushmeat Working Group, to continue its work and report to the Secretariat on its progress. The second draft decision encourages governments and other donors to support the implementation of national action/management plans and the development of a database of information on trade in bushmeat. Because bushmeat continues to be traded internationally, both regionally and on a larger scale, the United States believes that it is appropriate that the issue remain a focus within CITES and supports the adoption of the draft resolution. We recommend that the draft resolution also include a recommendation that the Working Group report to the COP as appropriate on its progress. We do not support the adoption of the first draft decision because we believe that the Working Group should retain its present name in order to encourage other regions facing similar issues to become involved in this work. Also, we believe that the reporting recommendation should be included in the draft resolution. We believe that the recommendations included in the second draft decision are more fully addressed in the draft decision included in document COP13 Doc. 62.2.

62.2 Bushmeat (Doc. 62.2; Ireland). *Tentative U.S. negotiating position:* Support. Recognizing that bushmeat trade is largely restricted to domestic markets and many of the species involved are not listed under CITES, Ireland believes that more needs to be done to encourage other international organizations to provide assistance in regulating the trade in bushmeat. The draft decision contained in the document directs the Secretariat to encourage increased involvement of the Parties to the Convention on Biological Diversity (CBD), through the Secretariat of the CBD, and the FAO in this issue. It further calls on the FAO to convene a workshop of international organizations, subject to sufficient funding, to facilitate the development of an action plan to address the problems underlying the unsustainable trade in bushmeat.

Conclusion of the Meeting

63. Determination of the time and venue of the next regular meeting of the Conference of the Parties (No document). *Tentative U.S. negotiating position:* Support. The Secretariat does not normally circulate a document on the time and venue of the next COP. We

anticipate receiving information on this at COP13, at which time the United States will develop a negotiating position. The United States favors holding COP14 in a country where all Parties and observers will be admitted without political difficulties.

64. Closing remarks (No document):

Future Actions

During our regular public briefings at COP13, we will discuss any changes in our negotiating positions. After COP13, we will host a public meeting to (*see* **ADDRESSES**, Public Meeting, above) to announce results of COP13 and invite public input on whether the United States should take a reservation on any of the amendments adopted to the CITES Appendices. While CITES provides a period of 90 days from the close of a COP for any Party to enter a reservation with respect to an amendment to Appendices I or II, the United States has never entered a reservation on any CITES listing. As discussed in the **Federal Register** notice of November 17, 1987 (52 FR 43924), entering a reservation would do very little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted CITES, and has not taken a reservation with regard to the species, part, or derivative, the United States would continue to require CITES documents as a condition of import. A reservation by the United States also would provide exporters in this country with little relief from the need for the U.S. export documents. Receiving countries that are party to CITES will require CITES-equivalent documentation from the United States even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving countries) only if they issue documents containing all of the information required in CITES permits and certificates.

Authority: This **Federal Register** notice has been published under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 17, 2004.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–21780 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on October 27, 2004, at the Crowne Plaza located at 2532 W. Peoria Avenue, Phoenix, Arizona. It will begin at 9 a.m. and conclude at 4 p.m. The agenda items to be covered include: Review of the August 18, 2004, meeting minutes; BLM State Director's update on statewide issues; new RAC member orientation; presentations on Mineral Split-Estate, Service First, and Draft Report to Congress on Section 321 of the Defense Authorization Act; and Arizona land use planning updates; RAC questions on written reports from BLM Field Managers; Field Office Rangeland Resource Team Proposals; reports by the Standards and Guidelines, Recreation, Off-Highway Vehicle Use, Public Relations, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups; reports from RAC members; and discussion of future meetings. A public comment period will be provided at 11:30 a.m. on October 27, 2004, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Joanie Losacco,

Acting Arizona State Director.

[FR Doc. 04–21822 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; Nev–045154; 4–08807]

Public Land Order No. 7617; Partial Revocation of Public Land Order No. 2307; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes Public Land Order No. 2307 insofar as it affects approximately 19 acres of land withdrawn for use by the Department of the Air Force in Nye County, Nevada. This order opens the land to surface entry, mining, mineral leasing, and mineral material disposals.

DATES: October 29, 2004.

FOR FURTHER INFORMATION CONTACT: Wendy Seley, BLM Tonopah Field Station, P.O. Box 911, 1553 South Main, Tonopah, Nevada 89049, (775) 482–7800.

SUPPLEMENTARY INFORMATION: On March 21, 1961, Public Land Order No. 2307 withdrew three parcels of land which included a Department of the Air Force radar site. The radar site is no longer needed and has been relinquished by the Air Force.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 2307, which withdrew public land for use by the Department of the Air Force for the Beatty Range Radar Site, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 10 S., R. 46 E.,
Sec. 9, unsurveyed. Commencing for reference at a point on a high peak whose approximate geographical location is latitude 37°05′ and longitude 116°49′ thence south 466.69 feet to the point of beginning; thence West, 466.69 feet; North, 933.38 feet; East, 933.38 feet; South, 933.38 feet; West, 466.69 feet to the point of beginning.

The tract described contains approximately 19 acres in Nye County.

2. At 9 a.m. on October 29, 2004, the land described in paragraph 1, will be opened to the operation of the public land laws generally, the operation of the mineral leasing laws, and the mineral material laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 29, 2004, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on October 29, 2004, the land described in paragraph 1, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of

the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 14, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–21776 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf (OCS) Policy Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Policy Committee will meet at the Holiday Inn Capitol in Washington, DC.

DATES: Wednesday, October 20, 2004, from 8:30 a.m. to 5 p.m. and Thursday, October 21, 2004, from 8:30 a.m. to 12 p.m.

ADDRESSES: The Holiday Inn Capitol Hotel, 550 C Street, SW., Washington, DC 20024, telephone (202) 479–4000.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at *jeryne.bryant@mms.gov.*

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal states, local government, environmental community, industry, and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of the MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for Wednesday, October 20 will cover the following principal subjects:

Overview of Global Oil and Gas Situation

This presentation will address the latest trends on oil and markets both nationally and internationally with an emphasis on how it relates to DOI's role.

OCS and MMS Role in the Domestic Energy Picture

This presentation will address MMS's mission and business practices in managing mineral resource development on the OCS.

MMS Regional Issues

The Regional Directors will highlight activities off the California and Alaska coasts and the Gulf of Mexico.

Future Planning

This presentation will address the 5–Year OCS Oil and Gas Leasing Program 2007–2012 and ways to prepare for future decision or direction of the Program.

Multiple Use of Existing Infrastructure

This presentation will address conversion of OCS oil and gas infrastructure for other uses, proposed OCS legislation and MMS's commitment to the challenge.

The agenda for Thursday, October 21 will cover the following principal subjects:

Committee Business

The new Committee will establish operating procedures and elect officers.

U.S. Commission on Ocean Policy

This presentation will highlight the Commission's final report and its recommendations for a national ocean policy.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than October 13, 2004, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 24, 2004.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 04–21843 Filed 9–28–04; 8:45 am]

BILLING CODE 4310–MR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 15, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

e-mail: records.mgt@nara.gov.

FAX: (301) 837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which

submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–3120. e-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

(1) Department of the Air Force, Agency-wide (N1–AFU–03–23, 2 items, 2 temporary items). Test materials and other records used in agency distance learning programs. Electronic copies of records created using electronic mail and word processing are also included.

(2) Department of the Air Force, Agency-wide (N1–AFU–03–9, 10 items, 10 temporary items). Certificate management authority records required for operating a public key infrastructure for digital signatures. Included are such records as certificate practice statements, contractual agreements, system equipment configuration records, certificate and revocation requests, subscriber identity authentications, documentation of receipt and acceptance of certificates, certificate revocation lists, and security audit records. Also included are electronic copies of records created using electronic mail and word processing. The schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

(3) Department of the Army, Agency-wide (N1–AU–04–8, 3 items, 3 temporary items). Records relating to the agency's program to maximize the quality and integrity of the information it provides to the public. Included are such records as registers, routine notices, memorandums, standards, procedures, and guidelines. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

(4) Department of Transportation, Bureau of Transportation Statistics (N1–398–04–1, 3 items, 1 temporary item). First, second, and third quarter electronic data regarding passenger flights. Proposed for permanent retention are the cumulative fourth quarter data and the related documentation.

(5) Department of Transportation, Bureau of Transportation Statistics (N1–398–04–12, 5 items, 4 temporary items). Speeches and testimony given by agency officials other than the Director and Deputy Director. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of speeches and testimony by the Director and Deputy Director. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

(6) Department of Transportation, Bureau of Transportation Statistics (N1–398–04–13, 6 items, 5 temporary items). Press release background materials and newspaper clippings. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of press releases and fact sheets. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

(7) Department of Transportation, Bureau of Transportation Statistics (N1–398–04–14, 6 items, 5 temporary items). Routine publications, promotional items, and associated working papers. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of mission-related publications and promotional items. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

(8) Department of the Treasury, Internal Revenue Service (N1–58–04–5, 7 items, 7 temporary items). Administrative files and closed legal case files accumulated in the Office of the Associate Chief Counsel (General Legal Services), including area offices in the field. Also included are electronic copies of records created using electronic mail and word processing.

(9) Department of the Treasury, Internal Revenue Service (N1–58–04–6, 1 item, 1 temporary item). Audio digital recordings and screen image captures used to randomly review the customer service provided to the public by agency taxpayer assistors.

(10) National Commission on Libraries and Information Science, Administration (N1–220–04–4, 20 items, 18 temporary items). Administrative records relating to such matters as personnel management, travel, mailing lists, delegations of authority, records management, space planning, and stationery. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of records relating to nominations and appointments to the Commission and the use of the Commission seal.

(11) National Commission on Libraries and Information Science, Budget and Finance (N1–220–04–5, 2 items, 1 temporary item). Electronic spreadsheets relating to budgetary and

financial matters. Proposed for permanent retention are recordkeeping copies of annual budget files.

(12) National Commission on Libraries and Information Science, Sister Library Program (N1–220–04–6, 10 items, 8 temporary items). Records relating to the Sister Library Program, including such files as applications, a database used to manage applications and contacts, and electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of general subject files and samples of materials produced by participant libraries.

(13) National Commission on Libraries and Information Science, White House Conference on Libraries and Information Services (N1–220–04–7, 16 items, 9 temporary items). Records of the second White House Conference on Libraries and Information Sciences held during the administration of President George H. W. Bush. Included are records relating to such subjects as travel, printing, and other administrative matters, copies of informational materials, and electronic copies of records created using electronic mail and word processing. Also included are some records that both pre-date and post-date the conference. Proposed for permanent retention are recordkeeping copies of such records as program files, audiovisual materials, and hearing and open forum files.

Dated: September 20, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–21769 Filed 9–28–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The NCUA Board is requesting comment on ways to update, clarify and simplify the Federal Credit Union (FCU) Bylaws. In addition, this notice requests comment on specific, suggested changes to the FCU Bylaws.

DATES: The NCUA must receive comments on or before November 29, 2004.

ADDRESSES: You may submit comments by any of the following methods. (Please send comments by one method only):

- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- e-mail: Address to *regcomments@ncua.gov.* Include "[Your name] Comments on FCU Bylaws" in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Chrisanthy Loizos, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The FCU Act requires the NCUA Board to prepare bylaws that "shall be used" by FCUs. 12 U.S.C. 1758. In 1999, the NCUA Board issued revised FCU Bylaws. 64 FR 55760 (October 14, 1999). The 1999 revision included consolidating the existing bylaws into one publication, deleting outdated and obsolete bylaws, and using plain English.

It has been five years since that revision. The NCUA Board has a policy of continually reviewing NCUA regulations to "update, clarify and simplify existing regulations and eliminate unnecessary and redundant and unnecessary provisions." NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. As a result of NCUA's 2003 review, the Board has decided to seek comment on the FCU Bylaws to see if there are areas needing additional revisions at this time. The Board is aware of a few provisions in the bylaws it believes should be revised and is requesting comment on the specific, suggested changes discussed below.

Request for Comment

Article III, Section 7. In 1999, the Board clarified in the FCU Bylaws that owners of a joint account may be members of the FCU without opening separate accounts if they each purchase at least one share. Because some FCUs may not want to allow joint owners of one account to be members, the Board is proposing to add an alternative bylaw provision that would allow an FCU to require separate accounts for membership. An FCU would choose in its bylaws whether or not to allow joint account holders to be members without each opening a separate account. The Board proposes the following language as an alternative Section 7: "Each member must purchase and maintain at least one share in a share account that names the member as the sole or primary owner. Being named as a joint owner of a joint account is insufficient to establish membership."

Article IV, Section 4. This section provides the suggested order of business at annual meetings but does not require that every item of business listed be addressed during the meeting. The Board seeks comment on whether this section should include the required items of business that FCU officials must present at the annual meeting. For instance, the annual meeting must include the election of directors to vacant seats. 12 U.S.C. 1761(a). The supervisory committee is also required to provide a summary of its annual audit report to the members either orally or in writing at the annual meeting. 12 U.S.C. 1761d; 12 CFR 715.10. An FCU that participates in the Community Development Revolving Loan Program must report on its progress of providing needed community services at its annual meeting unless it sends the information to members in a written report. 12 CFR 705.6(b). The Board seeks comment on whether annual meeting requirements like the ones noted should be added to the bylaws.

Article V, Option A4, Sections 1 and 2. In Section 2, the sentence "All elections are determined by plurality vote" was inadvertently omitted from the beginning of this section. We recommend including this language that is present in the other three election options.

In addition, the Board is considering changing this provision, which currently permits voting electronically, to allow for mailing all notices electronically if the member consents. This would be accomplished by: (1) Adding to Section 1 at the end of paragraph one "or the secretary may use electronic mail to notify members who have opted to receive notices or statements electronically"; (2) deleting "written" everywhere it appears in Section 1, paragraph two; and (3) adding to the end of Section 2(b) "provided, however, that electronic mail may be used to provide the notice of ballot to members who have opted to receive notices or statements electronically."

Article V, Option A4, Section 2(c)(2). The Board is considering amending this

provision to require an FCU to include a mail ballot with its electronic election procedure instructions rather than require a member without the requisite electronic device to request a ballot. Requiring members to contact the FCU in order to receive a ballot may discourage member participation in the election process. If the mail ballot is included with the electronic election instructions, members will have a choice as to the voting method without having to contact the FCU.

Article V, Option A4, Section 2(d)(5). This provision addresses mail ballots and states that, if one form is used for the ballot and identification form, it must be "properly designed." NCUA's Office of General Counsel has interpreted this provision to require secrecy in the balloting process. OGC Legal Opinions 03–510, dated July 30, 2003; 03–1048, dated March 12, 2004. Prior editions of the FCU Bylaws provided instructions that stated: "[t]he ID form will be separated from your ballot when it reaches the credit union, and before any ballots are opened." Federal Credit Union Standard Bylaw Amendments and Guidelines, Sample Ballot, p. 41, October 1991.

The Board is interested in comments on whether this bylaw should be revised to address the secrecy requirement in conjunction with what constitutes a "properly designed" ballot. One issue to consider is the manner in which an FCU can establish an election process that assures members their votes remain confidential and secret from all interested parties when an independent third-party teller reviews the ballots with the members' signatures.

In another matter related to properly designed ballots, the Board is considering a change that would allow names printed on ballots to be placed in alphabetical order as an alternative to determining the order by drawing lots. The Board seeks comment on this suggestion and other alternatives to a fair and properly designed ballot.

Article V, Section 4. This section currently reads: "Members cannot vote by proxy, but a member other than a natural person may vote through an agent designated in writing for the purpose. A trustee, or other person acting in a representative capacity, is not as such, entitled to vote." The Board proposes deleting the second sentence. The second sentence reflects a prior legal view when FCU authority to establish trust accounts was limited to trust accounts for minors. Among other restrictions on these accounts at the time, the trustee had to be a member but was not entitled to vote. The provision is now outdated because a trust is recognized as a legal entity and may qualify for membership in its own right. Also, formal trust agreements generally provide that a trustee has the power to vote on behalf of a trust when the trust holds shares or stock that entitle the owner to vote.

Article V, Section 7. The Board seeks comment on whether to include a provision that sets a minimum age as a qualification for eligibility to vote and hold office, as a second option to Section 7, which currently allows an FCU's board to establish the age by resolution.

Article IX, Section 1. The FCU Act precludes the director who is the "compensated officer" from being the director who can also be on the supervisory committee. 12 U.S.C. 1761(b). The bylaw currently states that "[t]he supervisory committee is appointed by the board from among the members of this credit union, one of whom may be a director other than the financial officer." The bylaw incorrectly assumes that the financial officer is the "compensated officer." We propose replacing "financial officer" with "compensated officer" so that the bylaw is consistent with the FCU Act.

The Board is seeking comment on all of the above mentioned proposed changes and also suggestions on other ways to update, clarify and simplify the existing FCU Bylaws. For example, NCUA has encouraged FCU managers and directors to consider improvements in matters relating to corporate governance and auditing in a manner similar to the requirements imposed on public companies under the Sarbanes-Oxley Act of 2002. NCUA Letter to Federal Credit Unions 03–FCU–07 (October 2003). The Board believes that sound corporate governance practices begin with prepared directors and managers. The Board welcomes comments on whether particular corporate governance practices or related issues should be added to the FCU Bylaws, such as board training or ethics. Based upon the comments, the Board will issue a notice with proposed bylaws and request for comment.

By the National Credit Union Administration Board on September 23, 2004.

Mary Rupp,

Secretary of the Board.

[FR Doc. 04–21758 Filed 9–28–04; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its June 7, 2002, application for proposed amendment to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, for Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

The proposed amendments would have revised the Updated Final Safety Analysis Report with regard to tornado mitigation. The proposed amendments would have eliminated credit for the flow path from the spent fuel pool to the high pressure injection pump following a tornado and would have credited the standby shutdown facility as the assured means of achieving safe shutdown following a tornado.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment that was originally published in the **Federal Register** on July 23, 2002 (67 FR 48216). A revised Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on February 18, 2003 (67 FR 7814). However, by letter dated September 9, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 7, 2002, and the licensee's letter dated September 9, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC'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 Systems (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, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of September, 2004.

For the Nuclear Regulatory Commission.

Leonard N. Olshan, Sr.

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–21764 Filed 9–28–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendments To Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (I&M or the licensee) for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, (D. C. Cook) located in Berrien County, Michigan.

The proposed amendment, requested by I&M in its application dated April 6, 2004, represents a full conversion from the Current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1431, "Standard Technical Specifications (STS) for Westinghouse Plants," Revision 2, dated April 2001. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the NRC staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement)," published in the **Federal Register** on July 22,1993 (58 FR 39132), to the CTS and using NUREG–1431 as a basis, proposed an ITS for D. C. Cook. The criteria in the Final Policy Statement was subsequently added to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50.36, "Technical Specifications," in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

In addition to the conversion, the licensee also proposed: (1) To delete three license conditions in the operating licenses for D. C. Cook Units 1 and 2 and relocate the requirements to either the ITS or the Technical Requirements Manual of the D. C. Cook Updated Final Safety Analysis Report (UFSAR); and (2) 34 beyond scope issues (BSIs) where the proposed requirements are different from the CTS or the STS NUREG–1431. The BSIs are identified later in this notice.

This notice is based on the application dated April 6, 2004, and the information provided to the NRC through the Cook ITS Conversion Web page. To expedite its review of the application, the NRC staff issued its requests for additional information (RAIs) through the Cook ITS Conversion Web page and the licensee addressed the RAIs by providing responses on the Web page. Entry into the database is protected so that only licensee and NRC reviewers can enter information into the database to add RAIs (NRC) or providing responses to the RAIs (licensee); however, the public can enter the database to only read the questions asked and the responses provided. To be in compliance with the regulations for written communications for license amendment requests and to have the database on the D. C. Cook dockets before the amendments would be issued, the licensee will submit a copy of the database in a submittal to the NRC after there are no further RAIs and before the amendments would be issued. The public can access the database through the NRC Web site at *http://www.nrc.gov* by the following process: (1) Click on the tab labeled "Nuclear Reactors" on the NRC home page along the upper part of the web page, (2) then click on the link to "Operating Reactors," which is under "Regulated Activities" on the left hand side of the web page, (3) then click on the link to "Improved Standard Technical Specifications" which is on right hand side of the page, and (4) finally click on the link to "Comments on the application and responses by D. C. Cook," near the bottom of the Web page, to open the database. The RAIs and responses to RAIs are organized by ITS Sections 1.0, 2.0, 3.0, 3.1 through 3.9, 4.0, and 5.0, which are listed first, and the 34 BSIs, which are listed later. For every listed ITS section or BSI, there is an RAI which can be read by clicking on the ITS section or BSI number. The licensee's responses are shown by a solid triangle adjacent to the ITS section or BSI number, and, to read the response, you click on the triangle. To page down through the ITS sections to the BSIs, click on "next" along the top of the page or on "previous" to return to the previous page.

The licensee has categorized the proposed changes to the CTS into five general groupings within the description of changes (DOC) section of the application. These groupings are characterized as administrative changes (*i.e.*, ITS x.x, DOC A.xx), more restrictive changes (*i.e.*, ITS x.x, DOC M.xx), relocated specifications (*i.e.*, ITS x.x, DOC R.xx), removed detail changes (*i.e.*, ITS x.x, DOC LA.xx), and less restrictive changes (*i.e.*, ITS x.x, DOC L.xx). This is to say that the DOCs are numbered sequentially within each letter designator for each ITS Chapter, Section, or Specification, and the designations are A.xx for administrative changes, M.xx for more restrictive changes, R.xx for relocated specifications, LA.xx for removed detail changes, and L.xx for less restrictive changes. These changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

Administrative changes are those that involve restructuring, renumbering, rewording interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the CTS. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant); (b) identifying plant-specific wording for system names, etc.; and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the STS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded

that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c) and, therefore, may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Attachment 1 to the licensee's April 6, 2004, application, "Donald C. Cook Nuclear Plant, Units 1 and 2, License Amendment Request—Conversion of Current Technical Specifications (CTS) to Improved Technical Specifications (ITS)." The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively-controlled documents such as the quality assurance program, the UFSAR, the ITS Bases, the technical requirements manual that is incorporated by reference in the UFSAR, the core operating limits report, the offsite dose calculation manual, the inservice testing program, the inservice inspection program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59.

Removed detail changes, are changes to the CTS that eliminate detail and relocate the detail to a licensee-controlled document. Typically, this involves details of system design and function, or procedural detail on methods of conducting a surveillance requirement (SR). These changes are supported, in aggregate, by a single generic no significant hazard consideration. The generic type of removed detail change is identified in italics at the beginning of the DOC.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of: (a) Generic NRC actions; (b) new NRC staff positions that have evolved from technological advancements and operating experience; or (c) resolution of the Owners Groups' comments on the Improved STSs. Generic relaxations contained in NUREG–1431 were reviewed by the NRC staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different from the requirements in both the CTS and the STS NUREG–1431. The BSIs are listed below in which the first 21 were identified by the licensee and addressed in Enclosure 4 to its application. In some cases, the BSI is addressed as a justification for deviation (JFD) from the STS, and identified as ITS x.x, JFD x. These BSIs to the conversion, listed in the order of the applicable ITS specification or section, are as follows [note that the words below that are capitalized are terms that are defined in the ITS]:

(1) Surveillance Frequencies for certain CHANNEL CALIBRATION Surveillance Requirements (SRs) are being changed from 18 months in the CTS to either 31 days or 184 days in the ITS. (ITS 3.3.1, DOC M.16; ITS 3.3.2, DOC M.10; ITS 3.3.5, DOC M.2)

(2) Changing certain ALLOWABLE VALUES as a result of extending the CHANNEL CALIBRATION surveillance frequency from 18 months to 24 months. (ITS 3.3.1, DOC M.17; ITS 3.3.1, DOC L.19; ITS 3.3.2, DOC M.11; ITS 3.3.2, DOC L.22

(3) Certain surveillance frequencies are being changed from 7 days, 31 days, or 92 days to 184 days. (ITS 3.3.1, DOC L.18; ITS 3.3.2, DOC L.19; ITS 3.3.5, DOC L.5; ITS 3.3.6, DOC L.9; ITS 3.4.15, DOC L.8; ITS 3.6.9, DOC L.3; ITS 3.7.10, DOC L.3; ITS 3.7.12, DOC L.3; ITS 3.7.13, DOC L.5)

(4) Decreases the number of manual channels required OPERABLE to one per train. (ITS 3.3.2, DOC L.20)

(5) Decreases the number of manual channels required OPERABLE to one per train. (ITS 3.3.6, DOC L.10)

(6) Deletes the once per shift SOURCE CHECK requirement on the containment radiation instrumentation. (ITS 3.3.6, DOC L.11)

(7) Changes the number coolant loop required to be in operation and/or OPERABLE, based on the status of the rod control system. (ITS 3.4.6, DOC L.1)

(8) Requirement to specifically state the required water level as referenced to a specific point inside the steam generators instead of using a specific indication from one instrument is being changed. (ITS 3.4.6, DOC L.5; ITS 3.4.7, DOC L.3)

(9) Changes for Unit 1 only to: (1) Decrease the unidentified LEAKAGE limit and provide additional REQUIRED ACTIONS; and (2) add the requirement to analyze grab samples of the containment atmosphere every 12 hours instead of every 24 hours. (ITS 3.4.13, DOC M.1; ITS 3.4.15, DOC M.2)

(10) Increasing the pressure constant value, resulting in a decrease in the calculated seal line resistance flow. (ITS 3.5.5, DOC M.1)

(11) Require two of the three refueling canal drains to be OPERABLE, and, due to this change, the word "required" has been added to the Actions and the SRs since not all installed refueling drains are required to be OPERABLE. (ITS 3.6.14, DOC L.2)

(12) Increasing the condensate storage tank volume requirements. (ITS 3.7.6, DOC M.1)

(13) Delete the 1-hour allowance to delay declaring inoperable the opposite unit essential service water (ESW) train, and adds requirements to address the opposite unit ESW train. (ITS 3.7.8, DOC M.3)

(14) Ensure only one control room air conditioning (CRAC) train is in operation and change the temperature limit from 95 °F to 85 °F during the 12-hour surveillance, and add a specific requirement to verify that each CRAC train can maintain control room air temperature < 85 °F every 31 days, and add requirements to verify control room air temperature. (ITS 3.7.11, DOC M.2)

(15) Add the requirement that the required fuel handling area exhaust ventilation (FHAEV) train must be in operation, add an ACTION to take if the required FHAEV train is not in operation, add a new surveillance

requirement to periodically verify the required FHAEV train is in operation, and delete a surveillance requirement to verify the train automatically directs its exhaust flow through the charcoal adsorber banks on an actuation signal. (ITS 3.7.13, DOC M.1)

(16) Reduce the steady-state voltage range from 4160 ± 420 V to 4160 +240 V, − 250 V, and the steady-state frequency range from 60 ± 1.2 Hz to 60 + 1.2 Hz, − 0.6 Hz. (ITS 3.8.1, DOC M.5)

(17) Delete the requirement to perform the surveillance requirement in accordance with the Diesel Generator (DG) Test Schedule Table, and change the nominal test frequency to 92 days. (ITS 3.8.1, DOC L.19)

(18) Deletes requirements in CTS SR 4.8.1.1.2.e.10 on testing the DG. (ITS 3.8.1, DOC L.20)

(19) Changes the time to perform surveillance requirement checks from 8 hours or 24 hours, to 12 hours. (ITS 3.8.1, DOC L.21)

(20) Certain CTS SRs are not required in the ITS. (ITS 3.8.2, DOC L.6)

(21) Extend the surveillance frequency for various surveillance requirements to 24 months, consistent with the guidelines provided in NRC Generic Letter 91–04. (ITS 3.1.4, DOC L.9; ITS 3.3.1, DOCs L.1, L.2, L.3 and L.11; ITS 3.3.2, DOCs L.1, L.2, L.4 and L.13; ITS 3.3.3, DOC L.6; ITS 3.3.4, DOC L.1; ITS 3.3.6, DOCs L.5 and L.6; ITS 3.3.7, DOC L.2; ITS 3.3.8, DOC L.3; ITS 3.4.1, DOC L.2; ITS 3.4.9, DOC L.1; ITS 3.4.11, DOC L.3; ITS 3.4.12, DOC L.3; ITS 3.4.14, DOC L.4; ITS 3.4.15, DOC L.6; ITS 3.5.2, DOC L.3; ITS 3.6.3, DOC L.5; ITS 3.6.6, DOC L.1; ITS 3.6.7, DOC L.1; ITS 3.6.8, DOC L.3; ITS 3.6.9, DOC L.2; ITS 3.6.13, DOC L.1; ITS 3.7.5, DOC L.8; ITS 3.7.7, DOC L.2; ITS 3.7.8, DOC L.2; ITS 3.7.10, DOC L.2; ITS 3.7.12, L.2; ITS 3.7.13, DOC L.4; ITS 3.8.1, DOC L.3; ITS 3.8.4, DOC L.2; and ITS 5.5, DOCs L.1 and L.3)

(22) The surveillance frequency is changed from prior to reactor startup if not performed within the previous 7 days to 24 months. (ITS 3.3.1, DOC L.12)

(23) CTS Table 4.3–1 requires a CHANNEL CALIBRATION of Functional Units 7 and 8, the Overtemperature delta T and Overpower delta T channels, respectfully. The ITS specifies the normalization of the delta T channels is not required to be performed until 72 hours after Thermal Power is greater than or equal to 98 percent rated thermal power. (ITS 3.3.1, DOC M.10)

(24) CTS Table 4.3–1 Functional Units 18.A and 18.B specify the SRs for the Turbine Trip—Low Fluid Oil Pressure and Turbine Stop Valve Closure Functions, but does not include a CHANNEL CALIBRATION requirement. ITS SR 3.3.1.13 has been added which requires a CHANNEL CALIBRATION of these channels every 24 months. (Table 3.3.1–1 Functions 16.a and 16.b). (ITS 3.3.1, DOC M.14)

(25) The CTS is being changed by adding the explicit Automatic Actuation Logic and Actuation Relays SRs for ITS Function 5.a, Turbine Trip and Feedwater Isolation. The frequency proposed for the slave relay (24 months) is consistent with the frequency proposed for the simulated actuation tests. (ITS 3.3.2, DOC M.2)

(26) The proposed test frequencies are based on consistency with either other functions or with simulated actuation tests. (ITS 3.3.2, DOC M.3)

(27) Licensee is applying WCAP–10271 to the Containment Air Recirculation Fan Actuation logic, and Containment Pressure—High Functions. (ITS 3.3.2, DOC L.5)

(28) Licensee applying WCAP–10271, WCAP–15376 and WCAP–14333 for the required actions, completion times, and surveillance test intervals for the functions listed in DOC L.5 and L.17. (ITS 3.3.2, DOC L.5 and L.17)

(29) Deviation from STS for the P–12 interlock action to place in "trip" instead of "place in the required state." (ITS 3.3.2, JFD 23)

(30) Eliminate requirements for residual heat removal trip bypass when the refueling water storage tank level instrumentation becomes inoperable. (ITS 3.3.3, DOC L.4)

(31) Relax the CTS surveillance frequency for the hydrogen analyzer by deleting the requirement to test on a STAGGERED TEST BASIS. (ITS 3.3.3, DOC L.13)

(32) Adopt the STS repair allowed outage time of 6 hours before the channel must be placed in trip. (ITS 3.3.5, DOC L.2)

(33) Add a setpoint methodology citation to the ITS Bases. (ITS 3.3.5, Bases Insert 4—Reference 4)

(34) Revise the wording in Required Action A.1 of ITS 3.5.5. (ITS 3.5.5, JFD 4)

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility 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 a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 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, [E T='03']http://www.nrc.gov/reading-rm/doc-collections/cfr/.[/E] If a request for a hearing or petition for leave to intervene is filed by the above date, 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/requestor 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 requestor's/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 intends to rely in proving the contention at the

hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner 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.

Nontimely 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.* A copy of the request for hearing and petition for leave to intervene should also be sent David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

For further details with respect to this action, see the licensee's application for amendment dated April 6, 2004, and the Cook ITS Conversion Web page (as discussed above). Documents may be examined, and/or copied for a fee at the Commission's 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 at Rockville, Maryland, this 23rd day of September, 2004.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–21765 Filed 9–28–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50417; File No. SR–CHX–2003–07]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Stock Exchange, Incorporated Relating to Out-of-Range Execution Rules

September 21, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003, the Chicago Stock Exchange, Incorporated ("CHX" 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 March 10, 2004, the Exchange filed Amendment No. 1 to the proposed rule change,[3] and on September 15, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[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 CHX Article XX, Rule 37, which governs, among other things, "out-of-range" executions. The text of the proposed rule change, as amended, appears below. Additions appear in *italics*; deletions are in [brackets].

* * * * *

Chicago Stock Exchange Rules

ARTICLE XX

Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a)Guaranteed Executions.

* * * * *

[6. Executions Outside of Range. Since executions are guaranteed on the basis of the size and price of the best bid or offering, the order may be executed out of the primary market range for the day but in a Dual Trading System issue a stop must be granted if requested.]

[7.]*6.* No change to text.

* * * * *

(b) Automated Executions.

* * * * *

(9) [All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. Additionally, specialists may stop limit orders that are marketable when entered into the MAX System. Subject to Interpretations and Policies .03 under this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials.]

* * * * *

(d) SuperMAX 2000.

SuperMAX 2000 shall be a voluntary automatic execution program within the MAX System. SuperMAX 2000 shall be available for any security trading on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 2004 ("Amendment No. 1"). Amendment No. 1 clarified the purpose and effects of the proposal.

[4] *See* letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 13, 2004 ("Amendment No. 2"). Amendment No. 2 replaced the original proposal and Amendment No. 1 in their entirety.

Exchange in decimal price increments. A specialist may choose to enable this voluntary program within the MAX System on an issue-by-issue basis.

* * * * *

[(5) Out of Range. Notwithstanding anything herein to the contrary, SuperMAX 2000 will not automatically execute an order if such execution would result in an out of range execution.]

* * * * *

. . . Interpretations and Policies

.01 No change to text.

.02 No change to text.

.03 *Reserved for future use.* [With regard to paragraph 6 of paragraph (a) of this Rule, in the case of a minimum variation market, a stopped sell order will not be filled until a transaction takes place at the bid price or lower on the primary exchange or the Exchange's displayed share volume at the offering has been exhausted. A stopped buy order will not be filled until a transaction takes place at the offering price or higher on the primary exchange or the Exchange's displayed share volume at the bid has been exhausted. Notwithstanding the foregoing, all orders stopped pursuant to this Interpretation and Policy .03 shall be executed by the end of the trading day on which such order was stopped at no worse than the stopped price.]

* * * * *

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 CHX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 CHX Article XX, Rule 37, which governs, among other things, "out-of-range" executions. The Exchange's rules currently impose specific order handling requirements on specialists when the execution of an order would result in an out-of-range execution.[5] For example, Exchange rules require that market orders received through MAX®, the Exchange's automated routing and execution system that would result in an out-of-range execution are deemed received with a request to stop.[6] Under existing rules, a specialist may execute a stopped order out of the primary market range only with the approval of two floor officials.

This out-of-range rule likely was put in place at the request of customers, or as a marketing tool to attract new customers, when trading occurred in much larger minimum variations and when trading on regional exchanges was somewhat less common. Today, trading on regional exchanges is not a new phenomenon. Moreover, trading on all markets now occurs in a decimal trading environment, where an out-of-range execution based on the national best bid or offer is more readily seen by customers as accurately and appropriately reflecting the current market for the security. In addition, the existing rule can have the unintended—and in today's sometimes fast-paced trading environment—inappropriate result of delaying order executions when the specialist has stopped the order waiting for an opportunity to fill it within the primary market range.[7] For all of these reasons, the Exchange believes that it is no longer necessary to require that its specialists only fill orders within the primary market range for the day.

The proposed rule text would eliminate all references to specific order-handling responsibilities with respect to out-of-range executions.[8] Once the out-of-range functionality is eliminated from the Exchange's systems, an order that is eligible for automatic execution will be automatically executed by the Exchange's MAX system, even if it will constitute an out-of-range execution.

2. Statutory Basis

The CHX believes that the proposed rule change, as amended, is consistent with 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 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.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments Regarding 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 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 (*http://www.sec.gov/rules/sro.shtml*); or

[5] An "out-of-range" execution is an execution that would create a new high or new low for the day when compared to the primary market range.

[6] *See* CHX Article XX, Rule 37(b)(9).

[7] Inadvertent violations of the current rule also require specialists to correct improper executions, which can be an inconvenience to the Exchange's order-sending firms who must send additional execution confirmations to their customers.

[8] Deletion of the out-of-range provisions relating to the stopping of otherwise out-of-range orders may impact CHX Article XX, Rule 28, which deals with a CHX specialist's liability for stopped orders. The Exchange, based on discussions with the Commission, agrees that it is appropriate to clarify whether the practice of stopping stock should be permitted on the Exchange. If the Exchange's management, member committees and Board of Governors determines that this practice should be prohibited, the Exchange will effect such a rule change, including deletion of CHX Article XX, Rule 28, by means of a separate submission to the Commission. If the Exchange determines that it remains appropriate for CHX specialists to stop stock in certain limited circumstances, then the Exchange will submit a rule change to the Commission that would specifically define the circumstances under which stock may be stopped on the CHX, and specifically outlining appropriate CHX specialist conduct under such circumstances.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

• Send e-mail to *rule-comments@sec.gov*. Please include File No. SR–CHX–2003–07 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–CHX–2003–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. 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–CHX–2003–07 and should be submitted on or before October 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21839 Filed 9–28–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50430; File No. SR–PCX–2004–78]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Priority and Order Allocation Procedures for PCX Plus

September 23, 2004.

On August 10, 2004, the Pacific Exchange, Inc. ("PCX") 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 PCX Rule 6.76 (Priority and Allocation Procedures of PCX Plus) to eliminate the requirement that inbound marketable Broker Dealer orders route to Floor Broker Hand Held Terminals in some trading scenarios in lieu of receiving immediate electronic executions and to eliminate Electronic Book Execution pursuant to PCX Rule 6.76(b)(4). The proposed rule change was published for comment in the **Federal Register** on August 19, 2004.[3] The Commission received no comments on the proposal.

The Exchange proposes to amend PCX Rule 6.76 to allow Firm and Non-OTP Holder Market Maker[4] orders to immediately execute on PCX Plus. The PCX also proposes to remove the restrictions on an order entered by a Firm or Non-OTP Holder or OTP Firm Market Maker less than one minute before the inbound order. In addition, the Exchange proposes to eliminate the 40% participation limitation currently placed on a Firm, Non-OTP Holder or OTP Firm Market Maker for an inbound order that is not entirely filled. Finally, the PCX proposes to eliminate the Electronic Book Execution rules set forth in PCX Rule 6.76(b)(4) that prevent PCX Market Makers from immediately executing orders against the Consolidated Book.

After careful review, 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[5] and, in particular, the requirements of section 6(b) of the Act[6] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission finds that, in eliminating restrictions which prevent Firm and Non-OTP Market Maker orders from immediately executing, the proposed rule changes should provide greater efficiencies in the marketplace. In particular, the Commission believes that allowing PCX Market Makers to immediately execute against the Consolidated Book by eliminating the Electronic Book Execution rules of PCX Rule 6.76.(b)(4) should improve the speed of executions at the PCX.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–PCX–2004–78) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21838 Filed 9–28–04; 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. 50191 (August 13, 2004), 69 FR 51504.

[4] The term "Non-OTP Holder Market Maker" includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers and competitive market makers registered on an exchange other than the PCX. *See* PCX Rule 6.1(b)(35).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4844]

Culturally Significant Objects Imported for Exhibition Determinations: "Comic Grotesque: Wit and Mockery in German Art, 1870–1940"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Comic Grotesque: Wit and Mockery in German Art, 1870–1940" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie New York, New York, New York, from on or about October 15, 2004 to on or about February 14, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State (telephone: (202) 619–5078). The address is: 301 4th Street, SW., (SA–44), Room 700, Washington, DC 20547–0001.

Dated: September 22, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–21793 Filed 9–28–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4843]

Culturally Significant Objects Imported for Exhibition Determinations: "A Feast of Color: Selections From the Noro Foundation"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "A Feast of Color: Selections from the Noro Foundation," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA from on or about October 9, 2004 to on or about January 23, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 22, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–21794 Filed 9–28–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4842]

Determination Related to Colombian Armed Forces Under Section 563 of Foreign Operations, Export Financing, and Related Programs Appropriations Act, Division D, Consolidated Appropriations Act, 2004, (Pub. L. 108–199)

Pursuant to the authority vested in me as Secretary of State, including under section 563 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Division D, Consolidated Appropriations Act, 2004, (Pub. L. 108–199), I hereby determine and certify, in accordance with the conditions contained in section 563(a)(2), that: (A) The Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank who, according to the Minister of Defense or the Procuraduria General de la Nacion, have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations; (B) the Colombian Government is vigorously investigating and prosecuting those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations, and is promptly punishing those members of the Colombian Armed Forces found to have committed such violations of human rights or to have aided or abetted paramilitary organizations; (C) the Colombian Armed Forces have made substantial progress in cooperating with civilian prosecutors and judicial authorities in such cases (including providing requested information, such as the identity of persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information); (D) the Colombian Armed Forces have made substantial progress in severing links (including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation) at the command, battalion, and brigade level, with paramilitary organizations, especially in regions where these organizations have a significant presence; (E) the Colombian Armed Forces are dismantling paramilitary leadership and financial networks by arresting commanders and financial backers, especially in regions where these networks have a significant presence.

The Department of State has consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the conditions contained in section 563(a)(2), as required in section 563(c).

This Determination shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 04–21795 Filed 9–28–04; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 4817]

Defense Trade Advisory Group; Notice of Open Meeting

AGENCY: Department of State.

ACTION: Notice.

The Defense Trade Advisory Group (DTAG) will meet in open session from 9 a.m. to 12 noon on Thursday, October 21, 2004, in Room 1912 at the U.S. Department of State, Harry S. Truman Building, Washington, DC. Entry and registration will begin at 8:15. Please use the building entrance located at 23rd Street, NW., Washington, DC, between C&D streets. The membership

of this advisory committee consists of private sector defense trade specialists, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to review progress of the working groups and to discuss current defense trade issues and topics for further study.

Although public seating will be limited due to the size of the conference room, members of the public may attend this open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Wednesday, October 13, 2004. If notified after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary processing required to attend the October 21 plenary.

Each non-member observer or DTAG member needing building access that wishes to attend this plenary session should provide his/her name, company or organizational affiliation, phone number, date of birth, social security number, and citizenship to the DTAG Secretariat, contact person Mary Sweeney via e-mail at *SweeneyMF@state.gov*. DTAG members planning to attend the plenary session should notify the DTAG Secretariat, contact person Mary Sweeney via e-mail at *SweeneyMF@state.gov*. A list will be made up for Diplomatic Security and the Reception Desk at the 23rd Street Entrance. Attendees must present a driver's license with photo, a passport, a U.S. Government ID, or other valid photo ID for entry.

FOR FURTHER INFORMATION CONTACT: Mary F. Sweeney, DTAG Secretariat, U.S. Department of State, Office of Defense Trade Controls Management (PM/DTCM), Room 1200, SA–1, Washington, DC 20522–0112, (202) 663–2865, FAX (202) 261–8199.

Dated: September 24, 2004.

Michael T. Dixon,

Executive Secretary, Defense Trade Advisory Group, Department of State.

[FR Doc. 04–21796 Filed 9–28–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4845]

Imposition of Nonproliferation Measures Against Fourteen Foreign Entities, Including Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that fourteen entities have engaged in activities that require the imposition of measures pursuant to Section 3 of the Iran Nonproliferation Act of 2000, which provides for penalties on entities for the transfer to Iran since January 1, 1999, of equipment and technology controlled under multilateral export control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes: (a) Items of the same kind as those on multilateral lists, but falling below the control list parameters, when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) other items with the potential of making such a material contribution, when added through case-by-case decisions, and (c) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists.

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to Sections 2 and 3 of the Iran Nonproliferation Act of 2000 (Pub. L. 106–178), the U.S. Government determined on September 20, 2004, that the measures authorized in section 3 of the Act shall apply to the following foreign entities identified in the report submitted pursuant to section 2(a) of the Act:

Beijing Institute of Aerodynamics (China) and any successor, sub-unit, subsidiary thereof;

Beijing Institute of Opto-Electronic Technology (BIOET) (China) and any successor, sub-unit, or subsidiary thereof;

Belarus Belvneshpromservice (Belarus) and any successor, sub-unit, or subsidiary thereof;

Changgwang Sinyong Corporation (North Korea) and any successor, sub-unit, or subsidiary thereof;

China Great Wall Industry Corporation (China) and any successor, sub-unit, or subsidiary thereof;

China North Industries Corporation (NORINCO) (China) and any successor, sub-unit, or subsidiary thereof;

Dr. C. Surendar (India);

Dr. Y.S.R. Prasad (India);

Khazra Trading (Russia) and any successor, sub-unit, or subsidiary thereof;

LIMMT Economic and Trade Company, Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Oriental Scientific Instruments Corporation (OSIC) (China) and any successor, sub-unit, or subsidiary thereof;

South Industries Science and Technology Trading Co., Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Telstar (Spain) and any successor, sub-unit, or subsidiary thereof;

Zaporizhzhya Regional Foreign Economic Association (Ukraine) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities:

(1) No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons;

(2) No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

(3) No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

(4) No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and

agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State or Deputy Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: September 24, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–21790 Filed 9–28–04; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 4840]

United States Climate Change Science Program

ACTION: Request expert review of the Intergovernmental Panel on Climate Change (IPCC) and Technology and Economic Assessment Panel (TEAP) "Special Report on Safeguarding the Ozone Layer and the Global Climate System: Issues Related to Hydrofluorocarbons and Perfluorocarbons" (SROC).

SUMMARY: In addition to periodic assessments of the science, impacts, and socio-economic aspects of climate change, the IPCC provides, on request, advice to the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and its bodies. The Eighth Conference of Parties to the UNFCCC and the Fourteenth Meeting of the Parties to the Montreal Protocol invited the IPCC and TEAP to prepare a special report on ozone and climate by early 2005. The report assesses scientific and technical information relating to decisions and policies on alternatives to ozone-depleting substances, thus contributing to the objectives of both the Montreal Protocol and the UNFCCC. The report covers chemicals in use or likely to be used in the next decade. A Steering Committee from IPCC Working Group I and III and TEAP is overseeing the preparation of this Special Report, which is being written by a team of over 100 authors under established IPCC rules and procedures.

The IPCC Secretariat has informed the U.S. Department of State that the second-order SROC draft is available for expert and Government review. The Climate Change Science Program Office (CCSPO) is coordinating collection of U.S. expert comments and the review of these collations by panels of Federal scientists and program managers to develop a consolidated U.S. Government submission. Instructions on how to format comments are available at *http://www.climatescience.gov/Library/ipcc/sroc-review.htm*, as is the document itself. Comments must be sent to CCSPO by 2 November 2004 to be considered for inclusion in the U.S. Government collation.

TIME AND DATE: Properly formatted comments should be sent to CCSPO at *sroc-USGreview@climatescience.gov* by COB Tuesday, 2 November 2004. Include report acronym and reviewer surname in e-mail subject title to facilitate processing.

FOR FURTHER INFORMATION CONTACT: David Dokken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave, NW., Washington, DC 20006 (*http://www.climatescience.gov*).

Dated: September 22, 2004.

Edward J. Fendley

Office Director, Acting, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 04–21698 Filed 9–28–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Advisory Circular Number AC 23–17B]

Advisory Circular on Systems and Equipment Guide for Certification of Part 23 Airplanes and Airships

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed advisory circular that sets forth an acceptable means, but not the only means of showing compliance with Title 14 Code of Federal Regulations (14 CFR), part 23, for the certification of systems and equipment in normal, utility, acrobatic, and commuter category airplanes and airships. The policy in this advisory circular is considered applicable for airship projects; however, the certifying office should only use specific applicability and requirements if they are determined to be reasonable, applicable and relevant to the airship project. This advisory circular applies to subpart D from 23.671 and subpart F. This advisory circular both consolidates existing policy documents, and certain advisory circulars that cover specific paragraphs of the regulations, into a single document and adds new guidance. This notice is necessary to advise the public of this FAA advisory circular and give all interested persons an opportunity to present their views on it.

DATES: Send your comments by October 29, 2004.

Discussion: We are making this proposed advisory circular available to the public and all manufacturers for their comments.

ADDRESSES: Copies of the proposed advisory circular, AC 23–17B, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed advisory circular is also available on the Internet at the following address *http://www.airweb.faa.gov/AC.* Send all comments on this proposed advisory circular to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4134; fax: 816–329–4090; e-mail: *leslie.b.taylor.@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this proposed advisory circular. Send any data or views as you may desire. Identify the proposed Advisory Circular Number AC 23–17B on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain "Comments to proposed advisory circular AC 23–17B" in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text.

State what specific change you are seeking to the proposed advisory circular and include justification (for

example, reasons or data) for each request.

Issued in Kansas City, Missouri on September 21, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21861 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Addison Airport; Addison, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Town of Addison for Addison Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: Effective Date: The effective date of the FAA's determination on the noise exposure maps is September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Blackford, Federal Aviation Administration, Airports Division, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298, telephone (817) 222–5607.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Addison Airport are in compliance with applicable requirements of part 150, effective September 22, 2004. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Town of Addison. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of part 150 includes the following from the August 2004, 14 CFR part 150 Noise Compatibility Study Update: Exhibit 1, 2002 Noise Exposure Map Contour With Land Use; Exhibit 2, 2007 Noise Exposure Map Contour With Land Use; Exhibit 2E, Forecast Summary; Exhibit 3A, Aircraft Noise Measurement Sites and Table 3B, Measurement Results Summary; Table 3D, Operational Fleet Mix Projections and Table 3F, Existing Runway Use; Exhibits 3F–3H and 3J, Flight Tracks; Table 3G, Comparative Areas of Noise Exposure; Table 4B, Noise Sensitive Land Uses Exposed to 2002 Aircraft Noise; Table 4C, Population Exposed to 2002 Aircraft Noise; Table 4E, Noise—Sensitive Land Uses Exposed to 2007 Aircraft Noise; Appendix B, Coordination, Consultation, and Public Involvement. There are no Historic Resources within the DNL 65 contour. The FAA has determined that these noise exposure maps and accompanying documentation is in compliance with applicable requirements. This determination is effective on September 22, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps is available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; Mark Acevedo, Director of General Services, Town of Addison, 16801 Westgrove Drive, Addison, Texas 75001.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, September 22, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–21865 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

User Input to the Aviation Weather Technology Transfer (AWTT) Board

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: FAA will hold an informal public meeting to seek aviation weather user input. Details: October 12, 2004, Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, Nevada 89109; 10:30 p.m. to 3 p.m. in rooms N227/N228/N229/N230. The objective of this meeting is to provide an opportunity for interested aviation weather users to provide input on FAA's plans for implementing new weather products.

DATES: The meeting will be held in rooms N227/N228/N229/N230 at the Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, Nevada 89109 in conjunction with the National Business Aviation Association, Inc.

(NBAA) 2004 Convention. Times: 1:30 p.m.–3 p.m. on October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Debi Bacon, Weather Policy and Standards, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7705; Fax: (202) 385–7701; e-mail: *debi.bacon@faa.gov*. Internet address: *http://www.debi.bacon@faa.gov*.

SUPPLEMENTARY INFORMATION:

History

In 1999, the FAA established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development into operations. The Manager of Operations Planning Policy and Administration chairs the AWTT Board. The board is composed of stakeholders in the Air Traffic Organization, ATO and Regulation and Certification, AVR in the Federal Aviation Administration and the Office of Climate, Water and Weather Services, OS and the Office of Science and Technology, OST in the National Weather Service.

The AWTT Board meets semi-annually or as needed, to determine the readiness of weather research and development (R&D) products for experimental use, full operational use for meteorologists or full operational use for end users. The board's determinations will be based upon criteria in the areas of users' needs; benefits; costs; risks; technical readiness; operational readiness and budget requirements.

The user interface process is designed to allow FAA to both report progress and receive feedback from industry users. Each AWTT board meeting will be preceded by a half-day industry review session approximately one month prior to each board meeting. These industry review sessions will be announced in the **Federal Register** and open to all interested parties.

This meeting is the industry review session intended to receive feedback on weather R&D products that will be presented for consideration at the November 2004 AWTT Board meeting. The products to be considered are the Graphical Turbulence Guidance Flight (GTG) Flight Level 100–200 and the Forecast Icing Product—Alaska (FIP–AK).

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate. This meeting is being held in conjunction with the NBAA Convention 2004. There is a charge to attend the NBAA convention; however, any person desiring to attend this informal meeting will be admitted by NBAA convention officials at no charge to this meeting only.

(c) FAA personnel will present a briefing on changes to the AWTT and user input process made in the last year. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of that presentation that is not clear.

(d) FAA personnel will present a briefing on the specific products to be reviewed at the November 2004 AWTT Board Meeting. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the presentation that is not clear.

(e) Any person present may give feedback on the product to be presented. Feedback on the proposed product will be captured through discussion between FAA and personnel and any persons attending the meeting. The meeting will not be formally recorded.

(f) An official verbatim transcript or minutes of the informal meeting will not be made. However, a list of the attendees and a digest of discussions during the meeting will be produced. Any person attending may receive a copy of the written information upon request at the meeting.

(g) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback may also be submitted to FAA personnel for up to seven (7) days after the close of the meeting.

Agenda

(a) Opening remarks and discussion of meeting procedures.

(b) Briefing on AWTT process.

(c) Briefing on weather products.

(d) Request for user input.

(e) Closing comments.

Issued in Washington, DC on September 27, 2004.

Richard J. Heuwinkel,

Manager, Weather Policy and Standards.

[FR Doc. 04–21863 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 2004, there were two applications approved. This notice also includes information on one application, approved in July 2004, inadvertently left off the July 2004 notice. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Columbus Regional Airport Authority, Columbus, Ohio.

Application Number: 04–07–C–00–CMH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $77,562,914.

Earliest Charge Effective Date: October 1, 2004.

Estimated Charge Expiration Date: December 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators when enplaning revenue passengers in service and equipment reportable to FAA on FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent on the total annual enplanements at Ports Columbus International Airport.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Terminal and curb front signage improvements.

Flight information display system/baggage information display system improvements/upgrade and public address system improvements.

PFC program formulation and administrative.

Snow removal equipment—runway brooms.

Snow removal equipment—heavy trucks.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Concourse C—apron expansion/taxiway.

Concourse C—five gate expansion.

Runway 10R hold apron relocation.

West extension of taxiway B.

Runway 10R glide slope relocation.

Taxiway C rehabilitation.

Antenna farm relocation.

Terminal apron rehabilitation/glycol collection.

Perimeter and tug roads—phase 1.

Runway 10R/28L rehabilitation.

Runway 10R/28L safety area improvements.

Stelzer Road and other airfield safety fencing.

East apron rehabilitation.

Safety area improvements on taxiway E.

International gate/federal inspection services expansion.

Rehabilitate east portion of Lane fixed base operator apron.

Access control system replacement.

Decision Date: July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jason K. Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 04–08–C–00–RNO.

Application Type: Impose and use of PFC.

Total PFC Revenue Approved in this Decision: $25,440,000.

PFC Level: $3.00.

Earliest Charge Effective Date: December 1, 2004.

Estimated Charge Expiration Date: April 1, 2005.

PFC Level: $4.50.

Earliest Charge Effective Date: April 1, 2005.

Estimated Charge Expiration Date: January 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Checked baggage security screening system.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Second floor concourse restroom expansion.

Decision Date: August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriguez, San Francisco Airports District Office, (650) 876–2805.

Public Agency: New Orleans Aviation Board, New Orleans, Louisiana.

Application Number: 04–07–C–00–MSY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $60,199,838.

Earliest Charge Effective Date: May 1, 2011.

Estimated Charge Expiration Date: March 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Louis Armstrong New Orleans International Airport.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Airport interior signage.

Exterior terminal renovations—lower roadway.

Gate utilization study.

Terminal heating, ventilation, and air conditioning rehabilitation, phase II.

Terminal pedestrian access enhancements.

Airport master plan.

Replace apron high mast lighting.

Terminal heating ventilation, and air conditioning rehabilitation, phase III.

Terminal interior and exterior improvements.

Transportation center expansion.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Concourse C checkpoint expansion.

Construct connector taxiway U.

Construct holding bay—runway 19.

Federal inspection services facility.

Transportation Security Administration—related terminal modifications.

Part 1542 security system.

Residential sound insulation program/land acquisition.

Terminal apron expansion.

Brief Description of Withdrawn Projects: Noise mitigation flight tracking system.

Determination: This project was withdrawn by the public agency on June 24, 2004. Concourses A and B terminal reflooring.

Determination: This project was withdrawn by the public agency on August 24, 2004.

Decision Date: August 26, 2004.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (871) 222–5613.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–01–C–03–ATL Atlanta, GA	06/17/04	$944,143,576	$1,463,359,982	05/01/05	10/01/08
00–02–U–01–ATL Atlanta, GA	06/17.04	NA	NA	05/01/05	10/01/08
92–01–C–03–PSP Palm Spring, CA	07/23/04	76,883,179	88,415,656	07/01/24	07/01/29
*91–01–C–05–LAS Las Vegas, NV	08/16/04	1,052,934,909	1,052,934,909	09/01/14	07/01/11
93–02–C–02–LAS Las Vegas, NV	08/16/04	21,496,000	21,496,000	02/01/16	02/01/16
94–03–U–01–LAS Las Vegas, NV	08/16/04	NA	NA	09/01/14	07/01/11
94–04–C–01–LAS Las Vegas, NV	08/16/04	510,808,093	510,808,093	11/01/24	11/01/24
93–02–C–03–LAS Las Vegas, NV	08/16/04	21,496,000	21,496,000	02/01/16	11/01/11
94–03–U–02–LAS Las Vegas, NV	08/16/04	NA	NA	02/01/16	11/01/11
*94–04–c–02–LAS Las Vegas, NV	08/16.04	510,808,093	510,808,093	11/01/24	01/01/17
01–05–C–02–DFW Dallas/Ft. Worth, TX	08/16/04	1,681,378,289	2,191,494,482	05/01/13	07/01/15

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Las Vegas, NV, this change is effective on November 1, 2004.

Issued in Washington, DC on September 23, 2004.

JoAnn Horne,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 04–21867 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–03–U–00–PIT To Use the Revenue From a Passenger Facility Charge (PFC) at Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pittsburgh International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 29, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John R. Serpa, of the Allegheny County Airport Authority at the following address: Allegheny County Airport Authority, P.O. Box 12370, Pittsburgh, Pennsylvania 15231–0370.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Allegheny County Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, Pennsylvania 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pittsburgh International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 26, 2004, the FAA determined that the application to use the revenue from a PFC submitted by Allegheny County Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 24, 2004.

The following is a brief overview of the application.

PFC Application No.: 04–03–U–00–PIT.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 2001.

Proposed charge expiration date: October 1, 2006.

Total estimated PFC revenue: $7,834,933.

Brief description of proposed project(s):—Improve Runway Safety Areas for Runways 10L–28R and 10R–28L.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:—Non-schedules, on-demand air carriers filing DOT Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Allegheny County Airport Authority.

Dated: Issued in Camp Hill, PA on September 22, 2004.

Lori Ledebohm,

PFC Contact, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 04–21864 Filed 9–21–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of the Posting of Draft Technical Analyses Data and Other Documentation for the O'Hare Modernization Environmental Impact Statement, Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) gives notice of the availability of draft Technical Analyses Data and other documentation being used as part of the O'Hare Modernization Environmental Impact Statement (EIS) for Chicago O'Hare International Airport, Chicago, Illinois. In support of the planning and environmental analyses of the O'Hare Modernization EIS, the FAA is using computer simulation modeling. The computer modeling includes Delay and Travel Time Analysis, Noise Analysis, Air Quality Analysis, and Surface Transportation Analysis. As this data becomes available in draft final form, the FAA will post the various components of each analysis such as the assumptions, project files, and supporting material used in the modeling efforts. This information can be found at *http://www.agl.faa.gov/OMP/EISTechSim/TechSim.htm.*

This information is being provided to facilitate early involvement of the public in the EIS process. The FAA plans to post over five million pages of data, and other EIS related documentation prior to the release of the Draft EIS. Other EIS related documentation is also available on the following Web sites: *http://www.agl.faa.gov/omp* and *http://www.ompeis.net.*

DATES: Effective Date: July 27, 2004.

FOR FURTHER INFORMATION CONTACT: Barry Cooper, Manager, Chicago Area Modernization Program Office, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, IL 60018; Telephone: (847) 294–7369, fax: (847) 294–8157, Internet: *ompeis@faa.gov.*

Issued in Des Plaines, Illinois on September 13, 2004.

Barry Cooper,

Manager, Chicago Area Modernization Program Office, Great Lakes Region.

[FR Doc. 04–21866 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2004–19192]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this

notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Frances Jerry, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–5861; fax: (202) 366–5980; or e-mail: *frances.jerry@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Uniform Financial Reporting Requirements.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0005.

Form Numbers: MA–172.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semiannual and annual financial statements with the Maritime Administration. Regulations requiring financial reports to the Maritime Administration are authorized by section 801, Merchant Marine Act, 1936, as amended.

Need and Use of the Information: The collected information is necessary for MARAD to determine compliance with regulatory and contractual requirements.

Description of Respondents: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

Annual Responses: 196 responses.

Annual Burden: 1862 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

(Authority: 49 CFR 1.66.)

Dated: September 23, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–21777 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2004 19191]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Krusa, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2648, FAX: 202–366–3746; or e-mail: *chris.krusa@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Supplementary Training Course Application.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0030.

Form Numbers: MA–823.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Section 1305(a) of the Maritime Education and Training Act of 1980 indicates that the Secretary of Transportation may provide maritime-related training to merchant mariners of the United States and to individuals preparing for a career in the merchant marine of the United States. Also, the U.S. Coast Guard requires a fire-fighting certificate for U.S. merchant marine officers. This collection provides the information necessary for the maritime schools to plan their course offerings and for applicants to complete their certificate requirements.

Need and Use of the Information: This information collection is necessary for eligibility assessment, enrollment, attendance verification and recordation. Without this information, the courses would not be documented for future reference by the program or individual student.

Description of Respondents: U.S. Merchant Marine Seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

Annual Responses: 500.

Annual Burden: 25 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

(Authority: 49 CFR 1.66.)

By order of the Maritime Administrator,
Dated: September 23, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–21778 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2004–18642]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before November 29, 2004.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 by any of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the Docket Management System.
- Fax: (202) 493–2251.
- Mail: Dockets, 400 7th Street, SW., Washington, DC 20590.
- Hand Delivery/Courier: Plaza Level Room 401, (PL #401), of Nassif Building, 400 7th Street, SW., Washington, DC 20590, telephone: 1–800–647–5527.

Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Carlita Ballard, NHTSA, 400 Seventh Street, SW., Room 5320, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Procedures for Selecting Lines to be Covered by the Theft Prevention Standard (49 CFR 542).

OMB Control Number: 2127–0539.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard forms.

Abstract: The Anti Car Theft Act of 1992 amended the Motor Vehicle Theft Law Enforcement Act of 1984 (P.L. 98–547) and requires this collection of information. One component of the theft prevention legislation required the Secretary of Transportation (delegated to the National Highway Traffic Safety Administration (NHTSA)) to promulgate a theft prevention standard for the designation of high-theft vehicle lines. Provisions delineating the information collection requirements include § 33104, which requires NHTSA to promulgate a rule for the identification of major component parts for vehicles having or expected to have a theft rate above the median rate for all new passenger motor vehicles sold in the United States, as well as with major component parts that are interchangeable with those having high-theft rates.

The specific lines and parts to be identified are to be selected by agreement between the manufacturer and the agency. If there is a disagreement of the selection, the statute states that the agency shall select such lines and parts, after notice to the manufacturer and an opportunity for written comment.

In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. The final rule becomes effective September 1, 2006.

Estimated Annual Burden: 40.

Number of Respondents: 7.

Issued on: September 23, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–21830 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2004–18737]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget

(OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before November 29, 2004.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2004–18737] 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.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

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: Complete copies of each request for collection of information may be obtained at no charge from Deborah Mazyck, NHTSA 400 Seventh Street, SW., Room 5320, NVS–131, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4809. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Consolidated Vehicle Identification Number Requirements and Motor Vehicle Theft.

OMB Control Number: 2127–0510.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard forms.

Abstract: NHTSA's statute at 15 U.S.C. 1392, 1397, 1401, 1407, and 1412 of the National Traffic and Motor Vehicle Safety Act of 1966 authorizes the issuance of Federal Motor Vehicle Safety Standard (FMVSS) and the collection of data which support their implementation. The agency, in prescribing an FMVSS, is to consider available relevant motor vehicle safety data and to consult with other agencies as it deems appropriate. Further, the Act mandates, that in issuing any FMVSS, the agency should consider whether the standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 115, Vehicle Identification Number, specifying requirements for vehicle identification numbers to aid the agency in achieving many of its safety goals.

The standard was amended in August 1978 by extending its applicability to additional classes of motor vehicles and by specifying the use of a 30-year, 17-character Vehicle Identification Number (VIN) for worldwide use. The standard was amended in May 1983 by deleting portions of FMVSS No. 115 and reissuing those portions as a general agency regulation, part 565. Subsequently, the standard was amended again in June 1996 transferring the text of the FMVSS No. 115 to part 565, without making any substantive changes to the VIN requirements as a result of the proposed consolidation. The provision of the part 565 (amended) regulation requires vehicle manufacturers to assign a unique VIN to each new vehicle and to inform NHTSA of the code used in forming the VIN. These regulations apply to all vehicles: passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, and motorcycles.

Part 541

The Motor Vehicle Information and Cost Savings Act was amended by the Anti-Car Theft Act of 1992 (Pub.L. 102–519.) The enacted Theft Act requires specified parts of high-theft vehicle to be marked with vehicle identification numbers. In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. Each major component part must be either labeled or affixed with the VIN and its replacement component part must be marked with the DOT symbol, the letter (R) and the manufacturers' logo. The final rule becomes effective September 1, 2006.

Part 567

This part specifies the content and location of, and other requirements for, the certification label or tag to be affixed to motor vehicles and motor vehicle equipment. Specifically, the VIN is required to appear on the certification label. Additionally, this certificate will provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards are applicable to the

vehicle or equipment, and its date of manufacturer.

Estimated Annual Burden: For part 565 and part 567, NHTSA estimates the vehicle manufacturers will incur a total annual hour burden of 388,750 and cost burden of $5,053,750. For Part 541, NHTSA estimates the vehicle manufacturers will incur a total annual hour burden of 607,878 and cost burden of $75.68 million.

Number of Respondents: 1,000.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: September 23, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–21831 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2004–18643]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before November 29, 2004.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 by any of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the Docket Management System.
- Fax: (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Carlita Ballard, NHTSA 400 Seventh Street, SW., Room 5320, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Petitions for Exemption from the Vehicle Theft Prevention Standard (49 CFR 543).

OMB Control Number: 2127–0542.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard forms.

Abstract: 49 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. 49 U.S.C. section 33106 provides for an exemption to this identification process by petitions from manufacturers who equip covered vehicles with standard original equipment antitheft devices, which the Secretary determines are likely to be as effective in reducing or deterring theft as the identification system. Section 543.5 is revised for each model year after model year 1996 a manufacturer may petition NHTSA to grant an exemption for one additional line of it's passenger motor vehicles from the requirements of part 541 of this chapter.

In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. The final rule becomes effective September 1, 2006.

Estimated Annual Burden: 67 hours.

Number of Respondents: 5.

Issued on: September 23, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–21832 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Recall Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petitions for an investigation into alleged defects in Firestone Steeltex tires.

SUMMARY: This notice sets forth the reasons for the denial of two petitions submitted to NHTSA under 49 U.S.C. 30162 by the Law Offices of Lisoni &

Lisoni of Pasadena, California, requesting that the agency commence a defect investigation of alleged defects in all Firestone Steeltex tires manufactured since 1995 and in those Steeltex tires installed on ambulances. After a review of the petitions and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petitions does not appear warranted. The agency accordingly has denied the petitions. The petitions are hereinafter identified as DP04–004 (All Steeltex tires) and DP04–005 (Steeltex tires on ambulances).

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Magno, Safety Defects Engineer, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0139.

SUPPLEMENTARY INFORMATION:

Petition Review—DP04–004 and DP04–005

1.0 Introduction

On May 12, 2004 the Law Offices of Lisoni & Lisoni (petitioners) submitted two petitions requesting that the Office of Defects Investigation (ODI) commence an investigation of Firestone Steeltex tires pursuant to 49 U.S.C. 30162, and issue a recall order pursuant to 49 U.S.C. Sections 30118(b), 30119, and 30120. One petition pertains to all Steeltex tires manufactured since 1995 (DP04–004), and the other pertains to Steeltex tires on ambulances (DP04–005). ODI began a technical review of DP04–004 and -005 on May 26, 2004 in accordance with the provisions of 49 U.S.C. 30162. During the review, ODI:

- Analyzed data within its own vehicle owners questionnaire (VOQ) database;
- Analyzed early warning reporting (EWR) data submitted by all tire manufacturers since December 2003;
- Examined a total of 190 Steeltex tires, 21 of which had been installed on ambulances;
- Hired an independent expert to examine 89 failed Steeltex tires held by Bridgestone-Firestone North American Tires (Firestone) at a storage facility in Marengo, Indiana; [1]
- Requested and analyzed data pertaining to Steeltex tire performance from Firestone;
- Analyzed the petition contents and additional data requested from the petitioners;
- Witnessed and interviewed the petitioners' consultants during their examination of failed Steeltex tires at Firestone's Akron, Ohio technical center;
- Collected ambulance-specific data from the Ford Motor Company (Ford), primary manufacturer of ambulance platforms equipped with light truck radial tires over the last ten years;
- Interviewed 30 of the ambulance operators cited in the petitions; and
- Interviewed a local ambulance fleet operator not cited in the petitions to better understand approaches to ambulance tire usage and maintenance.

Based on this technical review, ODI has concluded that the petitions should be denied.

2.0 Background

Steeltex is a model name applied to the majority of light truck radial tires sold by Firestone since 1990. Over this time period, Firestone has manufactured in excess of forty million Steeltex tires in three load ranges (C, D, and E), two types (all terrain (A/T) and all season (R4S, superceded by the R4SII)), and twelve sizes at five plants. Steeltex tires have been the primary original equipment (OE) tire on many of the largest passenger vans, sport utility vehicles (SUV), pickup trucks, and "cutaways" (including motor homes (RV) and ambulances) sold in that time period. Almost three quarters of Steeltex tires produced are Load Range E (LRE) tires that may be inflated up to 80 psi and can carry between 2,500 lb and 3,400 lb per tire. More than half of Steeltex tires are concentrated in three sizes: LT225/75R16, LT245/75R16, and LT265/75R16.

Steeltex tires are light truck radial (LTR) tires comprised of two polyester body plies and two steel belts. Within the population of Steeltex tires there exist a variety of designs that include obvious differences such as tread pattern, sidewall configuration, and tire size as well as differences in internal construction such as cord configuration, cord gauge, cord angle, and mold shape. LTR tires are distinguished from passenger radial (PSR) tires by having heavier cord gauges, thicker rubber plies, deeper tread depths, and substantially higher inflation pressures. These qualities enable them to carry heavier loads and resist chipping and tearing. However, these characteristics also increase their sensitivity to usage factors such as overload, underinflation, and overspeed. This is due chiefly to the heat generated by these factors and the lesser ability of thicker, heavier tires to dissipate this heat. Heat promotes a reduction in the material properties in all radial tires.

ODI initiated its first investigation (PE00–040) of Steeltex tires on September 9, 2000. PE00–040 was closed on April 9, 2002. The primary bases for the decision to close were the fact that the tires under investigation displayed failure rates comparable to those of LTR tires sold by other major manufacturers and that many of the failures reported were influenced by the usage factors cited above. ODI also noted that the vehicle type had the largest influence on the likelihood of a tire failure causing a vehicle crash.

ODI revisited the question of Steeltex tire failures during its technical review of a petition (DP02–011) from the Law Offices of Lisoni & Lisoni in November of 2002. DP02–011 alleged that all Steeltex tires manufactured since 1990 were defective, that ODI had undercounted VOQs in its database, and that Firestone had deliberately understated its failure figures. ODI denied DP02–011 on June 16, 2003 on the basis that VOQ and Firestone figures had changed little since the closing of PE00–040 and that the petitions added relatively little new data for consideration.

The petitions under consideration here allege that all Steeltex tires manufactured since 1995 are defective and that Steeltex tires used on ambulances pose an unacceptable safety risk to Emergency Medical Service (EMS) operators. Among other things, the new petitions contain allegations that Firestone cost reduction efforts compromised Steeltex tire durability, and the petitioners' assessment from their examination of disabled Steeltex tires in Firestone's custody.

3.0 DP04–004 Analysis (All Steeltex Tires Produced Since 1995)

3.1 VOQs Since the Denial of DP02–011

During the fourteen months since the denial of DP02–011, ODI has received 294 Steeltex tire failure VOQs, approximately three-quarters of which reported tread separations.[2] Fourteen VOQs allege that the tire failure led to a crash, of which six involved injuries, with no deaths.

In terms of tire fitment, Class C RVs based on cutaway van chassis represent the largest share of VOQs received, with just under half of the Steeltex tire failures reported; however, none of these involved a crash or injury. RV

[1] A "failed" tire is a tire that experiences a major component (*e.g.* tread or casing) separation or other event including rapid air-loss while driving.

[2] This figure does not include letters mailed to ODI at the behest of an August 4, 2004 e-mail from the petitioners to their clients. To date, ODI is aware of 27 such letters, the majority of which describe tire failures that were reported in the petition, VOQ database, or Firestone property damage claim database. All but one of these events occurred prior to 2004.

complaints largely involved the Ford E-series dual rear wheel platform using LT225/75R16 LRE Steeltex R4S tires.

Pickup trucks accounted for a third of the VOQs and half of the remaining crash reports while Ford Excursions equipped with tires subject to Recall 04T–003 accounted for a third of the crashes, and half of the injuries. [3]

Excluding tires subject to Recall 04T–003, the total known Steeltex failure VOQ count now stands at 1,451; of which 908 report tread separation. Thirty-four VOQs report vehicle crashes, of which 28 led to injuries or deaths. A total of 51 injuries and 6 deaths were reported.

3.2 EWR Data

ODI began receiving EWR data from all major tire manufacturers in December of 2003. This includes data on production, adjustments, property damage claims, and death and injury claims and notices. Scrutiny of these data earlier this year contributed to Recall 04T–003.

ODI's analysis has found that, in general, Steeltex tire property damage claim rates are very close to and in many cases below the LTR class average, with a number of major LTR tire manufacturers having higher claim rates. In all cases, for each size of Steeltex tires, two or more competitors experienced higher property damage claim rates.

ODI also reviewed the death and injury claim and notice (collectively, "claim") data and found that Steeltex tires were above the industry average for injury-only LTR tire claim rates but had some of the lowest fatal LTR tire claim rates. With respect to injury claims, two major LTR tire manufacturers experienced higher rates.[4]

3.3 Tire Analysis

To determine whether a pattern of failure modes or underlying causes existed in Steeltex tires, ODI hired Thomas M. Dodson, an expert in tire forensic analysis from a prominent tire and materials test lab,[5] to examine tires at Marengo. A total of 89 Steeltex tires were randomly selected from within each of three tire sizes,[6] half of which had been examined by the petitioners.

According to the report issued by Mr. Dodson, while tire failure modes observed at Marengo appeared similar at the macroscopic level, they were quite varied when viewed from a close-up perspective. The report also stated that the numerous different failure modes observed did not indicate the presence of a common or singular underlying cause of failure. Furthermore, the report also found that the types of conditions and/or appearances observed were consistent with the array of modes of failure typically seen in tires of comparable size and type. Usage factors such as road hazards, mounting damage, improper repairs, and overdeflection figured prominently in Mr. Dodson's observations.

The ODI engineer who participated in Mr. Dodson's examinations of tires at Marengo also witnessed the petitioners' examination of 74 Steeltex tires in Akron and observed many of the same contributory factors and conditions.

3.4 Firestone Data

ODI reviewed thousands of claims [7] received by Firestone over the last ten years. After filtering out tires subject to Recall 04T–003, misapplications, and the most obvious road hazards and flex-failures,[8] all Steeltex tire sizes and lines show failure rates that are lower than those observed in peer LRE tires. The four largest LRE tire sizes continue to account for 85% of claims and all but one of the nonfatal injury crashes that occurred in 2002. Tires manufactured in 1999 account for the highest number of claims and of injury crashes.

ODI also examined Firestone's warranty adjustment data and found no signs of a defect trend overall, or in any specific tire lines and sizes.

In summary, the above information indicates that Steeltex tires overall do not stand out from their peers in terms of failure rates, and there are no indications of a defect trend.

4.0 DP04–005 Analysis (Steeltex Tires on Ambulances)

4.1 ODI VOQs

ODI has received over 100 VOQs relating to ambulances over the last ten years, 28 of which involve tires, four of which reported concerns with valve stem durability or accessibility, or sidewall cracks. Of the 24 VOQs that report tire failures, two involved Michelin tires. One of the Michelin complaints reported multiple sidewall failures that stopped occurring after the fleet converted their OE rubber valve stems to metal clamp-in valve stems.

The VOQs that report Steeltex tire failures involve Type I and Type III ambulances based on the Ford F–350 and E–350/–450 dual rear wheel platforms. Most of these failures occurred on the rear axle. None of the 22 VOQs allege a crash, injury, or death. Most incidents took place in 2000 and 2001, with the most recent incident occurring in August 2003.

4.2 Firestone Data

Over the last ten years, Firestone has received a total of eight claims relating to Steeltex tires on ambulances. Six of these are claims for property damage only, while the remaining two are personal injury claims involving a total of three injuries, including one death. One of the injury claims was dismissed because the injury could not be substantiated and the LT245/75R16 LRE tire involved displayed the classic flex failure mode associated with severe underinflation, while the other claim, involving the death and a non-fatal injury, is still open.

Overall, the property damage claims are confined to Steeltex R4S/R4SII tires, mostly involving LT225/75R16 LRE tires. With the exception of a misapplied LRC tire and two failures due to extreme underinflation, failure times varied from two to five years in service.

4.3 Ford Data

Ford produced the vast majority of LTR tire-equipped ambulance platforms, totaling almost 60,000 over the last ten years. Dual rear wheel vehicles, which were predominantly fitted with Steeltex tires, account for two thirds of ambulance production, with Type III E–350/–450 cutaways accounting for almost half of overall production.

Ford informed ODI that it chooses tire fitments for ambulance package-equipped vehicles based on the tire's ability to meet speed and load requirements. It has further stated that it discourages vehicle modifiers that convert cutaways into finished ambulances from changing the OE tire fitments provided by Ford.

Ford has received sixteen tire-related complaints concerning ambulances over the last ten years, a quarter of which relate to valve stem leakage or tire

[3] On February 26, 2004, Firestone announced that it would recall approximately 487,000 LT265/75R16 LRD Steeltex A/T tires manufactured for OE fitment on MY 2000–2003 Ford Excursion SUVs. Firestone estimated that 297,000 of these tires were still in service at that time.

[4] It should be noted that no single tire manufacturer consistently ranked the highest in any of the categories described.

[5] Smithers Scientific Services of Akron, Ohio furnished the expert and issued a report, available in the DP04–004 public file.

[6] Three tire sizes account for the majority of tire production and property damage claims, and are used on potentially sensitive vehicles such as large passenger vans and ambulances: LT225/75R16, LT245/75R16, and LT265/75R16.

[7] In this case, the term claim refers to lawsuits and claims for both property damage and personal injury.

[8] Flex failure is caused by operation at extreme levels of underinflation, a condition that was identified in some tires by both ODI's expert and the petitioners' consultants.

misapplication. The sole reported injury crash involved a Uniroyal tire failing on the right rear position of a MY 1997 Type II ambulance in 2001. One additional crash was reported in 2002 that involved a patched tire and no injuries.

Review of the failure data reported to ODI, Firestone, and Ford indicates that Steeltex tire failures on ambulances are spread out over a significant period of time, and often involve usage factors such as misapplication, valve stem concerns (as evidenced by the complaints regarding valve stem durability and access), and road hazards. Additionally, analysis indicates that Steeltex tires were, until 2003, the predominant tire used in dual rear wheel ambulance applications and, thus, uniquely exposed to tire issues associated with ambulance operation.

5.0 Petition Allegations

The petitioners made numerous allegations,[9] which primarily restate those in DP02–011: that ODI has undercounted Steeltex VOQs; that the volume of complaints[10] gathered is evidence of a safety defect trend; and that the subject tires contain manufacturing and material defects. In contrast to DP02–011, the petitioners have now examined a number of failed Steeltex tires in Firestone's custody and have characterized their findings as evidence that the tires are defective in design and manufacture.

ODI has reviewed the materials submitted in the petitions and found that they do not demonstrate the existence of a safety-related defect trend or warrant the opening of a defect investigation. The petitions allege a wide array of defects throughout the various sizes, load ranges, and designs of Steeltex tires manufactured by Firestone since 1995. These include inferior raw materials, inadequate component gauges, improper splices, improper curing, inadequate rubber-wire adhesion in the steel belts, and various other design and manufacturing deficiencies. ODI's analysis of all of the available tire failure data does not indicate that the Steeltex tires contain a defect condition and certainly do not support the petitioner's claims of such a broad range of defects.

The petitioners did not conduct any testing or laboratory analyses to support these claims and some of the claims are in direct conflict with others. For example, the current and prior petitions allege that the Steeltex tires contain the same defect as the Wilderness A/T tires previously recalled by Firestone and identify inadequate rubber-wire adhesion, as allegedly demonstrated by "shiny brass" in the belt wire, as one of the primary causes. Extensive lab analyses of hundreds of Wilderness A/T tires performed by ODI, Firestone, and Ford during the course of EA00–023 found good steel cord-rubber adhesion and that Wilderness A/T tire tread separations involved fatigue crack growth through the skim rubber between the two steel belts, rather than at the interface between the rubber and steel. Likewise, many of the tires examined at Marengo displayed crisp multi-level tear patterns in the skim rubber, suggesting good steel cord-rubber adhesion. The report submitted by the petitioners at the end of July contains many similar internal contradictions and scientific errors.[11]

The petitioners' resubmission of allegedly undercounted Steeltex VOQs contained many of the same errors highlighted in the DP02–011 denial: Fully one-fifth of these complaints involved tires sold by Firestone's competitors,[12] non-Steeltex Firestone tires,[13] contained no failure summary or description, or reported conditions that were not tire failures such as vibrations and rapid wear. In the end, somewhat more than half of the original number of complaints submitted by the petitioners alleged a Steeltex tread separation.

DP04–004 Exhibits E and F contain information concerning the petitioners' tire examinations at Marengo. While the petitioners used former Firestone employees as consultants, they applied forensic condition codes that are not used by Firestone and in many cases do not accurately describe a disabled tire condition. Many basic mistakes were made, including the misstatement of the DOT code or consumer's name in almost a third of the records.

The petitioners make numerous references to the C95 cost reduction program[14] conducted by Firestone in the mid 1990s as evidence of unacceptable reductions to Steeltex tire quality.[15] Firestone has stated that many of the recommendations cited by the petitioners were never implemented. The petitioners have attempted to link Firestone's search for lower cost materials to a labor dispute at a carbon black supplier from which Firestone buys relatively little material. The petitioners also allege that lighter steel cords were used, reducing steel cord-rubber adhesion; yet ODI has observed signs of strong steel cord-rubber adhesion in most of the Steeltex tires that it examined. The petitioners have alleged that process times were shortened leading to undercure of Steeltex tires, and that such tires would fail early in service, but we note that failure data show that these tires generally fail well into their service lives, on average after three years of use, and halfway through their tread life.

DP04–005 alleges that Steeltex tires endanger ambulance operators and contains two references to press reports of patients dying as a result of ambulance tire failures, 41 signed statements from EMS companies, and additional contact information contained in Exhibits A and B.

ODI has found significant inconsistencies in this information. For example, one of the alleged fatal ambulance crashes involved a Type II ambulance that left the road and rolled over. Closer investigation found that that there was no evidence of a pre-crash tire failure, and that the vehicle was in fact fitted with Michelin tires. Two of the complainants that filed signed statements included in DP04–005 were not EMS services and did not operate ambulances;[16] the vehicle crash experienced by the Kinross EMS was not caused by a tire failure;[17] and fully

[9] Allegations and supporting information were provided in three submissions: Petitions DP04–004 and DP04–005 dated May 12, 2004; a submission dated July 20, 2004 that includes video tapes of the Marengo tire inspections, copies of VOQs, and additional complaint information; and a technical report dated July 29, 2004.

[10] Many of these complaints allege failure modes such as flex failures, and impact breaks that are different from tread separation—the failure mode identified in the petitions. We further note that these failures can be caused by many different conditions, including usage factors.

[11] For example, Page 6 of the July 29, 2004 report misidentifies (tire) rubber "reversion" as the return of vulcanized rubber to its pre-cure state in the presence of high temperatures. This conflicts with established polymer science that identifies rubber reversion as a continuation of the vulcanization process, leading to a decline in its desirable physical properties. Likewise, statements made on Page 8 mischaracterize the reasons for adding natural rubber to tires as being its heat resistance relative to that of synthetic rubber.

[12] For example: VOQ # 748972 reported multiple tread separations on Michelin LT225/75R16 tires on a Ford E–350 RV.

[13] For example: VOQ # 733402 reported road hazard damage to a Wilderness A/T P265/75R16 tire on a 2000 Chevrolet Silverado.

[14] Information concerning C95 was submitted by the petitioners to ODI in April 2003 during ODI's technical review of DP02–011. The document submitted included a list of 153 potential cost-reduction recommendations.

[15] More details concerning these allegations can be found in the petitioners' July 29 technical report.

[16] One was a general contractor (North East Lighting Protection) and one was a state environmental agency (Florida Bureau of Environmental Response).

[17] A Kinross EMS representative advised that the petitioner has misquoted them. Kinross EMS has experienced two Steeltex tire failures, both attributed to valve stem extension leakage on its vehicles. The crash itself was unrelated to tire failure and occurred as a result of driving in icy conditions.

one third of the EMS services contacted by ODI did not experience a tire failure while driving.[18]

6.0 Discussion

In determining whether to open a defect investigation into a product, ODI typically considers a number of factors, dependent upon the alleged defect and component at issue. The decision whether to re-open an investigation into Firestone Steeltex tires was based on consideration of a number of matters identified during the course of the technical review. These considerations were discussed at length above and include such items as the number and trend of owner complaints, claims and adjustment data, the number and severity of injury claims, and evidence of a possible source and mode of failure.

Standing alone, no one factual consideration was dispositive. For example, the fact that the adjustment or property damage claims rates for Steeltex tires may have been comparable to or lower than competitor tires, was but one factor. Other information was considered as well, such as the number and severity of injury incidents associated with the tires, and the variety of failure conditions observed during ODI's tire examinations.

As noted in the denial of DP02–011, the subject Steeltex tires represent an immense and diverse population of tires that are used in the harshest LTR tire applications. The data continue to show that the rate of Steeltex tire failures is similar to that of other tires in similar uses.

The petitioners' data and VOQs show that Class C RVs, representing a relatively small segment of vehicles that use Steeltex tires, account for the largest share of recent failures, but a very small share of the crash numbers. Class C RVs are an especially severe LTR tire application because, by design, they operate very close to the tires' rated capacities, are subject to tire pressure maintenance concerns, and accumulate mileage at a lower rate than most other vehicles equipped with LTR tires.

Additionally, the independent tire failure expert ODI retained to examine an assortment of failed Steeltex tires was unable to find evidence of any specific type or mode of failure in the tires. His examination concluded that the tires demonstrated evidence of a wide variety of failure modes, all of which were consistent with the failure modes typically seen in tires of comparable size and type, regardless of manufacturer.

[18] In these instances, complainants reported valve stem leakage, vibration, bulges, and irregular wear.

With regard to ambulance applications in particular, tire examinations and interviews conducted by ODI, and surveys conducted by Firestone have uncovered evidence of significant tire maintenance concerns (many of which also apply to RVs). ODI examined 21 ambulance tires and found many of the same conditions observed at Marengo, including flex failures and unrepaired road hazards. The dual rear wheel arrangement on many ambulances often renders the inner valve stem inaccessible, making it difficult to assure that proper pressures are maintained. Up to a third of the vehicles surveyed by Firestone evidenced substantial underinflation of their tires. This is especially significant because, like RVs, ambulances operate very close to the maximum carrying capacity of their tires most of the time.[19]

7.0 Conclusions

Based on ODI's analysis of information submitted in support of the petitions, additional complaint and claims information gathered since the DP02–011 denial, and its examination of failed Steeltex tires, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject tires at the conclusion of the investigations requested by the petitioners. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, ODI is denying the petitions to reopen the Steeltex investigation. ODI will continue to monitor the performance of these tires for any signs of an emerging defect trend.

Authority: 49 U.S.C. 30120(e); delegations of authority at CFR 1.50 and 501.8.

Issued on: September 24, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–21786 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–59–P

[19] Based on these and other operational and maintenance issues identified in dual rear wheel tire applications during the course of this review, NHTSA plans to conduct outreach activities to the EMS and RV communities in an effort to improve vehicle/tire loading and tire pressure maintenance conditions.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Hazards Associated With De-Watering of Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: On June 21, 2004, the Research and Special Programs Administration's Office of Pipeline Safety (RSPA/OPS) issued Advisory Bulletin ADB–04–01 to owners and operators of gas and hazardous liquid pipelines to consider the hazards associated with pipeline de-watering operations. This advisory bulletin was originally issued jointly with the Department of Labor's Occupational Safety and Health Administration (OSHA) as Safety and Health Information Bulletin SHIB 06–21–2004. Operators are strongly encouraged to follow the recommended work practices and guidelines to reduce the potential for unexpected separation of temporary de-watering pipes.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, (202) 366–4565; or by e-mail, *richard.huriaux@rspa.dot.gov*. This document can be viewed at the OPS home page at *http://ops.dot.gov*. The original advisory bulletin issued by OSHA can be viewed at *http://www.osha.gov*. General information about the RSPA/OPS programs may be obtained by accessing RSPA's home page at *http://rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The OSHA Allentown and Wilkes-Barre Area Offices recently investigated two fatalities that occurred in conjunction with de-watering processes associated with newly constructed gas pipelines. In both cases, the temporary de-watering piping violently separated from its couplings, striking and fatally injuring employees. In one instance, the separated section of pipe was thrown 45 feet from where it had been attached to the temporary de-watering valve. OSHA determined that a major contributing factor to both of the accidents was temporary de-watering pipelines that were not adequately secured to prevent the piping from moving or separating. In one case, the failure occurred at a pipe coupler that was not being used within the safe tolerances established by the manufacturer.

After a pipeline is laid, a hydrostatic test is conducted to ensure its integrity. Hydrostatic testing may also be conducted during the service life of the pipeline to evaluate its operational integrity. The hydrostatic test consists of pumping water into the pipeline, pressuring up the line to specified test pressures, and holding that pressure for a discrete period of time in accordance with applicable regulations and guidelines, including regulations

promulgated by RSPA/OPS. After completion of the hydrostatic test, the pressure is relieved and the water is removed from the pipeline during de-watering procedures.

The de-watering process involves connecting a temporary de-watering line to the main pipeline with mechanical couplers and adequately securing the temporary de-watering line to prevent displacement. A de-watering pig is then forced through the main pipeline using several hundred pounds pressure of compressed air. As the pig is forced through the pipeline with air pressure, the water remaining in the line from hydrostatic testing is pushed out of the main pipeline through the temporary de-watering line.

During the de-watering process, significant and sudden variations in pressure often occur within the main pipeline and temporary de-watering line. These variations can be caused by changes in pig velocity as it passes through bends in the pipeline or changes in pig and water velocity due to changes in pipeline elevation. Compressed air escaping around the pig, which can combine with air already present in the main pipeline at high spots in the pipe, can also create a source for stored energy within the main pipeline. These sudden pressure changes produce surges that are transferred from the main pipeline to the temporary de-watering line. This can result in movement of the temporary de-watering line; as the pressures can easily exceed the working pressures and bending capabilities of the temporary de-watering line couplers. The movement of the de-watering line can result in violent failure of the temporary piping system, particularly when the temporary piping is not properly anchored. This situation can be exacerbated when the temporary pipeline suddenly changes direction, when couplers or pipe sections have worn beyond the specified tolerances established by the manufacturer of the de-watering piping system, or when the entire de-watering manifold is inadequately designed for the stresses that can be imposed while de-watering.

RSPA/OPS recognizes the existence of hazards associated with testing pipelines and requires operators to protect their employees and the public during hydrostatic testing. Section 192.515(a) states that "* * * each operator shall insure that every reasonable precaution is taken to protect its employees and the general public during the testing." In addition, § 195.402(c) requires each pipeline operator to prepare and follow procedures for safety during maintenance and normal operation.

Advisory Bulletin (ADB–04–01)

To: Owners and operators of gas and hazardous liquid pipeline systems.

Subject: Hazards associated with de-watering of pipelines.

Purpose: To advise owners and operators of gas and hazardous liquid pipelines to consider hazards associated with pipeline de-watering operations and to follow recommended work practices and guidelines to reduce the potential for unexpected separation of temporary de-watering pipes.

Advisory: Each operator of a gas or hazardous liquid pipeline should take recommended precautions against the unexpected separation of temporary de-watering pipes during de-watering procedures. This advisory bulletin was originally issued jointly with the Department of Labor's Occupational Safety and Health Administration (OSHA) as Safety and Health Information Bulletin SHIB 06–21–2004. The original advisory bulletin issued by OSHA can be viewed at *http://www.osha.gov,* or the RSPA/OPS Web site at *http://www.ops.gov.*

The following guidelines will help reduce the risk of injury to employees involved in de-watering activities:

- *Study the piping system.* During the initial planning stage of a de-watering operation, an engineering analysis of the existing and temporary piping system should be performed to identify the pressure associated with fluids and other forces that could adversely affect the integrity of the pipeline or the stability of the drainage and its components. The operator should design the de-watering system and develop installation techniques based on the expected forces of the particular project. Alternatively, designs and techniques could be developed for a "worst case" scenario that could be applied to all de-watering projects.
- *Anchor the de-watering lines.* It is accepted industry practice to adequately anchor or secure de-watering piping to prevent movement and separation of the piping. Operators should establish effective anchoring systems based on expected forces and ensure that the systems are used during de-watering projects.
- *Ensure condition of couplings and parts.* All couplings and parts of the de-watering system need to be properly selected for their application. The associated piping which the couplings connect is a significant variable in the entire mechanical piping system. The couplings are manufactured in a controlled environment, and variations in the quality of the couplings should be limited. Operators should ensure that couplings are within manufacturer's tolerances and free of damage that may result in connection failure. A chain is only as strong as its weakest link—in de-watering piping systems, the weakest link frequently is the temporary de-watering pipe connections.
- *Provide adequate employee training.* This training should instruct employees on de-watering installation designs and techniques, including proper coupling and anchoring methods. Operators should ensure that employees understand the potential hazards of improperly installed de-watering systems, provide employees a means of determining whether the pipe groove meets manufacturer's tolerances, and the procedures they should implement to protect themselves and others working around them.
- *Proper procedures.* Operators should ensure that proper installation and de-watering procedures are followed on the job site.

Operators may refer to recommended practices provided by national consensus standards organizations, such as American Petroleum Institute (API) Recommended Practice for Occupational Safety for Oil and Gas Well Drilling and Servicing Operations (API RP 54–1999, Section 12.4.3); American National Standards Institute (ANSI) Power Piping (ANSI B31.1–1973, Section 121.2); and U.S. Army Corps of Engineers (USACE) Safety and Health Requirements Manual (EM 285–1–1, 1996 Section 20).

Issued in Washington, DC, on September 23, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–21829 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 425X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Chase, Morris, Marion and Dickinson Counties, KS

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments,* to abandon a 25.57-mile line of railroad between BNSF milepost 0.00 near Neva and milepost 25.45 near Lost Springs, in Chase, Morris, Marion and Dickinson Counties, KS. The line

traverses United States Postal Service Zip Codes 66838, 66850, 66859 and 66869.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 29, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 12, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 11152.28 must be filed by October 19, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 4, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by September 29, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 21, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21680 Filed 9–28–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 426X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In Matagorda and Wharton Counties, TX

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F–*Exempt Abandonments* to abandon 20.89 miles of rail line between BNSF milepost 66.95 in Bay City and milepost 54.00 near Cane Junction and between milepost 0.00 near Cane Junction and milepost 7.94 near Newgulf, in Matagorda and Wharton Counties, TX. The line traverses United States Postal Service Zip Codes 77414, 77420 and 77482.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 29, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 12, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 19, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the effects, if any, of the abandonment on the

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

environment and historic resources. SEA will issue an environmental assessment (EA) by October 4, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by September 29, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 22, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21779 Filed 9–28–04; 8:45 am]

BILLING CODE 4915–01–P

Corrections

Federal Register

Vol. 69, No. 188

Wednesday, September 29, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Ballistic Missile Defense System Draft Programmatic Environmental Impact Statement

Correction

In notice document 04–20813 beginning on page 56043 in the issue of Friday, September 17, 2004 make the following corrections:

1. On page 56043, in the second column, under the **SUMMARY** heading, in the 14th line "MDBS" should read "BMDS".

2. On the same page, in the third column, in the seventh line, "October 19, 2994" should read "October 19, 2004".

3. On the same page, in the same column, in the first full paragraph, in the next to last line, "addressed" should read "addresses".

4. On the same page, in the same column, under the **ADDRESSES** heading, in the eighth line, "*mda.bmds,peis@icfconsulting.com* " should read "*mda.bmds.peis@icfconsulting.com*".

[FR Doc. C4–20813 Filed 9–28–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
September 29, 2004

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 61
Picture Identification Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–11666; Amendment No. 61–107]

RIN 2120–AH76

Picture Identification Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on final rule.

SUMMARY: On October 28, 2002, the FAA revised the authority to exercise the privileges of a pilot certificate to require a pilot to carry photo identification acceptable to the Administrator. Additionally, the final rule required a pilot certificate holder to present that photo identification when exercising the privileges of the certificate. The rule permits the Administrator, an authorized representative of the National Transportation Safety Board or Transportation Security Administration, or a law enforcement officer to inspect the photo identification. These requirements addressed pilot identification and pilot certificate security concerns.

DATES: The final rule was effective on October 28, 2002. The closing date for comments on the final rule was November 27, 2002.

ADDRESSES: You may examine the complete docket for the final rule on pilot picture identification at the Docket Management System (DMS). DMS is located at the U.S. Department of Transportation, 400 Seventh Street, SE., Room 401, Plaza Level, Washington, DC 20590–0001. Hours are 9 a.m. to 5 p.m., Monday–Friday, except Federal holidays. You may also access the docket electronically at *http://dms.dot.gov*. A "Simple Search" on docket number 11666 will provide a list of all comments as well as a copy of the final rule and this disposition document.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Background

The Aviation and Transportation Security Act (ATSA), Public Law 107–71, enacted on November 19, 2001, required the Under Secretary of Transportation for Security to consider upgrading U.S. pilot certificates. Section 109 (a)(6) of ATSA provided that the Under Secretary, in consultation with the Administrator of the Federal Aviation Administration, may "consider whether to require all pilot licenses to incorporate a photograph of the license holder and appropriate bio-metric imprints."

In addition, the FAA received a petition from the Aircraft Owners and Pilots Association (AOPA), dated February 21, 2002. AOPA asked the FAA to revise 14 CFR 61.3(a) and (l) to require a pilot to carry photo identification while exercising the privileges of the pilot certificate. The petition also requested that the FAA require a pilot to present that photo identification when requested for inspection by an appropriate official. The AOPA pointed out in its petition that this solution would be far less costly and quicker to implement than would any significant modification to the pilot certification system. The AOPA suggested the most commonly held form of photo identification is a State driver's license, which would impose no additional cost to the pilot or to the Federal government.

The FAA responded to the AOPA on March 27, 2002, stating the proposal "provides a positive short-term measure to enhance security throughout the general aviation community." The FAA also acknowledged that, while the proposal was a good interim measure, it did not fully address the concerns of ATSA or requirements of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (DEA Act). The FAA also stated that it would continue to work with the Transportation Security Administration (TSA) to determine what further actions need to be taken to improve the pilot certification process. The TSA, recognizing ongoing security concerns regarding the use of an aircraft to conduct terrorist acts within the United States, requested the FAA to issue a final rule, immediately effective, adopting the AOPA proposal as an interim measure. Thus, on October 28, 2002, the final rule for pilot picture identification was published and effective on that date.

Discussion of Comments Received on the Final Rule

Comment: Many commenters expressed overall support for the rule as a necessary, low-cost first step in increasing security by identifying pilots. Individuals applauded the FAA for a quick solution that is easily available and does not incur additional expense. The Aircraft Owners and Pilots Association noted that publishing this requirement as a direct final rule was the right action to address this security issue.

FAA's Response: As noted in the final rule, the FAA found that this requirement was an "expeditious and cost effective measure that will provide additional security through enhanced identification of pilots exercising the privileges of their certificate." In addition, TSA determined that the security benefits of this rule must not be delayed and requested the FAA to adopt a final rule.

Comment: Some commenters, however, were highly critical of the rule, stating the rule provides no security benefits, but rather represents an attempt by the FAA to look like we are addressing security concerns.

FAA Response: The FAA disagrees with this comment. This pilot identification rule adds another layer of security to the aviation system. This rule provides added protection against potential acts of terrorism in the aviation system by requiring pilots to produce a form of identification other than the pilot certificate, when asked by an appropriate official. This rule requires a form of pilot identity confirmation through a photo identification.

Comment: Other commenters said the rule would be ineffective because anyone can obtain a falsified driver's license.

FAA Response: Although this rule does not address security concerns with the various types of identification that may be used to comply with this rule, the FAA recognizes that each identification has an authority working to maintain a secure identification.

Comment: One commenter noted that profiling would provide more security benefits than this rule. Another commenter suggested fingerprinting or laser-scanned identification instead of this rule.

FAA Response: As stated in the NPRM, the FAA adopted this rule as an interim measure to implement security measures concerning the pilot certificate. Measures such as profiling of pilots or more sophisticated methods of identification, like fingerprinting, are long term broad security measures that are beyond the scope of this rule. However, the FAA continues to consider various types of long term security measures.

Comment: Several commenters suggested that the current rule provides little or no security benefit and urged

the FAA to require a photograph on the pilot certificate. These commenters noted that states require photo identification for driver's licenses and there is very little cost to the public for these identifications.

FAA Response: The FAA recognizes the need for additional security measures associated with the pilot certificate, thus, this rule was adopted as an interim measure. The FAA took a permanent step in adding security features to the pilot certificate, by replacing paper certificates with a new plastic identification card that contains additional security features.

Comment: One commenter asked whether a security guard at an airport is authorized under 61.3(a)(2) to ask for pilot identification.

FAA Response: A security guard could be authorized to ask for pilot identification under 61.3(a)(2), if state or local law enforcement authorities have delegated duties to that security guard and the pilot is executing the privileges of the airman certificate.

Comment: Several commenters, including the Air Line Pilots Association, International (ALPA), International Brotherhood of Teamsters (IBT), and the New York State Office of Public Security, commented that this rule may serve as an interim measure, but the rule does not meet the intent of either the DEA Act or ATSA. These commenters urged the FAA to develop and require an up-to-date, fraud-resistant, means of pilot identification, similar to the identification card proposed in response to the DEA Act, March 12, 1990 (55 FR 9270). ALPA supported the Department of Transportation's Transportation Worker Identification Card (TWIC).

FAA Response: Since the issuance of the final rule on pilot picture identification, the FAA has responded to many of these suggestions by replacing the current paper pilot certificate with a plastic credit-card sized certificate that incorporate security features. The FAA issues new certificates as pilots earn additional ratings, replace a certificate, or request a new certificate. Pilots who seek a replacement certificate, may obtain one by submitting an application with a $2 fee to Flight Standards Service, Airmen Certification Branch, AFS–760, FAA, P.O. Box 25082, Oklahoma City, Oklahoma, 73125 (telephone: (405) 954–3205). The FAA recognizes that its new plastic pilot certificate does not establish a combined photo identification and pilot certificate at this point. However, as previously stated, the "Picture Identification Requirements" final rule is an interim measure, and the FAA is considering various security options associated with the new plastic identification certificate. In addition, the new airman certificate, partially addresses some of the concerns in the DEA Act and ATSA.

Comment: One commenter suggested the FAA extend this rule to other crew members such as flight engineers or navigators.

FAA Response: The FAA does not plan to extend this rule to other crewmembers at this time.

Comment: One commenter suggested including the immigration status of a pilot/flight instructor along with the pilot's authority to work in the U.S.

FAA Response: Although the new pilot certificate may be capable of containing many different security features, the FAA does not plan at this time to include a pilot's immigration or authority to work status in the certificate.

Comment: Several commenters were concerned that it may be difficult for student pilots under the age of 16 to comply with this rule because such students may not possess a driver's license. Commenters also suggested these individuals are unlikely to have a passport or other Government identification that would comply with this rule.

FAA Response: Section 61.3(a)(2) has several options for meeting the requirements of carrying a photo identification that matches the pilot certificate and showing the identification to the proper authorities. The FAA believes it is not difficult for students, even those under the age of 16, to obtain an identification card that will meet the requirements of this rule. For example, the Department of Motor vehicles for many states issue photo identification cards to individuals under the age of 16 or otherwise not eligible for a driver's license. For further information contact your local Department of Motor Vehicles or visit http://www.dmv.org and click on identification cards.

Comment: One commenter stated that the rule is unnecessary because each pilot is already required to carry with his/her pilot certificate a current medical certificate which has that pilot's height, weight, hair color, eye color, etc.

FAA Response: While a medical certificate does include the listed physical descriptions, one description could fit many people. The photo makes it readily apparent whether or not the medical certificate actually matches the photo and thus identifies the person.

Comment: Several individuals commented that this rule would not have prevented the September 11 terrorist attacks because terrorists would have some form of photo identification with them. They stated that more than a year has passed since the terrorist attacks, and there has been no terrorist attacks in general aviation. Yet another commentator stated that it is virtually impossible to prevent acts of terrorism; it is up to the citizenry to be more vigilant.

FAA Response: The fact that time has passed since the terrorist attacks of September 11, does not mean the FAA can afford to relax its security measures. The FAA agrees with the commenter that a vigilant citizenry is important to prevent acts of terrorism. However, the FAA will continue to examine and implement security measures, with the advice of the TSA, to carry out all reasonable measures to ensure the security of the aviation system in the United States.

Comment: One commenter calls the final rule an invasion of privacy because it contradicts a long-standing policy that the U.S. government will not require private citizens to carry identification.

FAA Response: This rule does not constitute an invasion of privacy. This rule only applies to those individuals who seek to exercise the privileges of a pilot certificate, that privilege now includes the obligation to identify oneself for security purposes.

Comment: A pilot commented that immediate adoption of the rule was not justified. This individual believes that because the threat level designated by the Department of Homeland Security was lowered to "Elevated" and there have been no further terrorist attacks on the U.S., aviation related or otherwise, since September 11, 2001, the public should have been given notice and the opportunity to comment before final action was taken. This commenter believes that for purposes of the notice and comment requirements of the Administrative Procedures Act (APA) the FAA's partial adoption of the AOPA petition circumvented the rulemaking process.

FAA Response: Federal agencies are allowed to issue final rules without comment under section 553 of the APA when a comment period is "impractical or contrary to public interest." In this case, the FAA was responding to TSA's request to issue a regulation to help prevent the use of aircraft in terrorist acts. As noted in both the NPRM and final rule, the FAA did not adopt the AOPA petition in its entirety. The TSA determined immediate adoption without notice and comment was in the public interest, and the FAA followed that determination.

Comment: Several individuals commented that their state does not include a photo as part of the driver's license. One individual commented that he has no identification that includes a photo.

FAA Response: The FAA believes it is not difficult for pilots to obtain an identification card that will meet the requirements of this rule. If a pilot is not eligible for one of the acceptable methods of identification permitted by the rule, the pilot may submit a request for an exemption pursuant to 14 CFR 11.63.

Comment: Another individual commented that the cost of the new rule is not necessarily minimal. The commenter stated that if each of the existing 600,000 pilots in the United States had to purchase some form of government identification, estimated at $17.00 per pilot, the cost of the rule would be $10,200,000.

FAA Response: The FAA believes that the vast majority of pilots will have government identification cards that meet the requirements of this rule. The FAA anticipates most pilots will have either a driver's license with a picture or a passport. Therefore, the cost to pilots is anticipated to be minimal.

Comment: One commenter asked whether "official passport" in 61.1(a)(2)(iv) means a U.S. official passport or does it include official passports issued by foreign governments.

FAA Response: The intent of "official passport" in 61.1(a)(2)(iv) was to include passports issued by the U.S. government or any travel document issued by a competent authority showing the bearer's origin, identity and nationality, if any, which is valid for the admission of the bearer into a foreign country.

Comment: Several individuals commented on the effect of this rule on foreign persons holding a U.S. pilot certificate. One commenter asked whether this rule is intended to apply outside the U.S. because this rule applies to "U.S. registered aircraft," including aircraft operated outside of the U.S. The commenter is concerned that pilots operating U.S. registered aircraft outside the U.S. will only be able to comply with this rule if they have an official passport or another form of identification the Administrator found acceptable.

FAA Response: Foreign pilots operating U.S. registered aircraft outside the U.S. will only have to comply with 61.3(a)(2) when such pilots are executing the privileges of a U.S. airman certificate. If the foreign pilot is operating the U.S. registered aircraft under the authority of a certificate issued by a foreign country, the pilot does not have to comply with this rule. Such operations are permitted under 61.1(a)(1), where the pilot is operating the aircraft under the authority of a pilot certificate issued by the country in which the aircraft is being operated. If the foreign pilot is relying on a U.S. pilot certificate, the pilot must comply with 61.1(a)(2).

Comment: One commenter asked whether a foreign pilot is subject to this rule when operating any aircraft in the U.S.

FAA Response: This rule applies to pilots exercising the privileges of a U.S. pilot certificate. The registration or location of the aircraft the pilot is operating does not determine whether a pilot must comply with this rule.

Conclusion

After consideration of the comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Amendment 61–107 remains in effect as adopted.

Issued in Washington, DC on September 20, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–21533 Filed 9–28–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
September 29, 2004

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2004–05 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT53

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2004–05 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 25, 2004.

ADDRESSES: You may inspect comments on the special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ((703) 358–1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In a proposed rule published in the August 17, 2004, **Federal Register** (69 FR 51036), we proposed special migratory bird hunting regulations for the 2004–05 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In a proposed rule published in the March 22, 2004, **Federal Register** (69 FR 13440), we requested that tribes desiring special hunting regulations in the 2004–05 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit the level of harvest, where it could be shown that failure to limit the harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** (53 FR 31612)).

Although the August 17 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the September 3, 2004, **Federal Register** (69 FR 53990). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 17 proposed rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons. The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 2004–05 migratory bird hunting season, we proposed regulations for 30 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 20 tribes have proposals with late seasons. Proposals are addressed in the following section. The comment period for the proposed rule, published on August 17, 2004, closed on August 27, 2004, however, we did not receive any comments.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under **ADDRESSES.** In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded

Lands" is available from the same address.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBM, at the address indicated under **ADDRESSES.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–1996, and then updated in 1998. We have updated again this year. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a midpoint estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Small Business Regulatory Enforcement Fairness Act

The annual migratory bird hunting regulations constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this series of rules has an annual effect on the economy of $100 million or more. However, because these rules establish hunting seasons, we do not plan to defer the effective date of this rule under the exemption contained in 5 U.S.C. 808 (1), and this rule will be effective immediately.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, the annual migratory bird hunting rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special

regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), November 6, 2000, (3 CFR 2000 Comp., p. 304), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the March 22 request for proposals and the August 8 proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and nontribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is amended by revising paragraphs (a), (b), (c), (g), (i), (m), (n), (o), (r), (s), (t) and (v) and by adding paragraphs (w) through (dd) to read as set forth below. (Current § 20.110 was published at 69 FR 53990, September 3, 2004.)

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 2004; then open November 12, close December 26, 2004.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

Ducks (Including Mergansers)

Season Dates: Open October 16, 2004, close January 30, 2005.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, and four scaup. The seasons on canvasback and pintail are closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open October 23, 2004, close January 30, 2005.

Daily Bag and Possession Limits: Three geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters)

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2004, close March 9, 2005.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (Including Mergansers)

Pintails and Canvasbacks: Open October 2, close November 30, 2004.

Other ducks: Open October 2, 2004, close January 14, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), four scaup, and two redheads. The season on canvasback is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open October 2, 2004, close January 14, 2005.

Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open October 2, 2004, close January 14, 2005.

Daily Bag and Possession Limits: Three and six geese, respectively.

Youth Waterfowl Hunt

Season Dates: September 25–26, 2004.

Daily Bag and Possession Limits: Same as ducks but includes one pintail.

General Conditions: Tribal members and Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 11, close October 17, 2004.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Doves

Season Dates: Open September 1, close October 30, 2004.

Daily Bag Limit: 15 mourning doves.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Ducks

Pintail and Canvasback: Open October 2, close November 10, 2004.

Other ducks: Open October 2, close December 14, 2004.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (including no more than two female mallards), two redheads, one pintail (when open), three scaup, and two wood ducks. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 16, 2004, close January 18, 2005.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open September 25, close December 19, 2004.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open September 25, close December 30, 2004.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

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(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Ducks

Season Dates: Open September 25, 2004, close January 31, 2005. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays, and for a continuous period in the months of October and November, not to exceed 107 days total. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close September 15, 2004, for the early-season, and open October 1, 2004, close January 31, 2005, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 and 10, respectively, for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2004, close January 31, 2005.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2004, close January 31, 2005.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit. Hunters must observe all State and Federal regulations, such as those contained in 50 CFR part 20.

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(i) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2004, close January 15, 2005.

Daily Bag and Possession Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be a hen), 6 scaup, 2 black duck, 2 redheads, 3 wood ducks, 2 canvasback, and 2 pintail. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, close November 30, 2004, and open January 1, close February 8, 2005.

Daily Bag and Possession Limits: Five Canada geese and possession limit is twice the daily bag limit.

White-fronted Geese, Snow Geese, Ross' Geese, and Brant

Season Dates: Open September 20, close November 30, 2004.

Daily Bag and Possession Limits: Five birds and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2004.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

A. All tribal members are required to obtain a valid tribal resource card and 2004–05 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

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(m) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-Tailed Pigeons

Season Dates: Open September 1, close September 30, 2004.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 2004.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Pintails and Canvasback: Open September 25, close November 23, 2004.

Other ducks: Open September 25, 2004, close January 9, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), one canvasback (when open), four scaup, and two redheads. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate.

Dark Geese

Season Dates: Open September 25, 2004, close January 9, 2005.

Daily Bag and Possession Limits: Four and eight geese, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Navajo Nation also apply on the reservation.

(n) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Ducks (Including Mergansers)

Season Dates: Open September 25, close November 19, 2004, and open November 29, close December 5, 2004.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), five wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close November 19, 2004, and open November 29, close December 31, 2004.

Daily Bag and Possession Limits: Three and Six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 11, close November 14, 2004.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, close November 14, 2004.

Daily Bag and Possession Limits: 10 and 20, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(o) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 16, close December 31, 2004.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, close December 31, 2004.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2004, close March 10, 2005.

Daily Bag and Possession Limits: Two brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 16, close December 31, 2004.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 16, close December 31, 2004.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, close December 31, 2004.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 16, close December 31, 2004.

Daily Bag and Possession Limits: 2 and 4, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

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(r) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2004, and close February 29, 2005.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads. The season on canvasbacks is closed.

Geese

Season Dates: Open September 15, 2004, and close February 29, 2005.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. The Tribes also set a maximum annual bag limit of 365 ducks and 365 geese for those tribal members who engage in subsistence hunting.

Snipe

Season Dates: Open September 15, 2004, close February 29, 2005.

Daily Bag and Possession Limits: 8 and 16, respectively.

Nontribal Hunters

Ducks

Pintails: The season on pintails is the same as that established by the State of Washington, under final Federal frameworks, to be announced.

Other ducks: Open October 12, 2004, close January 26, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), four scaup, and two redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 50, respectively

Geese

Season Dates: Open October 19, 2004, close January 26, 2005.

Daily Bag and Possession Limits: Four geese, including four dark geese but no more than three light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 11, close January 26, 2005.

Daily Bag and Possession Limits: Two and four brant, respectively.

Snipe

Season Dates: Open November 14, 2004, close February 28, 2005.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(s) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Ducks

Season Dates: Open November 1, 2004, close February 8, 2005.

Daily Bag and Possession Limits: 15 and 20, respectively. The season on canvasbacks is closed.

Coots

Season Dates: Open November 1, 2004, close February 8, 2005.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open November 1, 2004, close February 8, 2005.

Daily Bag and Possession Limits: The daily bag limits are seven geese and five brant. The possession limits for geese and brant are 10 and 7, respectively.

Mourning Dove

Season Dates: Open September 1, end December 31, 2004.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(t) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Teal

Season Dates: Open October 20, 2004, close January 29, 2005.

Daily Bag Limit: Six teal.

Ducks

Season Dates: Open October 20, 2004, and close February 21, 2005.

Daily Bag Limit: Six ducks, including no more than two hen mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 20, 2004, and close February 21, 2005.

Daily Bag Limit: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Geese

Season Dates: Open September 11, close September 25, 2004, and open November 8, 2004, close February 21, 2005.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second, and 15 snow geese.

Woodcock

Season Dates: Open October 16, and close November 30, 2004.

Daily Bag Limit: Three woodcock.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. Tribal members will observe all basic Federal migratory bird hunting regulations contained in 50 CFR.

* * * * *

(v) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, close September 15, 2004.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, close September 15, 2004.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Pintails and Canvasbacks: Open October 9, close December 5, 2004.

Other ducks: Open October 9, 2004, close January 30, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than three mallards (including no more than one hen mallard), two redheads, one canvasback (when open), and one pintail (when open). The possession limit is twice the daily bag limit.

Coots, Moorhens and Gallinules

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 9, 2004, close January 30, 2005.

Bag and Possession Limits: Three and six, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, the area open to waterfowl hunting in the above seasons consists of: the entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2004–05 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2004–05 season.

(w) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Nontribal Hunters)

Ducks

Pintails and Canvasbacks (For nontribal hunters only): Open September 27, close October 26, 2004.

Other ducks: Open September 27, close November 25, 2004, except shooting hours on opening day and for every hunting day for the remainder of the season would be one-half hour before sunrise and continue to one-half hour after sunset for tribal members. Nontribal shooting hours will go from one-half hour before sunrise to sunset on reservation.

Daily Bag Limits and Possession Limits: The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. The possession limit is twice the daily bag limit.

The Band's Conservation Department regulates nontribal harvest limits under the following regulations: (1) Nontribal hunters must be accompanied at all times by a Band Member guide; (2) Nontribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) Nontribal hunters and Band Members must have only Service-approved nontoxic shot in possession at all times; (4) Nontribal hunters must conform to possession limits established and regulated by the State of Minnesota and the Bois Forte Band.

(x) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

Pintail and Canvasback

Season Dates: Open October 9, close November 30, 2004.

Other Ducks (Including Mergansers)

Season Dates: Open October 9, close November 30, 2004.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, one canvasback, two redheads, and four scaup. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 9, close November 30, 2004.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(y) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

Ducks

Season Dates: Open October 1, 2004, close January 28, 2005.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines.

(z) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Mergansers and Coots)

Season Dates: Open October 2, 2004, close March 7, 2005.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 16, 2004, close March 7, 2005.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 16, 2004, close March 7, 2005.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 16, 2004, close March 7, 2005

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 25, close September 26, 2004.

Daily Bag and Possession Limits: Same as above.

Nontribal Hunters

Pintail

Season Dates: Open October 23, close November 21, 2004.

Other Dockets (Including Mergansers and Coots)

Season Dates: Open October 2, 2004, close January 6, 2005.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, and one pintail (when open). The season on canvasbacks is closed. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 16, 2004, close January 18, 2005.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 16, 2004, close January 9, 2005.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 16, 2004, close January 15, 2005, and open February 26, close March 10, 2005.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 25, close September 26, 2004.

Daily Bag and Possession Limits: Same as above.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(aa) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Pintails and Canvasbacks

Season Dates: Open October 2, close November 30, 2004.

Other Ducks

Season Dates: Open October 2, 2004, close January 14, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), one canvasback (when open), one scaup, and two redheads. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 mergansers, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20 coots, respectively.

Geese

Season Dates: Open October 2, 2004, close January 14, 2005.

Daily Bag and Possession Limits: Four geese, including not more than three light geese or two white-fronted geese. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(bb) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

Pintails

Season dates: Open October 1, close November 30, 2004.

Ducks (Including Mergansers)

Season Dates: Open October 1, 2004, close January 31, 2005.

Daily Bag and Possession Limits: 10 including no more than five hen mallards, two pintail, seven scaup, and five redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Six and twelve, respectively. The daily bag limit on brant is three.

Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20, respectively.

Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(cc) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

Off Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2004, close February 25, 2005.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

On Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2004, close March 9, 2005.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: Steps will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Swinomish Tribal Fish and Game.

(dd) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

Ducks (Including Mergansers)

Pintails and Canvasbacks: Open October 9, close November 16, 2004.

Other ducks: Open October 9, close December 21, 2004.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (no more than two hen mallards), two redheads, one canvasback (when open), one pintail (when open), three scaup, and two wood ducks. The daily bag limit for mergansers is five, of which no more than one can be a hooded merganser. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as other ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

Dark Geese

Season Dates: Open October 29, 2004, close January 31, 2005.

Daily Bag and Possession Limits: Three geese, including no more than one white-fronted goose or brant. The possession limit is twice the daily bag limit.

Light Geese

Season Dates: Open October 29, 2004, close January 19, 2005.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions:

(1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 24, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–21827 Filed 9–24–04; 4:50 pm]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
September 29, 2004

Part IV

The President

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Vol. 69, No. 188
Wednesday, September 29, 2004

Presidential Documents

Title 3—

The President

Proclamation 7821 of September 25, 2004

Gold Star Mother's Day, 2004

By the President of the United States of America

A Proclamation

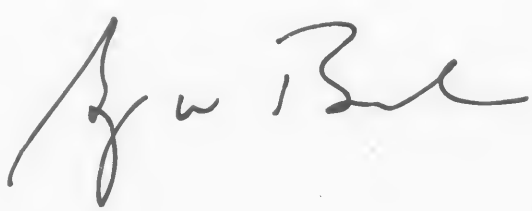
Americans have always answered the call to serve our Nation. Many brave American men and women have made the ultimate sacrifice to defend freedom's blessings, and no one feels their loss more deeply than their mothers. On Gold Star Mother's Day, we remember these mothers who have suffered the loss of a son or daughter through service to our country. We honor their courage and perseverance and the memory of their children.

Across our Nation, these compassionate and generous women are volunteering to serve veterans, helping families of service members, supporting educational programs that promote patriotism and citizenship, and turning their grief into action. They inspire all Americans with their compassion and service. On this day, people across America join together to honor our Gold Star mothers and send our gratitude, prayers, and best wishes to them and to their families.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895 as amended), has designated the last Sunday in September as "Gold Star Mother's Day," and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Sunday, September 26, 2004, as Gold Star Mother's Day. I call upon all Government officials to display the flag of the United States over Government buildings on this solemn day. I also encourage the American people to display the flag and hold appropriate meetings in their homes, places of worship, or other suitable places as a public expression of the sympathy and respect that our Nation holds for our Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–22042
Filed 9–28–04; 9:04 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7822 of September 25, 2004

National Hunting and Fishing Day, 2004

By the President of the United States of America

A Proclamation

America is a land of majestic beauty, and we take pride in our wildlife, forests, mountains, lakes, rivers, and coastlines. Outdoor recreation is an important part of our Nation's heritage. On National Hunting and Fishing Day, we celebrate the remarkable progress we have made in conserving our environment and recognize those who have worked to conserve our natural resources.

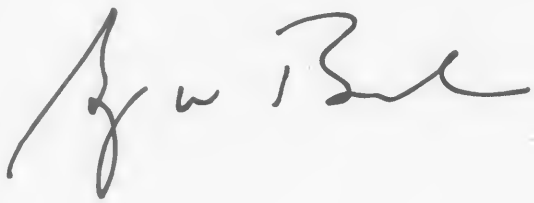
America's hunters and anglers represent the great spirit of our country and are among our Nation's foremost conservationists. These citizens have worked to protect habitat and restore fish and wildlife populations. They volunteer their time, talents, and energy to countless conservation projects, because they recognize the importance of maintaining the natural abundance of our country for future generations.

My Administration is committed to achieving a cleaner, safer, and healthier environment for all Americans, including our hunters and anglers. My Administration has expanded opportunities to hunt and fish at national wildlife refuges and improved habitat on public and private lands. We have cut phosphorus releases into our rivers and streams, and I signed the Healthy Forests Restoration Act to help protect our forests from the risk of wildfires.

Americans are blessed to live amid many wonders of nature, and we have a responsibility to be good stewards of the land. I commend all who advance conservation and help our citizens enjoy the benefits of our environment. These efforts ensure that our national heritage remains a source of pride for our citizens, our communities, and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 25, 2004, as National Hunting and Fishing Day. I call upon the people of the United States to join me in recognizing the contributions of America's hunters and anglers, and all those who work to conserve our Nation's fish and wildlife resources.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–22043
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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.

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JUSTICE DEPARTMENT

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Cotton classing, testing and standards:
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Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

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Privacy Act; implementation; comments due by 10-8-04; published 8-9-04 [FR 04-18079]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

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Energy conservation standards—
Commercial packaged boilers; test procedures and efficiency standards; Open for comments until further notice; published 12-30-99 [FR 04-17730]

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Electronic tariff filings; software availability and testing; comments due by 10-4-04; published 7-23-04 [FR 04-16478]

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Chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills; Maryland; comments due by 10-7-04; published 9-16-04 [FR 04-20897]
Chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills; comments due by 10-7-04; published 9-16-04 [FR 04-20898]
Coke oven batteries; comments due by 10-8-04; published 8-9-04 [FR 04-17787]
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New Mexico and Arkansas; comments due by 10-8-04; published 9-8-04 [FR 04-20334]

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Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

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Incumbent local exchange carriers network elements; unbundled access; comments due by 10-4-04; published 9-13-04 [FR 04-20467]

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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Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 361/P.L. 108–304
Sports Agent Responsibility and Trust Act (Sept. 24, 2004; 118 Stat. 1125)

H.R. 3908/P.L. 108–305
To provide for the conveyance of the real property located at 1081 West Main Street in Ravenna, Ohio. (Sept. 24, 2004; 118 Stat. 1130)

H.R. 5008/P.L. 108–306

To provide an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through September 30, 2004, and for other purposes. (Sept. 24, 2004; 118 Stat. 1131)

S. 1576/P.L. 108–307
Harpers Ferry National Historical Park Boundary Revision Act of 2004 (Sept. 24, 2004; 118 Stat. 1133)

Last List September 9, 2004

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108th Congress

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